

Mr.Kuljit Singh vs Government Of Nct Of Delhi on 20 May, 2013

Central Information Commission

File No.CIC/AD/A/2012/000570

File No.CIC/LS/A/2011/003966

File No.CIC/LS/A/2012/001314

File No.CIC/LS/A/2012/001120

Appellant : 1. Shri Kuljit Singh
2. Shri Saurabh Jain

Respondent : Power Finance Corporation Limited, New Delhi

Date/s of hearing : 23 July 2012
30 August 2012
6 December 2012
12 December 2012

1. Shri Kuljit Singh is the Appellant in case Nos.CIC/AD/A/2012/000570, CIC/LS/A/2011/003966 and CIC/LS/A/2012/001314. Shri Saurabh Jain is the Appellant in case No.CIC/LS/A/2012/001120. The Respondent in all the matters is Power Finance Corporation Limited, New Delhi (PFCL hereinafter). Since all the appeals concern the same matter, it has been decided to dispose them of through a common order that follows. The case wise position is as follows:-

CIC/AD/A/2012/000570

2. Appellant Kuljit Singh vide his RTI Application dated 17-8-2011 had sought the following information from the PIO of PFCL:-

- "(a) Photocopy of the Request for Qualification documents submitted by the Singapore consortium.
- (b) Photocopy of the Request for Proposal documents submitted by the Globeleq Singapore Consortium.
- (c) Photocopy of order and letter elaborating the scope of work assigned to each committee or group set up by Power Finance Corporation Ltd. Sasan Power Ltd. or by any other government agency for evaluation of the Request for Qualification bids.
- (d) Photocopy of order and letter elaborating the scope of work and appointment letter to two individual consultants, Mr. Keshav Saran and Mr. Sharma, appointed by Power Finance Corporation or Sasan Power Limited to advise in relation to Sasan Ultra Mega Power Project procurement process.
- (e) Photocopy of all reports deliverables, memorandum of advise and recommendations submitted by Mr. Keshav Saran and Mr. Sharma, the two individual consultants appointed by PFCL or Sasan Power Limited to advise in relation to Sasan Ultra Mega Power Project.
- (f) Photocopy of order and letter elaborating the scope of work assigned to each committee or group set up by Power Finance Corporation Ltd., Sasan Power Limited or by any other governmental agency for evaluation of the Request for Proposal bids.
- (g) Photocopy of the reports and memorandum of recommendations made by the various committees or groups set up by Power Finance Corporation Ltd., Sasan Power Limited or by any other Govt. agency to evaluate the Request for Qualification bids.
- (h) Photocopy of the reports and memorandum of recommendations made by the various committees or groups set up by Power Finance Corporation Ltd., Sasan Power Limited or by any other Govt. agency to evaluate the Request for Proposal bids.
- (i) Photocopies of all pre-qualification letters issued to the bidders. All the Request for Qualification bids were accepted by Sasan Power Limited.

- (j) Photocopies of all letters issued to the bidders which included condition of qualification of the bidders whose Request for Qualification bids were accepted by Sasan Power Limited.
- (k) Photocopy of the information filed by all the bidders pursuant to the conditional qualification letters issued by Sasan Power Limited.
- (l) Photocopy of the information filed by the Globeleq Singapore consortium pursuant to the conditional letter of pre-qualification dated 24.06.2006 issued by Sasan Power Limited to the Globeleq Singapore consortium.
- (m) Photocopy of the report and memorandum of recommendations of the group set up by Power Finance Corporation Ltd., and/or Sasan Power Limited for evaluating and recommending action on the information filed by the Globeleq Singapore consortium pursuant to the conditional pre-qualification letter dated 24.06.2006 issued by Sasan Power Limited.
- (n) Photocopy of the report and memorandum of recommendations of the Group set up by Power Finance Corporation for evaluating and recommending action on the information filed by all the bidders pursuant to the conditional pre-qualification letter issued by Sasan Power Limited.
- (o) Photocopy of the report of the Committee constituted and headed by Mr. A.K.Razdan to look into and suggest improvements to the Ultra Mega Power Project bidding process.
- (p) Photocopy of the report of the Committee consisting of Mr. Ashok Kumar, Mr. P.K.Bhargava and Mr. Rajiv Sharma to look into the issues relating to the Sasan Ultra Mega Power Project.
- (q) Photocopy of all reports and memorandum of recommendations, minutes of decision and file notings of the internal committee of Executive Director, Sasan Power Corporation and any other government committee or group including those set up by

Sasan Power Limited, which were set up to look into the issues relating to the Sasan Ultra Mega Power Project bid process or matters incidental thereto.

