

ANJALI BHARDWAJ AND OTHERS

A

v.

UNION OF INDIA AND OTHERS

(Writ Petition (Civil) No. 436 of 2018)

FEBRUARY 15, 2019

B

[A. K. SIKRI AND S. ABDUL NAZER, JJ.]

*Right to Information Act, 2005:*

*ss. 7, 19, 12(5) and 13(5) – Effective implementation of the Act – Sought by filing writ petition u/Art. 32 of Constitution – Alleging that non-filling of vacancies of Information Commissioners in timely manner in Central Information Commission (CIC) and State Information Commissions (SICs) stifles the functioning of the Act, resulting in huge backlog of appeals and complaints – It was also alleged that there was lack of transparency in appointment of Information Commissioners – It was sought that terms and conditions on which the appointments are to be made, should be clearly stated – Held: Right to information is a fundamental right which flows from Arts. 19(1)(a) and 21 – There is a definite link between right to information and good governance – Transparency is the key for functioning of a healthy democracy – There has been undue delays in filling up of the vacancies – The respondents are directed to fill up the vacancies without any delay – Insofar as transparency in appointment is concerned, all the States are directed to follow the system adopted by the Central Government, of placing all necessary information on the website – Though terms and conditions of appointment are provided in s. 13(5), it would be appropriate to specify the terms and conditions of appointment in the advertisement and also put the same on the website – Information Commissioners should be appointed also from other streams as mentioned in the Act and should not be limited only to the Government employees/ex Government employees.*

C

D

E

F

G

**Disposing of the petition, the Court**

**HELD:** 1. The right to information is a fundamental right and flows from Article 19(1)(a), which guarantees right to speech. This right has also been traced to Article 21 which concerns about right to life and liberty. Transparency is the key for functioning of a healthy democracy. [Para 10][210-G-H, 211-A]

H

- A *State of Uttar Pradesh v. Raj Narain (1975) 4 SCC 428: [1975] 3 SCR 333 ; S.P. Gupta v. President of India and Others (1981) Supp SCC 87 : (1982) SCR 365 – followed.*
- B *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspaper, Bombay Private Limited and others (1988) 4 SCC 592 : [1988] 3 Suppl. SCR 212; Union of India and Another v. Association of Democratic Reforms (2002) 5 SCC 294 : [2002] 3 SCR 696; Reserve Bank of India v. Jayantilal N. Mistry (2016) 3 SCC 525 : [ 2015] 14 SCR 505 – relied on*
- C *Article by Alwin Toffler titled “What will our future be like?” – referred to*
- D **2. The right to information, is not only a constitutional right of the citizens but there is a legislation in the form of Right to Information Act (RTI) which provides a legal regime for people to exercise their fundamental right to information and to access information from public authorities. The very preamble of the Act captures the importance of this democratic right. [Para 19] [215-B]**
- E **3. There is a definite link between right to information and good governance. In fact, the RTI Act itself lays emphasis on good governance and recognises that it is one of the objectives which the said Act seeks to achieve. The RTI Act would reveal that four major elements/objectives required to ensure good governance are: (i) greater transparency in functioning of public authorities; (ii) informed citizenry for promotion of partnership between citizens and the Government in decision making process; (iii) improvement in accountability and performance of the Government; and (iv) reduction in corruption in the Government departments. [Para 18][214-G-H, 215-A]**
- G **4. There are various provisions in this RTI Act which are incorporated in order to ensure that right to information becomes a reality. It is a self-contained legislation, providing a comprehensive framework in this behalf. [Para 20][215-D]**
- H **5. It is correct that there have been undue delays in filling up of the vacancies. It is expected that the vacancies shall be filled up, in future, well in time. [Para 34][226-F]**

**6.1** From the status report of Union of India it becomes clear that the procedure is now adequately transparent. The Department of Personnel and Training has put on website information in respect of names of the applicants for these posts, names of the members of Search Committee, agenda for the Search Committee, Minutes of the Search Committee etc. After the Search Committee sends its recommendations, the Selection Committee has to make the final selection. The composition of the Selection Committee is provided in Section 12(3) of the Act which consists of: (i) The Prime Minister, who shall be the Chairperson of the Committee; (ii) The Leader of Opposition in the Lok Sabha; (iii) The Union Cabinet Minister to be nominated by the Prime Minister. The Statutory Committee, thus, consists of very high ranking persons. [Para 35][226-G-H, 227-A-B]

**6.2** Therefore, it cannot be said that there is no transparency in the appointment process, when all essential information in respect of each candidate is made available to the public at large. Information in respect of Members of Search Committee, agenda of their meetings and even the Minutes of the Search Committee have also been put on website. The appointments made, finally, are also in public domain. [Para 36][227-C]

**7.1** As it is evident from s. 12(5) of RTI Act, any person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance is qualified to become Chief Information Commissioner or Information Commissioner. The Legislature in its wisdom widened the area of consideration by not limiting it to the serving or retired government employees alone. Persons of eminence in public life are made eligible. Field of knowledge and experience is also very much broadened as it can be either in law or science and technology or social service or management or journalism or mass media or administration and governance. The Parliament, thus, intended that persons of eminence in public life should be taken as Chief Information Commissioner as well Information Commissioners. Many persons who fit in the aforesaid criteria have been applying for these posts. However, the persons who

A

B

C

D

E

F

G

H

- A have been selected belong to only one category, namely, public service, i.e., they are the government employees. It is difficult to fathom that persons belonging to one category only are always be found to be more competent and more suitable than persons belonging to other categories. In fact, even the Search Committee which short-lists the persons consist of bureaucrats only. For these reasons, official *bias* in favour of its own class is writ large in the selection process. [Para 39][227-F-H, 228-A-B]
  - 7.2 There can be equally suitable persons from other walks of life as well who may be the aspirants for such posts. This Court, therefore, impresses upon the Search Committee, in future, to pick up suitable candidates from other categories as well. After all, the very purpose of providing wide range of suitability was to have members in CIC by giving representation to other classes as well. This would ensure wider representative character in the composition of CIC. [Para 40][228-C-D]
- B
- C
- D 8. So far as grievance that there was no specific condition of service stipulated in the advertisement while inviting applications for the post of Information Commissioners, is concerned, it is clear from the provision in s. 13(5) of the Act that any candidate who aspires to become Chief Information Commissioner knows as to what would be the salary and allowances and what would be other terms and conditions of service. At the same time, it is always advisable to make express stipulation of terms and conditions of service in the public notice/Notification and also on website. [Paras 41 and 42][228-E, 229-E]
- E
- F 9.1 The figures given by the State of West Bengal may show that the pendency is brought down. However, it is still very high and the rate of attrition is quiet slow. What is more important is that many cases could be decided after a long period. Therefore, the strength of one SCIC and two Information
- G
- H

**9.2 The purpose of Right to Information cannot be allowed to be frustrated by having thoroughly inadequate strength of Information Commissioners in the SIC.** The Act, enables the Government to have SIC with one SCIC and up to 10 Information Commissioners. It, therefore, becomes the statutory and constitutional obligation of the State Government to have adequate number of Information Commissioners for quick and speedy disposal of appeals and complaints. Therefore, the State Government should immediately consider creating more posts of Information Commissioners. It is suggested that at least three more such posts should be created. [Para 47][230-G-H]

A

**10.1 In the State of Andhra Pradesh, the Commission became defunct in May 2017 after the retirement of serving Information Commissioners. The SIC of the State of Andhra Pradesh is yet to become functional. For over 10 months, people seeking information from public authorities under the jurisdiction of the Andhra Pradesh SIC have had no recourse to the independent appellate mechanism prescribed under the RTI Act and their right to information is violated. Three Information Commissioners have since been appointed.** [Paras 48 and 49][231-C, D]

B

C

D

**10.2 Steps have not been taken for filling up of the post of SCIC as the Chief, who is the head of the Commission, performs crucial role inssofar as functions of the SIC is concerned. As per Section 15(4) of the Act, the general superintendence, direction and management of the affairs of the SIC vests in the SCIC. Thus, a very lackadaisical approach was adopted in filling up of this post and the Andhra Pradesh SIC is virtually non-functional since May 2017. May be, with three Information Commissioners who have recently been appointed, Andhra Pradesh SIC shall get activated, but to limited extent. However, that hardly serves the purpose and does not make the SIC fully functional. Therefore, the Court impresses upon the State of Andhra Pradesh to fill up the post of SCIC and also the remaining posts of Information Commissioners at the earliest and in any case within three months from the date of this judgment.** [Paras 50 and 51][231-G-H, 232-A-B]

E

F

G

H

- A        11. The composition of Telangana SIC with only SCIC and one Information Commissioner is too inadequate having regard to the pendency and also the number of cases which are filed on monthly/yearly basis. If sufficient number of Information Commissioners are not appointed, the pendency will keep increasing and piling up. Therefore, for proper functioning of the Telangana SIC, there should be at least four more Information Commissioners appointed, for the time being. [Para 54][232-F-H]
- B        12. In the State of Maharashtra 2 Information Commissioner posts are to be filled. No doubt, these posts became vacant only in November 2018. It is expected that steps be taken in advance so that such posts are filled up immediately after they became vacant and they do not remain unfilled for long period. Going by the pendency, which is huge, it would be appropriate if at this juncture the SIC has a total strength of 1 SCIC and 10 Information Commissioners. [Para 57][283-F-G]
- C        13. In respect of State of Gujarat, it is expected that the two posts are filled within one month. [Para 58][234-B]
- D        14. State of Kerala SIC is functioning with a single Commissioner, i.e., CSIC. 5 vacancies of Information Commissioners remain unfilled. It is notwithstanding the fact that as on 21<sup>st</sup> October, 2017 nearly 14,000 appeals and complaints were pending with the Commissioner. The Court expects the State Government to ensure timely appointment to the Commission in future. [Paras 59 and 60][234-C-F]
- E        15. It is impressed upon the Selection Committee to undertake the selection process so that the posts are filled within two months. Having regard to the alarming pendencies of the complaints and appeals before the Karnataka Information Commission, it would be appropriate to consider increasing the strength of Information Commissioner. The Commission needs to function with full strength, namely, 1 CSIC and 10 Information Commissioners and the Court recommends accordingly. This recommendation be considered and decision thereon be taken within one month. Thereafter, process should be initiated and completed within six months from the date of this judgment. [Paras 62 and 63][235-A-C]
- F        H

**16. The Odisha SIC had been functioning with 3 Commissioners, including the Chief as on the date of filing of the petition, whereas more than 10000 appeals and complaints were pending as on October 31, 2017. One post of Information Commissioner is lying vacant since 27<sup>th</sup> May, 2015. It is expected that the said posts be filled up within two months. There is a necessity for more Information Commissioners and to begin with, at least, three more posts of Information Commissioners should be created. Therefore, the State Government should immediately consider creating more posts of Information Commissioners.** [Paras 64 and 65][235-D, E-F, G-H]

A

**17. Nagaland SIC has been functioning without SCIC since September, 2017. The State Government to take immediate steps for filling up of the said posts, so that posts are filled up within six months from today.** [Para 66][236-B]

B

**18. Insofar as transparency in appointment of Information Commissioners is concerned, pursuant to the directions given by this Court, the Central Government is now placing all necessary information including issuance of the advertisement, receipt and applications, particulars of the applicants, composition of Selection Committee etc. on the website. All States shall follow this system.** [Para 67 (i)][236-C-D]

C

**19. Insofar as terms and conditions of appointment are concerned, no doubt, Section 13(5) of RTI Act states that the CIC and Information Commissioners shall be appointed on the same terms and conditions as applicable to the Chief Election Commissioner/Election Commissioner. At the same time, it would also be appropriate if the said terms and conditions on which such appointments are to be made are specifically stipulated in the advertisement and put on website as well.** [Para 67 (ii)][236-E-F]

D

E

**20. It would also be appropriate for the Search Committee to make the criteria for shortlisting the candidates, public, so that it is ensured that shortlisting is done on the basis of objective and rational criteria.** [Para 67(iii)][236-F-G]

F

**21. information Commissioners should also be appointed from other streams, as mentioned in the Act and the selection is not limited only to the Government employee/ex-government**

G

H

- A employee. In this behalf, the respondents shall also take into consideration and follow the directions given by this Court in \**Union of India vs. Namit Sharma* case. [Para 67 (iv)][236-G-H, 237-A]

\**Union of India v. Namit Sharma (2013) 10 SCC 359 :*

- B [2013] 13 SCR 96 – relied on

22. The respondents should fill up vacancies, in future, without any delay. For this purpose, it would be apposite that the process for filling up of a particular vacancy is initiated 1 to 2 months before the date on which the vacancy is likely to occur so that there is not much time lag between the occurrence of vacancy and filling up of the said vacancy. [Para 67 (v)][237-F-H]

Case Law Reference

[1975] 3 SCR 333	followed	Para 10
[1982] SCR 365	followed	Para 11
D [1988] 3 Suppl. SCR 212	relied on	Para 12
[2002] 3 SCR 696	relied on	Para 13
[2015] 14 SCR 505	relied on	Para 14
E [2013] 13 SCR 96	relied on	Para 67

C E CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 436 of 2018

Under Article 32 of the Constitution of India

F for the Petitioners.

G Ms. Pinky Anand, Ms. Madhvi Diwan, ASGs, Ms. Pooja Dhar, Rajesh Ranjan, Arvind Kumar Sharma, Guntur Prabhakar, Ms. Prerna Singh, Prasenth Mathur, Ms. Madhumita Bhattacharjee, Ms. Urmila Kar Purkayastha, P. Venkat Reddy, Prashant Tyagi (for M/s Venkat Palwai Law Associates), Ms. Hemantika Wahi, Ms. Jesal Wahi, Ms. Puja Singh, Ms. Vishakha, Ms. Parul Luthra, G. Prakash, Jishnu M.L., Mrs. Priyanka Prakash, Mrs. Beena Prakash, V. N. Raghupathy, Parikshit P. Angadi, Ravi Prakash Mehrotra, Ankit Agarwal, Ms. Deepa M. Kulkarni, Nishant Ramakantrao Katneshwarkar, Advs. for the Respondents.

H

The Judgment of the Court was delivered by

A

**A.K. SIKRI, J.**

1. This writ petition is filed under Article 32 of the Constitution of India, as a Public Interest Litigation. The petitioners state that it is filed with the aim to have effective implementation of the Right to Information Act, 2005 (hereinafter referred to as ‘RTI Act’) so that fundamental rights of citizens to access information from public authorities are secured. Under the RTI Act, the Central Information Commission (for short, ‘CIC’) and State Information Commissions (for short, ‘SICs’) have been created as statutory bodies to decide appeals and complaints against public authorities for non-compliance with the RTI law. On that basis, the petitioners assert that it is essential to have proper functioning of these institutions for effective implementation of the RTI Act. As per the petitioners, neither the Central Government in respect of CIC nor the State Government in respect of SICs, are filling the vacancies for the appointment of Commissioners in a timely manner. As a result the functioning of RTI Act is stifled. It is leading to huge backlogs of appeals and complaints in many Commissions across the country. The focus of the petition, thus, is to impress upon the respective governments to fill up such vacancies as and when they arise, without any delays.

B

C

D

E

F

G

2. It is averred by the petitioners in the petition that the RTI Act is a time-bound legislation and prescribes statutory timelines for providing the information. When that is not provided, or the applicant is aggrieved by the nature of response received, she/he is also entitled to file a first appeal with the designated First Appellate Authority. The First Appellate Authority is obligated to dispose of such an appeal within maximum period of 45 days. The reading of Sections 7 and 19 of the RTI Act makes it clear that the RTI Act is a time-bound legislation for effectively exercising the fundamental right to information guaranteed in Article 19 of the Constitution of India. However, the CIC and SICs which are the final appellate authorities under the RTI Act, and are the guardians of the Act are taking many months, and in some cases even years, to decide appeals and complaints due to accumulation of pending appeals/complaints. The main cause for such a delay is large number of vacancies in SICs across India.