- (r) Photocopy of the evaluation reports signed by the members of the evaluation committee or group which evaluated and cleared the Request for Qualification bids.
- (s) Photocopy of the minutes of the meeting at which such draft reports were tabled in all recitals and file notings about reservations expressed by members of the committee group, including reasons for abstention from signing of such reports, if any.
- (t) Photocopy of the minutes of the meeting of the Board of Directors of Sasan Power Limited with respect to the consideration and decisions on the Request for Qualification and Request for Proposal Bid Documents submitted by the Globeleq Singapore Consortium.
- (u) Photocopy of the minutes of the meeting of the Board of Directors of Sasan Power Limited with respect to the consideration and decisions on the Request for Qualification and Request for Proposal Bid Documents submitted by the Globeleq Singapore Consortium pursuant to the conditional letter of intent dated 24.06.2006 issued by Sasan Power Limited.
- (v) Photocopy of file noting, inter office memos, minutes and any other documents in respect to the decision and the implementation of the decision of the Board of Directors of Sasan Power Limited to refund Rs. 119 Crores of the Bid amount to the Globeleq Singapore Consortium.
- (w) Photocopy of the report of the Chief Vigilance Officer of Power Finance Corporation Limited on the Sasan Ultra Mega Power Project.
- (x) Photocopy of action report, recommendations, all documents and information including file notings in relation to evaluation and action taken or recommendation made in relation to Mr. V.K.Kharbanda, General Manager, Power Finance Corporation, G.Dastidar, AGM, Power Finance Corporation, M.K.Goel, Director, PFCL, Alok Sindhal, Director, Power Finance Corporation, R.N.Mathur, Dy. Director, Central Electricity Authority and a

accused or named in the report of the Chief Vigilance Officer Corporation on the Sasan Ultra Mega Power Project.

- (y) Photocopy of Report of action taken, recommendation, documents and including file notings with respect to each member of Globeleq Singapore Consortium
- (z) Photocopy of letters, instructions, memorandums received by Power Finance Corporation and Sasan Power Limited from the Central Vigilance Commission containing observations recommendations or directions in relation to the report of Vigilance Officer of Power Finance Corporation on the Sasan Ultra Mega Power Project or observations, recommendations or directions otherwise in relation to the role of

& Young, the committees of Power Finance Corporation or Sasan Power Limited or board of directors of Sasan Power Limited.

- (aa) Photocopy of letters, instructions, and memorandums received by Corporation or Sasan Power Limited from the Ministry of Power, Government of India containing observations, recommendations or directions in relation to the role of & Young, the committees of Power Finance Corporation or Sasan Power Limited on the board of directors of Sasan Power Limited or any other person, in relation to the process of the Sasan Ultra Mega Power Project.
- (bb) Photocopy of e-mail dated 15.11.2006 from Globeleq Singapore Consortium Power Limited requesting for changes in the board resolutions contemplating to obtain from Globeleq Limited and response of Sasan Power Limited such email.
- (cc) Photocopy of the Report of 'BAMI Committee' constituted by the Ministry of Power
- (dd) Photocopy of the engagement letter, report, other deliverables, memorandum of advice and recommendations with respect to any member of the network of Deloitte To

Tohmatsu engaged in relation to any aspect of the Sasan Ultra procurement process.

- (ee) Photocopy of the brief for opinion submitted by Power Finance Corporation/ Sasan Project/Ministry of Power to the Law Ministry and photocopy of 26.02.2007 from the then Attorney General Mr. Milon Banerjee to PFC, opining that Globeleq Singapore Consortium could be disqualified.
- (ff) Photocopy of any internal memo or communication circulated within Corporation directing its officials to debar or abstain from dealing with any member of the Ernst & Young network.
- (gg) Photocopy of letters, instructions, and memorandums received by Corporation or Sasan Power Limited from the Ministry of Power, Government of India containing observations, recommendations or directions in relation to on applying clause 2.4.3 of the Request for Qualification; and on applying or not applying

clause 2.7.1.3 of the Request for Proposal document to the Consortium with respect to their bids for the Sasan UMPP."