H

- A        3. The petition points out that a report published in March, 2018 titled, 'Report Card on the Performance of Information Commissions in India' found that eight information commissions had a waiting time of more than one year for an appeal/complaint to be heard, which was calculated on the basis of the number of appeals and complaints pending as on October 31, 2017 and the monthly disposal rate. Further, several Information Commissioners thereby undermine the autonomy of the Commission which hampers its smooth functioning including its ability to comply with the directions of the Supreme Court regarding the power of the Chief Information Commissioner to decide formation of special benches to hear matters involving complex questions of law. By not filling up vacancies in information commissions in a timely manner, the Central and State Governments are frustrating the very purpose of the RTI Act as receiving information in a time-bound manner is the essence of the law.
- B        4. Insofar as vacancy position and workload of CIC as well as SICs are concerned, the petitioners have given the following information:
- C        5. As on the date of filing of the petition, four posts of Information Commissioners were lying vacant in the CIC. More than 23500 appeals and complaints were pending as on April 04, 2018, before the CIC. However, no effective steps have been taken for filling up of the vacancies. Though, the Central Government had invited applications for the post of two Information Commissioners vide Circular dated 2<sup>nd</sup> September, 2016 in anticipation of vacancies occurring in December, 2016 and February, 2017, these vacancies have not been filled.
- D        6. In respect of various SICs, the petitioners have not only mentioned the backlog of the appeals and complaints pending therein, but also the vacancy position. It is further highlighted that though as per the RTI Act there has to be one Chief Information Commissioner and up to 10 Information Commissioners, most of the States have decided to have much lesser number of Commissioners, which again is affecting the workload. It is not necessary to give the details of such averments made in the petition as that would be taken note of while dealing with each SIC.
- E        7. The petitioners have also alleged that there is a lack of transparency in the appointment of Information Commissioners inasmuch as the Central Government as well as various State Governments have

H

failed to adopt proper procedure to ensure transparency in the shortlisting, selection and appointment of Information Commissioners. This lack of transparency, according to the petitioners, had led to filing of several cases in different courts challenging these appointments.

8. On the basis of averments of the aforesaid nature, the petitioners have made the following prayers:

A  
“A. Issue a writ of mandamus or any other appropriate writ directing the Union of India to take immediate steps to fill the vacancies in the CIC by making appointment of 4 information commissioners in a transparent and time bound manner.

B  
B. Issue a writ of mandamus or any other appropriate writ directing the State Governments of Maharashtra, Gujarat, Andhra Pradesh, Nagaland, West Bengal, Kerala, Karnataka, Odisha and Telengana to take immediate steps to appoint Chief State Information Commissioners and Information Commissioners of the respective SICs in a transparent and time bound manner.

C  
C. Issue a writ of mandamus or any other appropriate writ directing the Union of India and all state governments to commence the selection process for information commissioners, including the Chief, at least three months prior to the occurrence of vacancy.

D  
D. Issue a writ of mandamus or any other appropriate writ directing the Union of India and all state governments to ensure that all records of deliberations and rational criteria related to short-listing and selection of the Chief Information Commissioner and other Information Commissioners be properly recorded and made available to citizens in consonance with the provisions of the RTI Act.

E  
E. Issue a writ of mandamus or any other appropriate writ directing the Union of India and all the State Governments to evolve an appropriate and transparent method of selection of Chief Information Commissioner and other Information Commissioners in consonance with the provisions of the Act.

F  
F. Issue a writ of mandamus or any other appropriate writ directing the Union of India and all state governments to ensure transparency in the selection process by:

H

B

C

D

E

F

G

H

- A
  - a. Publishing advertisements to invite applications from eligible candidates.
  - b. Publicly disclosing, including through the website, the eligibility criteria for appointment as information commissioner/chief.
- B
  - c. Publicly disclosing, including through the website, the procedure and rational criteria for shortlisting candidates, if any shortlisting is done.
  - d. Publicly disclosing, including through the website, the composition, mandate and minutes of meetings of the screening/search committee set up.
- C
  - e. Publicly disclosing the names of short-listed candidates so that people can inform the selection committee any significant adverse information they may have about any such candidate.
- D
  - G. Issue such other writ, direction or order, which this Hon'ble Court may deem fit under the facts and circumstances of the case.”
- E
  - 9. In the petition, Union of India is arrayed as Respondent No. 1. Respondent Nos. 2 to 9 are the eight States, namely, States of West Bengal, Andhra Pradesh, Maharashtra, Kerala, Odisha, Karnataka, Gujarat and Telengana. After the notice of this petition was served upon the respondents, the Union of India as well as State Governments filed their response stating the position of pendency and also the steps taken for filling up of the posts. We shall take up the case of each of the respondents separately, going by the ground realities in respect of each State. Before embarking on discussion qua each of these respondents, it would be necessary to take note of certain provisions of the RTI Act and the significance thereof, as highlighted by this Court in various judgments.
- F
  - 10. Much before the enactment of RTI Act, which came on the statute book in the year 2005, this Court repeatedly emphasised the people's right to information to be a facet of Article 19(1)(a) of the Constitution. It has been held that the right to information is a fundamental right and flows from Article 19(1)(a), which guarantees right to speech. This right has also been traced to Article 21 which concerns about right to life and liberty. There are umpteen number of judgments declaring

that transparency is the key for functioning of a healthy democracy. In A  
the matter of ***State of Uttar Pradesh v. Raj Narain***<sup>1</sup>, a Constitution Bench of this Court held that:

“In a government of responsibility like ours, where all the agents B  
of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for C  
transactions which can, at any rate, have no repercussion on public security . To cover with veil secrecy the common routine business, is not in the interest of the public....”

11. ***S.P. Gupta vs. President of India and Others***<sup>2</sup>, a Seven-Judge D  
Bench of this court made the following observations regarding the Right to Information:

“....The concept of an open government is the direct emanation E  
from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible F  
consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.....”

12. We may also refer to the following observation from the judgment in the case of ***Reliance Petrochemicals Ltd. vs. Proprietors of Indian Express Newspaper, Bombay Private Limited and others***<sup>3</sup>:

“....We must remember that the people at large have a right G  
to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to Know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our

---

<sup>1</sup>(1975) 4 SCC 428

<sup>2</sup>(1981) Supp SCC 87

<sup>3</sup>(1988) 4 SCC 592

A land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon the responsibility to inform....”

B 13. In *Union of India and Another vs. Association of Democratic Reforms*<sup>4</sup>, this Court, while declaring that it is part of the fundamental right of citizens under Article 19(1)(a) to know the assets and liabilities of candidates contesting election to Parliament or the State Legislatures, also made following pertinent remarks:

“The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy....”

C 14. The Parliament sprung into action and passed Right To Information Act, 2005, which became effective from 12<sup>th</sup> October, 2005, persuaded by the message of this Court in its various judgments, outlining the importance of right to information that should be made available to

D the citizens of the country. After the RTI Act as well, this Court has been emphasising the importance of right to information. We may usefully refer to the judgment in the case of *Reserve Bank of India vs. Jayantilal N. Mistry*<sup>5</sup> where a Two-Judge Bench of this Court while upholding peoples’ right to access information, made the following observations regarding the Right to Information.

E “Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation’s interest better which as stated above also includes its economic interests.

F Recognizing the significance of this tool it has not only been made one of the fundamental rights under Article 19 of the Constitution also a Central Act has been brought into effect on 12th October 2005 as the Right to Information Act, 2005....”The ideal of ‘Government by the people’ makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for ‘open governance’ which is a foundation of democracy.”

H <sup>4</sup>(2002) 5 SCC 294  
<sup>5</sup>(2016) 3 SCC 525

15. In an article by *Alwin Toffler* titled “*What will our future be like?*”, he has traced the transition – from agriculture society to industry society to knowledge based society. If we go back to the beginnings of time agriculture was the prime source and the entire mankind was based on agriculture. 350 years ago with the invention of steam engines came the industrialised age and now what we are living through is the third gigantic wave, which is way more powerful than industrialised age. An age that is based on knowledge. Knowledge in today’s times can be gathered from so many sources. In digital age, it is available online. Since knowledge is power, getting information on any subject becomes equally important. In the Valedictory Address at the National Convention on Right to Information held on 15<sup>th</sup> October 2006, the then Prime Minister of India, Dr. Manmohan Singh, made the following pertinent remarks:

*“We live in an age of information, in which the free flow of information and ideas determines the pace of development and well being of the people. The implementation of RTI Act is, therefore, an important milestone in our quest for building an enlightened and at the same time, a prosperous society. Therefore, the exercise of the Right to Information cannot be the privilege of only a few.”*

16. The connect between information regime and development is succinctly brought about by Mr. M.M. Ansari, former Central Information Commissioner, in the following manner:

“Right to information (RTI) is harnessed as a tool for promoting participatory development, strengthening democratic governance and facilitating effective delivery of socio-economic services. In the knowledge society, in which we live today, acquisition of information and new knowledge and its application have intense and pervasive impact on processes of taking informed decisions, resulting in overall productivity gains.