3. Shri J.S.Amitabh, Company Secretary & PIO had responded to it vide letter dated 2011 stating therein that the matter under reference was sub-judice before the Delhi High Court and that supplying any information in this regard was barred under Section 8(1)(h) of the RTI Act 2005.

4. On appeal, Shri P.K.Singh, Appellate Authority vide order dated 4.11.11 had upheld the decision of the PIO. Para 5 of his order is extracted as below:

"Since appellate authority has already given his decision vide No.03/22/Appeal/2011/KS dated 9th September 2011 that the information is not to be disclosed under Section 8(1)(h) of RTI Act 2005 and the appellant has already preferred appeal before CIC, no further action is required in the said case."

5. Aggrieved with the above orders, the Appellant had filed second appeal dated 8.1 before this Commission. The matter was heard by the Single Bench of the Commission on March 2012. The interim order dated 24 April 2012 passed by the Bench presided over by Annapurna Dixit, Information Commissioner is extracted below:

"1. The instant case arose out of a bidding process and tender floated by the Power [hereinafter referred as PFC Ltd.] for the Sasan Ultra Mega Power Project. The A his RTI application dated 17.08.2011 information relating to the period of 2006– relating to the above mentioned project. The RTI questionnaire qualification documents submitted by one Globeleq Singapore consor documents submitted by the same group; documents indicating Scope of Work assign committee or group set up by PFC Ltd. or any other agency assigned the task of e Request for Qualification bids; information filed by all the b qualification letters issued by Sasan Power Ltd. and such other bidding related in his response dated 16.09.2011 stated that the matter in question was sub judi High Court and hence opined that providing information relating to the said issu process of investigation or apprehension or prosecution and thus Section 8 (1) (h) of the RTI Act 2005.

2. Aggrieved with the response of the PIO, the Applicant preferred a First alleging the PIO's reply as arbitrary, erroneous and malafide. The Appel vindictive denial of information on frivolous grounds without rende thereof is thus violative of fundamental rightswhile relying upon variou and the decision of Bhagat Singh vs. CIC & Ors. passed by the Hon'ble Hi Appeal was disposed off by the FAA's order dated 04.11.2011 whereby the the PIO.

3. Aggrieved with the consistent denial of information, the Applicant filed dated 08.12.2011 before the Central Information Commission.

Hearing

4. During the hearing of the Second Appeal, from the arguments of the Respondent's written submission, the facts of the case seemed intermittent with another case pending before the Court. The Appellant submitted orally that the Hon'ble High Court of Delhi had an order dated 19.7.11 whereby PFC had blacklisted his Company. The Respondent on his part submitted to the Commission an extract of the Minutes of the meeting of the Commission authorizing Mr. Kuljit Singh, (the Appellant in the present case) to seek under RTI copies of documents on behalf of the Company. The Respondent also argued that the Commission was to collect information in order to file cases against them in the Court. Respondent's Appellant stated that decision of the Board Members during the Board meeting is an administrative order and he as a citizen of India has a right to seek information from PFC under the RTI Act.

5. The Respondents argued that the information sought by the Appellant is essential for the case since the matter related to the said contract is sub judice (as already mentioned in the writ petition). Appellant however refuted this statement by stating that the PIO and the First Appellate Authority failed to establish how disclosure sought by him would impede the process of hearing the writ petition which had been filed by the Appellant himself before the Court of Law. He stated that the writ petition filed by him was on a different matter and related to blacklisting and was a distinct cause of action in law.

6. Based on the oral submissions of both parties and on perusing the submissions, the Commission noted that a number of documents being sought by the Appellant are already available from the Delhi High Court in connection with the Writ Petition.

7. At this stage in order to understand the matter further the corroborative documents from both sides including from the Respondents documents being sought by the Appellant which are in the possession of the Court, the Respondents believe can be provided since the same are not exempt from disclosure which other department/committee is the custodian of the information.
8. The Commission directed that all of the abovementioned categories of information along with rebuttals to the same by 15th April 2012. The Respondents were directed to submit their submissions by 10th April 2012 and the Appellant to submit their contention/s by 10th April 2012.
Decision
9. The detailed submissions dated 10.04.2012 were filed by the Respondents on 11.04.2012 to the Appellant. No submission however, was received from the Appellant.
10. The Respondents' submissions threw light and dealt minutely with the facts. Perusal of the voluminous submissions clarified the position that the Appellant sought the selection of consultants for selection of developers (Bid Process Management) for the Sasan Power Project contract duly executed between PFC Ltd. and Ernst & Young Ltd. on 06.04.2006. A committee was constituted regarding qualification of the bidder Lanco Globeleq Consortium which was found "Qualified" by the E&Y upon detailed assessment of Request for Qualification [RFQ] submitted including that of Globeleq. Another co-bidder, Reliance Energy Geopartnership awarded of LoI (Letter of Intent) to Globeleq on the ground that it met the qualification criteria. E&Y was accordingly asked to submit a factual report in terms of the qualification criteria. E&Y was accordingly asked to submit a factual report in terms of the qualification criteria. Factual report dated 21.05.2007 submitted alongwith letter dated 28.05.2007 by E&Y stated that Globeleq did not meet the qualification criteria as stated in terms of the qualification criteria. Ministers in discussion/s and meeting/s with the Ministries of Coal, Power, Company Affairs & Justice found the bid of Globeleq-Lanco Consortium void ab initio and recommended that the project be awarded to Reliance Power Ltd. [RPL]. Based on investigations/inquiries conducted by various committees constituted by the Ministry of Power lapses were found on the

examine the bid of Globeleq with due diligence, failure in disclosure of all material information to its clients, entire bidding process being cancelled and rendered futile leading to a delay of 18 months in implementation of the Sasan project. The abovementioned acts led to issuance of a show cause notice upon Ernst & Young and was followed by the decision of debarring the firm for a period of three years w.e.f 03.01.2011. This action of debarring Ernst & Young was

aggrieved and the matter is currently pending investigation and adjudication before the Hon'ble Court of Delhi.

11. The detailed submissions of the PFC Ltd. revolved around the following va

i) That the subject matter information regarding the Appellant, is pending adjudication before the Delhi High Court of Res Judicata stating that the matter in issue in this appeal is the same as the matter in issue in the writ petition filed before the Delhi High Court and hence the same principles between the same parties and hence the intervention of the CIC ought to be stayed.

ii) That the Applicant is acting at the behest and on behalf of the Applicant, who is a company, having been duly authorised by Ernst & Young Company. Therefore, the Applicant is not a citizen but actually a company, hence under the provisions of the law, no information can be provided to a non citizen.

iii) That no public interest would be served but it was the private interest of the Young Company alone which are sought to be served and hence

iv) Sasan Power Ltd. is a Ltd. Company, neither a subsidiary nor having been transferred to Reliance Power Ltd. in the year 2007, falls 2005.

v) PFC has submitted that number of documents and information so emanate from different departments of the Ministries, which are not

and are third parties to the instant case.

vi) Information sought by the Appellant under paragraph 7.1 to 7.2 is indefinite with no particular reference to a document or a

12. In view of the categorical submission of the Respondent Commission finds it essential at this stage to adjourn the matter and club both the Appeals which contain similar contents. Parties shall be duly notified with the next date of hearing

CIC/LS/A/2011/003966

6. Appellant Kuljit Singh vide another RTI Application dated 12.05.2011 seeking the following information from the PIO of PFCL:-

"(a) Photocopy of order and letter elaborating the scope of work assigned to each committee or group set up by Power Finance Corporation Ltd. Sasan Power limited or by any other government agency for evaluation of the Request for Qualification bids.

(b) Photocopy of order and letter elaborating the scope of work and appointment letter of two individual consultants, Mr. Keshav Saran and Mr. Sharma, appointed by Power Finance Corporation of Sasan Power Limited to advise in relation to Sasan Ultra Mega Power Project procurement process.

(c) Photocopy of all reports deliverables, memorandum of advise and recommendations submitted by Mr. Keshav Saran and Mr. Sharma, the two individual consultants appointed by Power Finance Corporation or Sasan Power Limited to advise in relation to Sasan Ultra Mega Power Project.

(d) Photocopy of order and letter elaborating the scope of work assigned to each committee or group set up by Power Finance Corporation Ltd., Sasan Power

government agency for evaluation of the Request for Proposal bids.