People who have access to information and who understand how to make use of the acquired information in the processes of exercising their political, economic and legal rights become empowered, which, in turn, enable them to build their strengths and assets, so as to improve the quality of life.

A

B

C

D

E

F

G

H

- A In view of this, almost every society has made endeavours for democratising knowledge resources by way of putting in place the mechanisms for free flow of information and ideas so that people can access them without asking for it. People are thus empowered to make proper choices for participation in development process.
- B The efforts made thus far to disseminate information and knowledge through the use of communication technologies such as print media, radio and television as well as internet, have yielded positive results. Sharing of information, for instance, about the new techniques of farming, health care facilities, hazards of environmental degradation, opportunities for learning and earning, legal remedies for combating gender biases, etc., have made significant contributions to the well being of poor people.”
17. Mr. Ansari has, in the aforesaid article, ably demonstrated
- D that RTI can be used as a tool, amongst others, to:
- (a) facilitate effective delivery of socio-economic services which may lead to poverty alleviation;
  - (b) create conditions for accountability of public servants and authorities insofar as effective implementation of social security and food security programmes are concerned. It may include implementation of NREGA, mid-day meals for school children, integrated child development scheme, grant of food security and pension for the poor senior citizens, etc.;
  - (c) ensure that there is a proper and effective delivery of services under subsidised schemes like public distribution system and shelter for poor;
  - (d) promote participatory governance;
  - (e) empower of weaker sections; and
  - (f) aid environmental protection.
18. There is a definite link between right to information and
- G good governance. In fact, the RTI Act itself lays emphasis on good governance and recognises that it is one of the objective which the said Act seeks to achieve. The RTI Act would reveal that four major elements/objectives required to ensure good governance are:
- (i) greater transparency in functioning of public authorities;
  - (ii) informed citizenry for promotion of partnership between citizens and the Government in decision making process;

(iii) improvement in accountability and performance of the A Government; and  
(iv) reduction in corruption in the Government departments.

19. The right to information, therefore, is not only a constitutional right of the citizens but there is now a legislation in the form of RTI Act which provides a legal regime for people to exercise their fundamental right to information and to access information from public authorities. The very preamble of the Act captures the importance of this democratic right which reads as under:

“.....democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.”

20. There are various provisions in this RTI Act which are incorporated in order to ensure that right to information becomes a reality. It is a self-contained legislation, providing a comprehensive framework in this behalf. Under the RTI Act, Information Commissions have been set up at the Centre (CIC) and in all the States (SICs) to adjudicate on appeals and complaints of persons who have been unable to secure information in accordance with the RTI Act or are aggrieved by violations of the RTI Act. Chapter III titled, ‘*The Central Information Commission*’, containing Sections 12 to 14 of the RTI Act, lays down the provisions relating to the constitution of CIC, the term of office and conditions of service of the Chief and the Central Information Commissioners and the procedure and grounds for removal of Chief Information Commissioner and Information Commissioners. Similarly, Chapter IV titled, ‘*The State Information Commission*’, containing Sections 15 to 17, lays down the provisions relating to the constitution of SICs, the term of office and conditions of service of the Chief and the State Information Commissioners and the procedure and grounds of removal of Chief Information Commissioner or State Information Commissioners.

21. As per the RTI Act, the Commissions consist of the Chief Information Commissioner and upto 10 Information Commissioners, appointed by the President of India at the Central level and by the Governor in the States, on the recommendation of a Committee. In respect of CIC, such a provision is contained in Section 12 which stipulates that CIC shall consist of the Chief Information Commissioner

B

C

D

E

F

G

H

- A and ‘such number of Central Information Commissioners not exceeding 10 as may be deemed necessary’. Similar provision for SIC is contained in Section 15(2) of the RTI Act. No doubt, there is a cap/upper limit of 10 Central Information Commissioners and State Information Commissioners in respect of each State respectively. Such number of CICs/SICs would depend upon the workload as the expression used is ‘as may be deemed necessary’. The required number of CIC/SICs, therefore, would depend upon the workload in each of these Commissions.
- B 22. Insofar as provisions relating to eliciting the information from public authorities is concerned, the same is provided in Chapter II which comprises of Sections 3 to 11. Section 3 declares that all citizens shall
- C have the right to information, of course, subject to the provisions of this Act. Section 4 puts an obligation on every public authority to provide information. In order to facilitate the right to information, various obligations are cast upon the public authorities under this Section. Perusal of Section 4 listing these obligations is itself a clear message that it is for
- D the purpose of facilitating the right to information to the citizens. Section 4 of the RTI Act reads as under:
- “4. Obligations of public authorities.—(1) Every public authority shall—
- E “(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;
- F (b) publish within one hundred and twenty days from the enactment of this Act,— (i) the particulars of its organisation, functions and duties;
- G (ii) the powers and duties of its officers and employees;
- G (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
- G (iv) the norms set by it for the discharge of its functions;
- H (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

- (vi) a statement of the categories of documents A that are held by it or under its control;
- (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof; B
- (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of C such meetings are accessible for public;
- (ix) a directory of its officers and employees;
- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations; D
- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes; E
- (xiii) particulars of recipients of concessions, permits or authorisations granted by it;
- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use; F
- (xvi) the names, designations and other particulars of the Public Information Officers;
- (xvii) such other information as may be G prescribed, and thereafter update these publications every year;
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public; H

- A (d) provide reasons for its administrative or quasi judicial decisions to affected persons.
- B (2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.
- C (3) For the purpose of sub section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.
- D (4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed. Explanation. For the purposes of sub sections (3) and (4), “disseminated” means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.”
- F 23. The RTI Act also provides in-house mechanism for giving information by these public authorities. For this purpose, each public authority is supposed to designate as many officers as Central Public Information Officers (for short, ‘CPIOs’) or State Public Information Officers (for short, ‘SPIOs’) who are supposed to provide information to persons requesting for the information under this Act. Timelines are set during which CPIOs/SPIOs are supposed to give the information, namely, within 30 days of the receipt of the request for obtaining information. Within this period either information is to be provided or request is to be rejected. Rejection can be only for a reason specified in Sections 8 and 9 of the Act. Sub-section (8) of Section 7 also casts an obligation upon the CPIOs or SPIOs to give reasons for such rejection. In the rejection order, applicant is also supposed to be informed about the period within which an appeal against such rejection may be preferred
- G H as well as particulars of the Appellate Authority.

24. If the information is not provided and the request is rejected, appeal can be filed before the CIC or SICs as the case may be under Section 19 of the Act. Apart from hearing the appeals, some more powers are also given to CIC or SICs and it is for this reason, in the entire scheme provided under the RTI Act, existence of these institutions becomes imperative and they are vital for the smooth working of the RTI Act. Of course, no specific period within which CIC or SICs are required to dispose of the appeals and complaints is fixed. However, going by the spirit of the provisions, giving outer limit of 30 days to the CPIOs/SPIOs to provide information or reject application with reasons, it is expected that CIC or SICs shall decide the appeals/complaints within shortest time possible, which should normally be few months from the date of service of complaint or appeal to the opposite side. In order to achieve this target, it is essential to have CIC/SCIC as well as adequate number of Information Commissioners. It necessarily follows therefrom that in case CIC does not have Chief Information Commissioner or other Commissioners with required strength, it may badly affect the functioning of the Act which may even amount to negating the very purpose for which this Act came into force. Same applies to SICs as well.