- (e) Photocopy of the reports and memorandum of recommendations made by the various committees or groups set up by Power Finance Corporation and Sasan Power Limited by any other Govt. agency to evaluate the Request for Qualification bids.
- (f) Photocopy of the reports and memorandum of recommendations made by the various committees or groups set up by Power Finance Corporation, Sasan Power limited or any other Govt. agency to evaluate the request for Proposal bids.
- (g) Photocopies of all pre-qualification letters issued to the bidder. Qualification bids were finally accepted by Sasan Power Limited.
- (h) Photocopies of all letters issued to the bidders which included conditions of qualification of the bidders whose Request for Qualification bids were finally accepted by Sasan Power Limited.
- (i) Photocopy of the information filed by all the bidders pursuant to the qualification letters issued by Sasan Power Limited.
- (j) Photocopy of the information filed by the Globeleq Singapore consortium pursuant to the conditional letter of pre-qualification dated 24.06.2006 issued by Sasan Power Limited to the Globeleq Singapore consortium.
- (k) Photocopy of the report and memorandum of recommendations of the group set up by Power Finance Corporation and Sasan Power Limited for evaluating and recommending action on the information filed by the Globeleq Singapore consortium pursuant to the conditional pre-qualification letter dated 24.06.2006 by Sasan Power Limited.
- (l) Photocopy of the report and memorandum of recommendations of the Group set up by Power Finance Corporation for evaluating and recommending action on the information filed by all the bidders pursuant to the conditional pre-qualification letter dated 24.06.2006 by Sasan Power Limited.

issued by Sasan Power Limited.

- (m) Photocopy of the report of the Committee constituted and headed by Mr. A.K.Razdan to look into and suggest improvements to the Ultra Mega Power Project bidding process.
- (n) Photocopy of the report of the Committee consisting of Mr. Ashok Kumar, Mr. P.K.Bhargava and Mr. Rajiv Sharma to look into the issues relating to the Sasan Ultra Mega Power Project.
- (o) Photocopy of all reports and memorandum of recommendations minutes of decisions and file notings of the internal committee of Executive Directors of Power Finance Corporation and any other government committee or group including those set up by Sasan Power Limited, which were set up to look into the issues relating to the SUMPP bid process and matters incidental thereto.
- (p) Photocopy of the evaluation reports signed by the members of the evaluation committee or group which evaluated and cleared the Request for Qualification bids.
- (q) Photocopy of the minutes of the meeting at which such draft reports were tabled in the committee, all recitals and file notings about reservations expressed by members of the committee group, including reasons for abstention from signing of such reports, if any.
- (r) Photocopy of the minutes of the meeting of the Board of Directors of Sasan Power Limited with respect to the consideration and decisions on the Request for Qualification and Request for Proposal Bid Documents submitted by the Globeleq Singapore Consortium.
- (s) Photocopy of the minutes of the meeting of the Board of Directors of Sasan Power Limited with respect to the consideration and decisions on the Request for Qualification and Request for Proposal Bid Documents submitted by the Globeleq Singapore Consortium pursuant to the conditional letter dated 24.06.2006 issued by Sasan Power Limited.
- (t) Photocopy of file noting, inter office memos, minutes and any

respect to the decision and the implementation of the decision of the Board of Directors of Sasan Power Limited and/or PFC and/or any other governmental agency to refund Rs. 119 Crores of the Bid Bond to the Globeleq Singapore Consortium.

- (u) Photocopy of the report of the Chief Vigilance Officer of Power Finance Corporation on the Sasan Ultra Mega Power Project.
- (v) Photocopy of action report, recommendations, all documents and information including file notings in relation to evaluation and action taken or recommendation made in relation to Mr. V.K.Kharbanda, General Manager, PFCL, G.Dastidar, AGM, Power Finance Corporation, M.K.Goel, Director, Power Finance Corporation, Alok Sindhal, AGM, Power Finance Corporation, R.N.Mathur, Dy. Director, Central Electricity Authority and any other person accused or named in the report of the Chief Vigilance Officer of Power Finance Corporation on the Sasan Ultra Mega Power Project.
- (w) Photocopy of Report of action taken, recommendation, documents and information including file notings with respect to each member of Globeleq Singapore Consortium.
- (x) Photocopy of letters, instructions, memorandums received by Power Finance Corporation and Sasan Power Limited from the Central Vigilance Commission or observations, recommendations or directions in relation to the report of the Chief Vigilance Officer of Power Finance Corporation on the Sasan Ultra Mega Power Project or observations, recommendations or directions otherwise in relation to the role of the committees & Young, the committees of Power Finance Corporation or Sasan Power Limited or the board of directors of Sasan Power Limited.

- (y) Photocopy of communication issued by Sasan Power Limited to Globeleq Singapore Consortium after 24.06.2006 formally communicating that they have been pre-qualified for RFP round.

- (z) Photocopy of letters, instructions, and memorandums received by

Corporation or Sasan Power Limited from the Ministry of Power, Government of India containing observations, recommendations or directions on relation to the role of Ernst & Young, the committees of Power Finance Corporation or Sasan Power Limited on the board of directors of Sasan Power Limited or any other person, in relation to the process of the Sasan Ultra Mega Power Project.

- (aa) Photocopy of e-mail dated 15.11.2006 from Globeleq Singapore Consortium to Sasan Power Limited requesting for changes in the board resolutions contemplating to obtain from Globeleq Limited.
- (bb) Photocopy of the Report of 'BAMI Committee' constituted by the Ministry of Power.
- (cc) Photocopy of the engagement letter, report, other deliverables, memorandum of advice and recommendations with respect to any member of the network of Deloitte & Touche Tohmatsu engaged in relation to any aspect of the Sasan Ultra Mega Power Project procurement process.
- (dd) Photocopy of the brief for opinion submitted by Power Finance Corporation/ Sasan Power Limited/Ministry of Power to the Law Ministry and photocopy of the letter dated 26.02.2007 from the then Attorney General Mr. Milon Banerjee to PFC, opining that the Globeleq Singapore Consortium could be disqualified.
- (ee) Photocopy of any internal memo or communication circulated within the Power Finance Corporation directing its officials to debar or abstain from dealing with any member of the Ernst & Young network.
- (ff) Photocopy of letters, instructions, and memorandums received by the Power Finance Corporation or Sasan Power Project from the Ministry of Power, Government of India containing observations, recommendations or directions in relation to on applying or not applying clause 2.4.3 of the Request for Qualification; and on applying or not applying

clause 2.7.1.3 of the Request for Proposal document to the Consortium with respect to their bids for the Sasan UMPP."

7. Shri J.S.Amitabh, Company Secretary & PIO had responded to it on 11.8.2011 informing the Appellant that he had sought the requisite information on behalf of Ernst & Young Pvt. which was not a citizen of India in the eyes of law and, therefore, the requisite information not be disclosed. The relevant para of his letter is reproduced below:

"In this regard, we wish to inform you that the desired information is sought by Ernst & Young Pvt. Limited, which is not a citizen in the eyes of law. It is noted that an Association or a Company cannot be treated as a citizen even though it may have been registered or incorporated in the country. A natural born person can only be a citizen of India under the provisions of Part-II of the Constitution. Section 3 of the Right to Information Act, 2005 gives the right to information to all citizens. Thus, it is quite clear that a person who is not a citizen cannot claim this right. (Reference : Shri D.N.Sahu Vs. Union of India, Land & Development Office, Ministry of Urban Development, Nirman Bhawan, New Delhi - Decision No.CIC/WB/A/2006/00336 dated 09-05-2006)"

8. On appeal, Shri P.K.Singh, Appellate Authority, vide his order dated 9-9-2011 has affirmed the decision of PIO.

9. Aggrieved with the above decisions, the Appellant had filed second appeal before another Bench of the Commission presided over by Shri M.L.Sharma, Information Commissioner. This Bench vide its decision dated 12.6.12 had transferred this appeal to a Bench of Smt. Annapurna Dixit, Information Commissioner, who was already presiding over connected Appeal No.CIC/AD/A/2012/000570.

10. In view of the complex legal issues involved in this matter, on the request of the Appellant, the Bench presided over by Smt. Annapurna Dixit, the Chief Information Commissioner, vide his

dated 18.6.2012, had constituted the Full Bench comprising of the following Commissioners:

- i) Smt. Annapurna Dixit, Information Commissioner;
- ii) Shri M.L.Sharma, Information Commissioner; &
- iii) Smt. Sushma Singh, Information Commissioner.

11. The Full Bench heard the Appeal Nos.CIC/AD/A/2012/000570 and CIC/LS/A/2011/003966 on 23.7.12 and passed the following interim order.