25. It is in the aforesaid perspective that the petitioners state that occurrence of vacancies in Information Commissions, which are not filled up on time, is leading to huge backlogs and concomitant long waiting time for disposal of appeals/complaints. It is emphasised that the RTI Act is a time-bound legislation and prescribes statutory timelines for providing the information from the date of application (ordinarily 30 days). In case information is not granted, or the applicant is aggrieved by the nature of response received, she/he is also entitled to file a first appeal with the designated First Appellate Authority. The First Appellate Authority is obligated to dispose of such an appeal within maximum period of 45 days. The reading of Sections 7 and 19 of the RTI Act makes it clear that it is a time-bound legislation for effectively exercising the fundamental right to information guaranteed in Article 19 of the Constitution of India.

26. However, the CIC and SICs which are the final appellate authorities under the RTI Act, and are the guardians of the Act are taking many months, and in some cases even years, to decide appeals and complaints due to accumulation of pending appeals/complaints because of a large number of vacancies in information commissions across India.

A

B

C

D

E

F

G

H

- A        27. The petitioners refer to a report published in March, 2018 titled, ‘Report Card on the Performance of Information commissions in India’ found that 8 information commissions had a waiting time of more than one year for an appeal/complaint to be heard, which was calculated on the basis of the number of appeals and complaints pending as of October 31, 2017 and the monthly disposal rate. Further, several Information Commissions are functioning without a Chief Information Commissioner thereby undermining the autonomy of the Commission and hampering its smooth functioning including its ability to comply with the directions of this Court regarding the power of the Chief Information Commissioner to decide formation of special benches to hear matters involving complex questions of law. It is the grievance of the petitioners that by not filling up vacancies in information commissions in a timely manner, the Central and State Governments are frustrating the very purpose of the RTI Act as receiving information in a time-bound manner is the essence of the law. In this way, argue the petitioners, the fundamental right of citizens to access information from public authorities is being hindered by the non-appointment of commissioners in the CIC and various SICs across the country.

28. In order to test the aforesaid submissions of the petitioners, we now proceed to examine the position in each Information Commission:

E        **CENTRAL INFORMATION COMMISSION (CIC)**

- F        29. It is averred in the petition that as on the date of filing of the petition 04 posts of Information Commissioners were lying vacant in the CIC. As on 4<sup>th</sup> April, 2018, more than 23500 appeals and complaints were pending before it. The CIC website shows that even appeals and complaints filed in the year 2016 are currently pending for disposal by the Commission. The petitioners further mention that though all the 04 vacancies arose in a routine manner on the retirement of Information Commissioners and upon the expiry of their five years’ tenure or upon attaining the age of 65 years, which fact was known to the Central Government much in advance, but no timely steps were taken for filling
- G        up of these vacancies. First vacancy had occurred more than 15 months before the filing of the petition. It is also stated that while the Central Government had invited applications for the post of two Information Commissioners vide Circular/ communication dated 2<sup>nd</sup> September, 2016 in anticipation of vacancies occurring in December, 2016 and February, 2017 till date none of the vacancies has been filled. The representation made by the petitioners in this behalf has also gone unheeded.

30. Orders were passed in the petition directing Respondent No. 1 to give the status report of the steps taken for filling up of these vacancies. On 13<sup>th</sup> December, 2018, another order in the following terms was passed:

A

“Union of India has filed affidavit dated 12.12.2018 mentioning the status of the appointments to the post of Chief Information Commissioner as well as Information Commissioners.

B

It is stated by learned Additional Solicitor General that insofar as the post of Chief Information Commissioner is concerned, pursuant to the advertisement, 64 applications were received. It is further informed that insofar as the posts of Information Commissioners are concerned, 4 posts are advertised and 280 applications were received. It is mentioned that advertisement was uploaded on the Department of Personnel and Training (DoPT) website.

C

Learned Additional Solicitor General also submits that the Selection Committee, as per Section 12 of the Right to Information Act, 2005, held a meeting on 11.12.2018 on which date the recommendation in respect of appointment of Chief Information Commissioner has been finalised and it is expected that the person shall be appointed soon. Insofar as post of Information Commissioners are concerned, having regard to a large number of applications, process could not be completed on that day. It is further stated at the Bar that this shall also be accomplished soon.

D

We are informed that three more posts of Information Commissioners are lying vacant. It would be appropriate to initiate the process of filling up these posts as well by issuing an advertisement at the earliest.

E

Mr. Prashant Bhushan, learned counsel appearing for the petitioners, submits that Paragraph 5 of the advertisement for the post of Chief Information Commissioner reads as under:

F

“The salary, allowances and other terms and conditions of service of the Chief Information Commissioner shall be as may be specified at the time of appointment of the selected candidate.”

G

His submission is that the RTI Act mentions salary, allowances and other terms of the Chief Information Commissioner to be

H

- A appointed and the stipulation could not have been in vague terms as stated there. This is the aspect that shall be considered on the next date of hearing.  
He further submits that similar clause is put in the advertisement pertaining to Information Commissioners. This aspect also will be considered on the next date of hearing.
- B However, we may take on record the statement of learned Additional Solicitor General that the RTI Act itself mentions the terms and conditions on which appointments of Chief Information Commissioner and Information Commissioners in the Central Information Commission are to be made.
- C The respondents shall put on the website the names of the Search Committee, the names of the candidates who have been shortlisted as well as the criteria which is followed for selection. We may again record the statement of learned Additional Solicitor General that the selection criteria is prescribed in the RTI Act itself which is being followed. Still, that can be put on the website.

D STATE OF KARNATAKA:

- In the affidavit filed on behalf of the State of Karnataka it is mentioned that there is only one vacancy of the State Information Commissioner ("SIO") which has been advertised. However, in the meantime, the High Court of Karnataka has stayed the appointment process.

E STATE OF MAHARASHTRA:

- F In the affidavit filed on behalf of the State of Maharashtra it is mentioned that the post of State Chief Information Commissioner ("SCIC") has already been filled. It is also stated that steps have been taken for filling up the post of one State Information Commissioner ("SIC") and that would happen soon. It is further stated that there are two post of SIC which have been fallen vacant now and in respect of these two posts process for filling up the posts through advertisement will be initiated positively within four weeks.
- G They shall also disclose on the website the particulars on the same lines as directed in the case of Union of India.

H STATE OF WEST BENGAL:

Learned counsel appearing for the State of West Bengal submits that SCIC has already been appointed. She further states that

one SIC is already in place and one more SIC has been appointed. In this way, as of now, one SCIC and two SICs are holding the office. As per the RTI Act up to ten SICs can be appointed. We are not sure as to whether the entire work can be dealt with by only one SCIC and two SICs.

The State of West Bengal shall file an affidavit stating the requirement of SICs. The information shall also be provided in respect of the applications under the RTI Act which are being filed, the applications which are pending as well as the appeals which are pending before the SICs and for how long they are pending. The pendency shall also be disclosed. An affidavit in this behalf shall be filed within two weeks.

STATE OF ANDHRA PRADESH:

Learned counsel for the State of Andhra Pradesh has handed over affidavit dated 12.12.2018. As per this affidavit, three persons are appointed as SIC. It is also stated that though the post of SCIC was also advertised but nobody could be appointed and it is not decided to issue fresh advertisement in this behalf. Insofar as SCIC is concerned, he has mentioned that advertisement was issued on 24.08.2018 and the last date for receiving the applications was extended up to 10.10.2018. Thirty one applications have been received and it is proposed to hold Selection Committee's meeting soon. We expect that such meeting shall take place as soon as possible and within one month the SCIC shall also be appointed.

It is also stated that, in the meantime, Mr. M. Ravi Kumar, who is working as SIC, is placed as In-charge for the post of SCIC so that the Commission may function.

An affidavit shall also be filed on the same lines as directed in the case of State of West Bengal before the next date of listing. They shall also disclose on the website the particulars on the same lines as directed in the case of Union of India.

STATE OF TELANGANA:

Insofar as State of Telangana is concerned, affidavit has not been filed in compliance with the directions given by this Court on the last date of hearing. Learned counsel states that it was because of the reason that there were elections of the Legislative Assembly which concluded and results came only on 11.12.2018.

- A He, therefore, seeks, and is granted, two weeks' time to file an affidavit.  
In the affidavit to be filed not only it would be indicated as to how many SICs are functioning, the affidavit shall also disclose the steps which are taken to fill up the posts and how many posts are required to be filled. In case the State of Telangana has taken a decision not to fill ten posts of SIO, justification thereof shall be provided in the form of an affidavit by disclosing the information in the same manner in which it has been directed in respect of State of West Bengal.