- "1. The Appeal No. CIC/AD/A/2012/000570 was heard by the Bench of Commissioner Mrs. Annapurna Dixit and decision passed on 24.7.12.
2. The other Appeal being No. CIC/LS/A/2011/003966 filed by the same Appellant came up for hearing before the Bench of Information Commissioner Mr. M L Sharma. Facts of the case indicated that a similar Appeal (as noted in paragraph above) had already been pending before the Bench of Mrs. Annapurna Dixit. Therefore, it was decided by the Commission that both the Appeals with similar contents be clubbed and heard together by a Full Bench.
3. Accordingly, the matter was fixed for a hearing on 23.07.2012 by a Full Bench Commission comprising of the Information Commissioners viz. Mrs. Annapurna Dixit, Mrs. Sushma Singh and Mr. M L Sharma.
4. At the very outset of the hearing in the matter on 23.07.2012 it was observed by the Bench that the information sought in the two RTI applications captioned appeals is similar, except a few questions. In view of the fact that each application sought voluminous information, it was decided by the Full Bench to hear the Appeal No. CIC/AD/A/2012/000570, since it is more representative and substantially covers the information sought in the Appeal no. CIC/LS/A/2011/003966.
5. The parties were heard. Ld. Counsel for the Public Authority submitted that a copy of the entire Appeal paper book in Appeal No. CIC/LS/A/2011/003966 filed by the Appellant

not been supplied to his client. Hence, counsel for the Respondent pleaded inability to make any submissions or proceed with the matter. After hearing the parties, the following preliminary order is passed:

- (i) the Appellant will supply a copy of the entire Appeal paper bearing number CIC/LS/A/2011/003966 (which arose out of the RTI application dated 17.08.2011) to the CPIO;
- (ii) the Appellant will consider reducing the requirement for information in the RTI application dated 17.08.2011 and communicate the same to the CPIO by 14.08.2012; and
- (iii) the CPIO will file a detailed factual report alongwith his response to the RTI application, covering the points of the modified RTI application dated 17.08.2011 [as directed by the Commission]. Such report from the CPIO should reach the Commission by 25th August 2012.

The matter is now adjourned to 30.08.2012 to be heard at 04:00pm."

CIC/LS/A/2012/001314

12. Appellant Kuljit Singh vide RTI Application dated 2-9-2011 has requested for information from the PIO of the Ministry of Power:-

- "(a) Photocopy of the report of the Committee constituted and headed by Mr. A.K.Rao to look into and suggest improvements to the Ultra Mega Power Project bidding process.
- (b) Photocopy of file noting, inter office memos, minutes and a copy of the decision in respect to the decision and the implementation of the decision to refund the Globeleq Singapore Consortium.

- (c) Photocopy of Report of action taken, recommendations, documents including file notings with respect to the issue of conditional letter dated June 24, 2006 by Sasan Power Limited to Globeleq Limited and the subsequent pre-qualification of Globeleq Singapore Consortium by Sasan Power Limited. Globeleq Limited stating through its letter dated July 19, 2006 that it could not provide the information requested for in the above referred letter dated June 24, 2006.
- (d) Photocopy of Report of action taken, recommendation, documents including file notings with respect to each member of Globeleq Singapore Consortium.
- (e) Photocopy of all letters, minutes of meetings, decisions and resolutions of Sasan Power Limited, Actis and Globeleq Singapore Pte with regard to the issue of conditional letter dated June 24, 2006 by Sasan Power Limited to the Globeleq Singapore Pte being authorized to submit bid for Sasan Ultra Mega Power Project and any matters incidental thereto.
- (f) Photocopy of file noting, inter office memos, minutes and any correspondence in respect to the conditional letter of pre-qualification dated June 24, 2006 by Sasan Power Limited to the Globeleq and the subsequent action taken by the Sasan Power Limited to provide the information filed by Globeleq pursuant to such conditional letter of pre-qualification.
- (g) Photocopy of the Report of 'BAMI Committee' constituted by the Ministry of Power.
- (h) Photocopy of the brief for opinion submitted by Ministry of Power to the Law Ministry and photocopy of the opinion dated 26.02.2007 from the then Attorney General, India, Mr. Banerjee to PFC, opining that the Globeleq Singapore Consortium could be disqualified.
- (i) Photocopy of the brief provided to the EGOM constituted for taking decision on the issue of "UMPP."

13. The Ministry had transferred the said RTI application to PFCL on 6.9.11. Thereafter, J.S.Amitabh, Company Secretary & PIO had responded to it vide letter dated 5-10-2011 stating therein that the matter under reference was sub-judice before the Delhi High Court and the requested information was barred from disclosure under Section 8(1)(h) of the RTI Act.