- C STATE OF ODISHA:  
C As per the earlier affidavit filed on behalf of the State of Odisha, the State has decided to function the Information Commission with one SCIC and three SIC. It is stated that SCIC and two SICs are already working and there is one post of SIC for which advertisement shall be issued very shortly.  
D Mr. Prashant Bhushan, learned counsel, submits that there are huge arrears before the Information Commission in the State of Odisha and there is no justification to have only three Information Commissioners.  
The State of Odisha shall also file an affidavit on the same lines as directed in the case of State of West Bengal before the next date of listing. They shall also disclose on the website the particulars of selection etc. on the same lines as directed in the case of Union of India.

- E STATE OF GUJARAT:  
F Learned counsel for the State of Gujarat states that she has received information from the State only two days ago and she shall be filing the affidavit within one week. However, she orally informs that as per the information received, in the State of Gujarat, the Information Commission consists of one SCIC and four SIC. She further submits that the SCIC and one SIC are functioning. Three vacancies for the post of SIC have already been advertised and the process is on. According to her, applications have been received and are pending before the Selection Committee.  
G We expect the Selection Committee to complete the process at the earliest, preferably before the next date of hearing.

H

They shall also disclose on the website the particulars of selection etc. on the same lines as directed in the case of Union of India. A

STATE OF KERALA:

Learned counsel for the State of Kerala states that one SCIC and four SIC are functioning. Five posts of SICs could not be filled because of pendency of some writ petition(s) in the Kerala High Court. B

List the matter on 22.01.2019.”

31. Pursuant to the aforesaid direction, Union of India filed the status report on 29<sup>th</sup> January, 2019 at the time of hearing of the matter. It is stated in this report that the selection criteria is prescribed in the RTI Act itself which is being followed, which also mentions the terms and conditions on which appointments of each Chief Information Commissioner and Information Commissioners in the CIC are to be made. The report further records as under:

“2. The files relating to appointment of Chief Information Commissioner (F.No. 4/13/201-IR) and Information Commissioners (F.No.4/9/2018-IR) in Central Information Commission have been put on the website of DoPT (dopt.gov.in rti/proactive-disclosure/selection of information commissioners) except personal information of the applicants which has been exempted under Section 8(1)(j) of the Right to Information Act. These files contain a list of applicants, the names of the members of Search Committee, Agenda for the Search Committee, Minutes of the Search Committee. Copies of the Gazette of India notifying the appointment of Chief Information Commissioner and Information Commissioners in the Central Information Commission w.e.f. 01.01.2019 are enclosed. The terms of appointment in respect of newly appointed Chief Information Commissioner and Information Commissioners in Central Information Commission will be regulated as per the Right to Information Act. The procedure for selection of Information Commissioners is given in Section 12(3) of the Right to Information Act which has been followed for the newly appointed Chief Information Commissioner and Information Commissioners. Photocopy of the Section 12(3) of the Right to Information Act is enclosed.

D

E

F

G

H

- A        3. The advertisement in respect of 4 Information Commissioners in Central Information Commission, against the present vacancies, has been uploaded on the website on DoPT on 04.01.2019 and the last date of receipt of applications for the same is 25.01.2019. The advertisement has been published in the 4 leading newspapers-The Hindu' and 'Times of India' (in English); 'Dainik Bhaskar' and 'Hindustan' (in Hindi) and their editions throughout India by the Bureau of Outreach and Communication.
- B        32. The aforesaid report reveals that some appointments have been made. At the same time, appointment process in respect of 4 Information Commissioners in CIC has been initiated. In this backdrop, three aspects on which the arguments were raised by the learned Counsel for the petitioner and which need to be addressed are the following:
- C        (a) Timely filling up of the vacancies to ensure that the work of the Information Commissioners does not suffer.  
D        (b) Transparency in the mode of appointments.  
E        (c) Terms and conditions on which these appointments are to be made should be clearly stated.
- F        33. Learned counsel for the petitioners made it clear that the petitioners were not challenging the appointments already made. However, they want transparency and full disclosure of information depicting : (a) definite criteria for such appointments, (b) and such criteria should be made public in advance.
- G        34. The petitioners are right in their submissions that there have been undue delays in filling up of these vacancies. We expect that the vacancies shall be filled up, in future, well in time. Certain directions in this behalf, which are necessitated, are given at the end of this judgment.
- H        35. Insofar as transparency of procedure is concerned, from the status report it becomes clear that the procedure is now adequately transparent. The Department of Personnel and Training has put on website information in respect of names of the applicants for these posts, names of the members of Search Committee, agenda for the Search Committee, Minutes of the Search Committee etc. It would be pertinent to point out at this stage that after the Search Committee sends its recommendations the Selection Committee has to make the final selection. The composition of the Selection Committee is provided in Section 12(3) of the Act which consists of:

(i) The Prime Minister, who shall be the Chairperson of A the Committee;

(ii) The Leader of Opposition in the Lok Sabha;

(iii) The Union Cabinet Minister to be nominated by the Prime Minister.

The Statutory Committee, thus, consists of very high ranking persons. B

36. Having regard to the aforesaid, it cannot be said that there is no transparency in the appointment process, when all essential information in respect of each candidate is made available to the public at large. Information in respect of Members of Search Committee, agenda of their meetings and even the Minutes of the Search Committee have also been put on website. The appointments made, finally, are also in public domain. C

37. In this manner though one cannot find fault in the process of appointment, yet there is one aspect which needs to be highlighted. D

38. Section 12(5) of the RTI Act lays down the eligibility conditions for the Chief Information Commissioner as well as Information Commissioners. It reads as under:

“12. Constitution of Central Information Commission.—

xxx      xxx      xxx

(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.” E

39. As can be seen, any person of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance is qualified to become Chief Information Commissioner or Information Commissioner. The Legislature in its wisdom widened the area of consideration by not limiting it to the serving or retired government employees alone. Persons of eminence in public life are made eligible. Field of knowledge and experience is also very much broadened as it can be either in law or science and technology or social service or management or journalism or mass media or administration and governance. The Parliament, thus, intended that persons of eminence in public life should be taken as Chief Information Commissioner as well F G H

- A Information Commissioners. Many persons who fit in the aforesaid criteria have been applying for these posts. However, a strange phenomenon which we observe is that all those persons who have been selected belong to only one category, namely, public service, i.e., they are the government employees. It is difficult to fathom that persons belonging to one category only are always found to be more competent and more suitable than persons belonging to other categories. In fact, even the Search Committee which short-lists the persons consist of bureaucrats only. For these reasons, official bias in favour of its own class is writ large in the selection process.
- B 40. It is by no means suggested that the persons who have ultimately been selected are not deserving for the post of Information Commissioners. It is, however, emphasised that there can be equally suitable persons from other walks of life as well who may be the aspirants for such posts. This Court, therefore, impresses upon the Search Committee, in future, to pick up suitable candidates from other categories as well. After all, the very purpose of providing wide range of suitability was to have members in CIC by giving representation to other classes as well. This would ensure wider representative character in the composition of CIC.
- C 41. Learned counsel for the petitioners also made a grievance that there was no specific condition of service stipulated in the advertisement while inviting applications for the post of Information Commissioners. The Learned Additional Solicitor General, however, submitted that insofar as salary and allowances as well as terms and conditions of appointment are concerned that is statutorily provided in sub-section (5) of Section 13. This sub-section reads as under:
- D "13. Term of office and conditions of service.—  
xxx      xxx      xxx
- E (5) The salaries and allowances payable to and other terms and conditions of service of—
  - (a) the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner;
  - (b) an Information Commissioner shall be the same as that of an Election Commissioner: Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the
- F
- G
- H

Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity: Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits: Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.”

42. In view of the aforesaid provision, it is clear that any candidate who aspires to become Chief Information Commissioner knows as to what would be the salary and allowances and what would be other terms and conditions of service. At the same time, it is always advisable to make express stipulation of terms and conditions of service in the public notice/Notification and also on website.

**STATE OF WEST BENGAL**

43. In respect of the WB SIC, the petitioners' grievance is that it is currently functioning with just two Information Commissioners. Since 2015, for a period of nearly twelve months, i.e. from November 2015 to July 2016 and from April 2017 to July 2017, the SIC was non-functional and did not hear any appeals or complaints as there was only one Information Commissioner during this time. It is also stated that more than 8000 appeals and complaints were pending as on 31<sup>st</sup> October 2017 and it is taking an inordinately long time for appeals and complaints to be disposed of by the SIC.

44. In the reply affidavit filed on behalf of the State, it is mentioned that earlier SIC was functioning with one SCIC and one Information Commissioner. On 18<sup>th</sup> July 2018, the State Government

- A decided to appoint another Information Commissioner. Advertisement in this behalf was published on 3<sup>rd</sup> August 2018. Thereafter, on 6<sup>th</sup> August 2018 a Committee was constituted for making recommendations for appointment to the post of Information Commissioner. This Committee held this meeting on 16<sup>th</sup> November 2018 wherein all 33 applications received by the due date were considered and it was resolved to appoint one Shri Raj Kanojia, IPS (Retd.), and he has since been appointed vide Notification dated 22<sup>nd</sup> November 2018. He has assumed charge on 19<sup>th</sup> December 2018.

45. Insofar as pendency of appeals and complaints is concerned, it is mentioned that as on 1<sup>st</sup> January 2018, 8627 cases were pending before the WB SIC. Further, appeals and complaints received from January 2018 to November 2018 were 1932. Number of appeals and complaints disposed of from January to November 2018 is 2879. Thus, at the end of November 2018, the number of pending appeals and complaints has gone down to 7680.

- D 46. The aforesaid figures given by the State may show that the pendency is brought down. However, it is still very high and the rate of attrition is quiet slow. What is more important is that many cases could be decided after a long period. In fact, the petitioners have alleged that some cases took more than 10 years before they could be heard and dispose of. Therefore, the strength of one SCIC and two Information Commissioners is quiet inadequate and it has the tendency to frustrate the very purpose of seeking the information by the applicants. It can also be legitimately inferred that when the applicants are not able to get information for a long period because of non-disposal of their appeals or complaints, they are deterred or discouraged to seek information or to pursue their RTI applications.

- G 47. The purpose of Right to Information cannot be allowed to be frustrated by having thoroughly inadequate strength of Information Commissioners in the SIC. The Act, after all, enables the Government to have SIC with one SCIC and up to 10 Information Commissioners.
- H It, therefore, becomes the statutory and constitutional obligation of the State Government to have adequate number of Information Commissioners for quick and speedy disposal of appeals and complaints. We are, therefore, of the opinion that the State Government should immediately consider creating more posts of Information Commissioners. We suggest that at least three more such posts should be created.

Decision in this behalf shall be taken by the State Government within one month and the newly created posts shall be filled up within six months thereafter.

**STATE OF ANDHRA PRADESH**

48. In respect of the State of Andhra Pradesh, the petitioners have stated in the writ petition that after the bifurcation of the State in the year 2014 and creation of a separate State of Telangana, for several months the SIC of Andhra Pradesh continued to function as the Information Commission for both the States. However, the Commission became defunct in May 2017 after the retirement of serving Information Commissioners. In August 2017, the High Court of Judicature at Hyderabad directed that Information Commissions be set up in Telangana and Andhra Pradesh. The Andhra Pradesh Government issued an order for constituting the SIC for Andhra Pradesh in August 2017, but till date not a single Commissioner has been appointed to the Commission. The SIC of the State of Andhra Pradesh is yet to become functional. For over 10 months, people seeking information from public authorities under the jurisdiction of the AP SIC have had no recourse to the independent appellate mechanism prescribed under the RTI Act and their right to information is violated.

49. In response, affidavit of the Additional Secretary to Government GA(AR) Department, AP Secretariat, is filed wherein it is mentioned that the Selection Committee met twice, i.e. on 13<sup>th</sup> December 2017 and 12<sup>th</sup> January 2018. It selected three candidates for appointment to the post of Information Commissioners and file for approval was sent to the Governor of Andhra Pradesh on 6<sup>th</sup> August 2018, return whereof is awaited. This affidavit is dated 24<sup>th</sup> August 2018. We are informed that these three Information Commissioners have since been appointed.

50. The affidavit further states that another notification was issued calling upon applications for filling up of the post of SCIC and remaining Information Commissioners. It is, however, not mentioned as to when this notification inviting applications for SCIC and Information Commissioners was issued. It is also not understood as to why steps were not taken for filling up of the post of SCIC as the Chief, who is the head of the Commission, performs crucial role insofar as functions of the SIC is concerned. As per Section 15(4) of the Act, the general superintendence, direction and management of the affairs of the SIC vests in the SCIC. We, therefore, get an impression that a very

- A lackadaisical approach is adopted in filling up of this post and the AP SIC is virtually non functional since May 2017. May be, with three Information Commissioners who have recently been appointed, AP SIC shall get activated, but to limited extent. However, that hardly serves the purpose and does not make the SIC fully functional.
- B 51. We, therefore, impress upon the State of Andhra Pradesh to fill up the post of SCIC and also the remaining posts of Information Commissioners at the earliest and in any case within three months from the date of this judgment.

#### **STATE OF TELANGANA**

- C 52. In the affidavit filed by the State of Telangana, it is accepted that as on 23<sup>rd</sup> January 2019, 10102 appeals and complaints were pending before the Telangana SIC. Bifurcation thereof has also been given. The affidavit also discloses that between 23<sup>rd</sup> October 2017 to 23<sup>rd</sup> January 2019, 64.50% of the appeals/ complaints received were disposed of.
- D 53. It is further stated that Telangana SIC was constituted on 13<sup>th</sup> September 2017. A Chief Information Commissioner and State Information Commissioner have been appointed vide G.O.Ms. No. 228 and G.O.Ms. No. 227, both dated 15<sup>th</sup> September 2017. The appointment of the Chief Information Commissioner and State Information Commissioner have been made in transparent manner by constituting a Committee vide G.O.Ms. No. 219, GA (GPM&AR) Dept. dated 13<sup>th</sup> September 2017 with the Chief Minister of Telangana as Chairperson, the Leader of the Opposition and the Deputy Chief Minister as Members for appointment of the Chief Information Commissioner and State Information Commissioner in Telangana SIC.
- E 54. We find that the composition of Telangana SIC with only SCIC and one Information Commissioner is too inadequate having regard to the pendency and also the number of cases which are filed on monthly/yearly basis. In the earlier affidavit filed by the State of Telangana on 6<sup>th</sup> September 2018, it was stated that as on 13<sup>th</sup> September 2017, when the Commission was constituted, there were a total of 6825 pending cases. This figure rose to 9341 on 30<sup>th</sup> June 2018 and as on 23<sup>rd</sup> January 2019, the pendency has increased to 10,102. In such a scenario, if sufficient number of Information Commissioners are not appointed, the pendency will keep increasing and piling up. Therefore, we feel that for proper functioning of the Telangana SIC, there should be at least four more Information Commissioners appointed, for the time being. This

suggestion may be considered and decision in this behalf shall be taken by the State Government within one month and the newly created posts shall be filled up within six months from the date of this judgment.

A

**STATE OF MAHARASHTRA**

55. As per the petitioners, the MAH SIC is functioning without a SCIC since April 2017 and one of the Information Commissioner is given additional charge as SCIC. Further, the Commission is functioning with only 7 Information Commissioners. It is also mentioned that at the end of February 2018, more than 40,000 appeals and complaints were pending before the Commission.

B

56. In reply, the State Government has mentioned that there are 8 sanctioned posts, i.e. 1 SCIC and 7 Information Commissioners. Out of these, three are lying vacant and these fell vacant on 1<sup>st</sup> June 2018, 4<sup>th</sup> November 2018 and 10<sup>th</sup> November 2018 respectively. It is mentioned that emergence of vacancies and appointment by selection is a continuous process. The Selection Committee had held its last meeting on 30<sup>th</sup> November 2018 wherein one candidate had already been recommended for appointment.

C

57. Pertinently, the respondent State has not denied pendency of 40,000 appeals and complaints as on February 2018. It has also not given any figures about the disposal of cases by the SIC. Though it is mentioned that the sanctioned strength is only 8 (and not 11 as contended by the petitioners), as of today, 2 Information Commissioner posts are to be filled. No doubt, these posts became vacant only in November 2018. We expect that steps be taken in advance so that such posts are filled up immediately after they became vacant and they do not remain unfilled for long period. In this behalf, general directions are given at the end. Further, going by the pendency, which is huge, it would be appropriate if at this juncture the SIC has a total strength of 1 SCIC and 10 Information Commissioners. This suggestion may be considered and decision in this behalf shall be taken by the State Government within one month and the newly created posts shall be filled up within six months from the date of this judgment.

D

**STATE OF GUJARAT**

58. In respect of this State, the petition avers that the SCIC retired in January 2018 and the position is currently vacant. In the reply affidavit it is mentioned that the post of SCIC has been filled up and one Shri D.P. Thaker has been appointed. It is also mentioned that there are

E

F

G

H

- A two more vacant posts of Information Commissioners and to fill up these two vacancies advertisement was issued on 19<sup>th</sup> May 2018 and the applications have been received. It is further stated that these posts will be filled up as early as possible. The affidavit was filed on 21<sup>st</sup> January 2019. We expect that these two posts are also filled within one month as it is mentioned that the applications received were submitted to the Selection Committee as far back as on 11<sup>th</sup> June 2018.
- B

#### **STATE OF KERALA**

- C 59. In respect of Kerala SIC, the petitioners state that it is functioning with a single Commissioner, i.e., CSIC. It is notwithstanding the fact that as on 21<sup>st</sup> October, 2017 nearly 14,000 appeals and complaints were pending with the Commissioner.

- D 60. In reply affidavit, filed on behalf of State of Kerala, it is, however, stated that Kerala SIC consists of a CSIC and 5 Information Commissioners. However, at present, there is only one CSIC. Therefore, 5 vacancies of Information Commissioners remain unfilled. In this behalf, it is mentioned, that for filling up of these vacancies Notification dated 11<sup>th</sup> October, 2017 was issued inviting applications. In response, 192 applications were received, Selection Committee considered these applications and ultimately 4 Information Commissioners were appointed to assume charge on 11<sup>th</sup> May, 2018. However, in the meantime, few
- E writ petitions came to be filed in the Kerala High Court because of which recruitment to the remaining one post of Information Commissioner has not been processed. It is, however, admitted that 10582 appeals and 4155 complaints were pending before the Commission as on 31<sup>st</sup> July, 2018. In view thereof we expect the State Government to ensure timely appointment to the Commission in future.
- F

#### **STATE OF KARNATAKA**

- G 61. Karnataka SIC is functioning with 05 Commissioners, namely, 01 CSIC and 4 Information Commissioners. As on 31<sup>st</sup> October, 2017 33,000 appeals and complaints were pending.
- H 62. In the counter affidavit, it is mentioned that Notification for filling up of the posts of CSIC and 2 Information Commissioners was issued on 7<sup>th</sup> August, 2018 against which 419 applications have been received. It is further stated that the meeting of the Selection Committee constituted under Section 15 of the RTI Act is awaited. This affidavit was filed on 8<sup>th</sup> December, 2018. Last date for receiving the application was 22<sup>nd</sup> September, 2018. It appears that after receipt of the applications,

for three months nothing happened. In these circumstances, we impress upon the Selection Committee to undertake the selection process so that the posts are filled within two months from today.

63. Further more, having regard to the alarming pendencies of the complaints and appeals before the Karnataka Information Commission, it would be appropriate to consider increasing the strength of Information Commissioner. In our view, Commission needs to function with full strength, namely, 1 CSIC and 10 Information Commissioners and we recommend accordingly. This recommendation be considered and decision thereon be taken within one month. Thereafter, process should be initiated and completed within six months from the date of this judgment.

#### **STATE OF ODISHA**

64. The Odisha SIC had been functioning with 3 Commissioners, including the Chief as on the date of filing of the petition, whereas more than 10000 appeals and complaints were pending as on October 31, 2017. In the counter affidavit, it is stated that the Odisha Commission was constituted vide Notification dated 29<sup>th</sup> October, 2005 with one CSIC and one Information Commissioner. Subsequently, two more posts of Information Commissioners were created on 5<sup>th</sup> April, 2010 and 9<sup>th</sup> July, 2012 respectively. At present, the strength of Odisha SIC is 1 CSIC and 3 Information Commissioner. One post of Information Commissioner is lying vacant since 27<sup>th</sup> May, 2015. It is further stated that advertisement for filling up of these posts is issued and the last date for receipt of the application was 31<sup>st</sup> January, 2019. Selection Committee is also constituted to fill up the posts. We expect the said posts to be filled up within two months.

65. Insofar as pendency of cases is concerned, the respondent accepted that as on the date of filing of the affidavit, i.e., 18<sup>th</sup> January, 2019, 1998 complaint cases and 9764 appeals were pending before the Commission. The respondents have also filed the chart containing receipt and disposal of the complaint cases as well as appeals. In the year 2018, only 522 complaints were disposed of. Likewise 2500 appeals were disposed of. It shows that there is a necessity for more Information Commissioners and to begin with, at least, three more posts of Information Commissioners should be created. We are, therefore, of the opinion that the State Government should immediately consider creating more posts of Information Commissioners. Decision in this behalf shall be

- A taken by the State Government within one month and the newly created posts shall be filled up within four months from the date of this judgment.

**STATE OF NAGALAND**

- B counter affidavit is filed on behalf of State of Nagaland. Since the grievance in the petition is only about non-appointment of CSIC, we direct the State Government to take immediate steps for filling up of the said posts, so that posts are filled up within six months from today.

**GENERAL DIRECTIONS FOR CIC & SCICs**

- C 67.(i) Insofar as transparency in appointment of Information Commissioners is concerned, pursuant to the directions given by this Court, the Central Government is now placing all necessary information including issuance of the advertisement, receipt and applications, particulars of the applicants, composition of Selection Committee etc. on the website. All States shall also follow this system.
- D (ii) Insofar as terms and conditions of appointment are concerned, no doubt, Section 13(5) of RTI Act states that the CIC and Information Commissioners shall be appointed on the same terms and conditions as applicable to the Chief Election Commissioner/Election Commissioner. At the same time, it would also be appropriate if the said terms and conditions on which such appointments are to be made are specifically stipulated in the advertisement and put on website as well.
- E (iii) Likewise, it would also be appropriate for the Search Committee to make the criteria for shortlisting the candidates, public, so that it is ensured that shortlisting is done on the basis of objective and rational criteria.
- F (iv) We also expect that Information Commissioners are appointed from other streams, as mentioned in the Act and the selection is not limited only to the Government employee/ex-government employee. In this behalf, the respondents shall also take into consideration
- G
- H

and follow the below directions given by this Court in **A**  
***Union of India vs. Nmit Sharma***<sup>6</sup>

“32. ...

(iii) We direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Ss. 12(5) and 15(5) of the Act be considered for appointment as Information Commissioner and Chief Information Commissioner. **B**

(iv) We further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Ss. 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees under Ss. 12(3) and 15(3) of the Act for appointment as Chief Information Commissioner or Information Commissioners. **C**

(v) We further direct that the Committees under Ss. 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made.” **D**

(v) We would also like to impress upon the respondents to fill up vacancies, in future, without any delay. For this purpose, it would be apposite that the process for filling up of a particular vacancy is initiated 1 to 2 months before the date on which the vacancy is likely to occur so that there is not much time lag between the occurrence of vacancy and filling up of the said vacancy. **E**

**F**

**G**

- A        68. We would like to place on record that aforesaid directions are given keeping in view the salient purpose which RTI Act is supposed to serve. This Act is enacted not only to sub-serve and ensure freedom of speech. On proper implementation, it has the potential to bring about good governance which is an integral part of any vibrant democracy.
  - B        Attaining good governance is also one of the visions of the Constitution. It also has vital connection with the development. All these aspects are highlighted above.
69. The writ petition stands disposed of in the aforesaid terms. However, the liberty is given to the petitioners to approach the Court again, either by way of filing interlocutory application in this petition or preferring another writ petition, if the occasion so demands.

Kalpana K. Tripathy

Petition disposed of.