14. On appeal, Shri P.K.Singh, Appellate Authority vide order dated 7.12.11 had upheld the decision of the PIO.

15. Aggrieved with the above decisions, the Appellant had filed the appeal dated 27.2.12 before the bench of Shri M.L.Sharma, Information Commissioner. The said Bench decision dated 19.9.12 had transferred the paras (b), (c), (d), (e) and (f) of the RTI application to the Full Bench for appropriate orders.

CIC/LS/A/2012/001120

16. Appellant Saurabh Jain vide RTI Application dated 2-9-2011 had requested for information from the PIO of PFCL:-

- "(a) Photocopy of the RFQ Evaluation summary report of Ernst & young Pvt. Limited.
- (b) Photocopy of the RFQ Evaluation detailed report of Ernst & Young Pvt. Limited.
- (c) Photocopy of the RFP Evaluation summary report of Ernst & Young Pvt. Limited.
- (d) Photocopy of the RFP Evaluation detailed report of Ernst & Young Pvt. Limited.
- (e) Photocopy of all letters, minutes of meetings, decisions and file notings of PFCL (including Directors and Chairman) relating to/received from or by PFCL Limited, Actis, Globeleq Singapore Pte, Department for International Development (DFID), Commonwealth Development Corporation (CDC) with regard to Globeleq Singapore being authorized to submit bid for Sasan Ultra Mega Power Project or matters incidental thereto."

17. Shri J.S.Amitabh, Company Secretary & PIO had responded to it vide letter dated 14.10.2011 stating therein that the matter under reference was sub-judice before the Delhi High Court and that supplying any information in this regard was barred under section 8(1)(h) of the RTI Act, 2005.

18. On appeal, Shri P.K.Singh, Appellate Authority vide order dated 14.12.11 had up decision of the PIO.

19. Aggrieved with the above decisions, the Appellant filed second before the Bench of Shri M.L.Sharma, Information Commissioner. The said Bench vide deci dated 19.9.12 had transferred the appeal to the Full Bench of the Commission which was a hearing the connected appeals. Para 5 of the order passed by the single bench is repro below:

"It is apt to mention that certain appeals filed by Shri Kuljeet Singh o Young Pvt. Ltd relating to Sasan Ultra Mega Power Project are pending before a Full Benc of the Commission. The issues raised in the RTI application extracted above appear to b analogous to those raised in the appeals filed by Shri Kuljeet Singh. Further, I passed order dt.19.9.2012 in File No.CIC/LS/A/2012/001314 wherein certain paras

application have been referred to Full Bench of the Commission for decision along with the main appeals filed by Shri Kuljeet Singh. In my opinion, it will not be proper on part to decide the present appeal on merits. It would be appropriate to refer this appe also to the Full Bench for an appropriate decision. The date of next hearing in the mai appeal will be intimated to the appellant herein for having his say appellant will be at liberty to argue his case both on facts as also on law. The Full B would also consider issuing notice to all the parties, including third parties. The par are being given an opportunity to file their replies within 03 weeks time."

20. The above said four appeals were heard by the Full Bench on 23 July, 2012; 30 A 2012; 6 December, 2012 and 12 December 2012. The following parties represented before the Commission:

Appellant(s) : Shri Kuljit Singh
Shri Saurabh Jain

Counsels for Appellants: Shri Suman J. Khaitan
Ms. Megha Mukerjee
Shri Abhishek Birthray
Shri N. Agarwal
Shri Vikramjit Banerjee
Ms. Barsha Mishra

Respondent(s)

PFCL : Shri J.S.Amitabh, PIO
Shri Anil Kumar Yadav, APIO
Shri Kamlesh Menon, Manager
Shri H.K.Das, DGM

Shri P.K.Singh, GM
Shri Manish Aggarwal, DM
Ms. Rachna Gupta Singh, CS
Shri Alok Siddartha, Asst. Manager (Law)

Counsel for PFCL : Shri Jagdeep Kishore

FACTUAL MATRIX

21. It may be pertinent to note at this stage that as desired by this Commission, P filed a detailed written representation dated 10 April, 2012 before No.CIC/AD/A/2012/000570. The Paras 2.1 to 2.4 capture the factual matrix of the matter merits extraction herebelow:-

"2.1 That in the present case, M/s.Ernst & Young Pvt. Ltd. Was engaged as consultant being experts in the trade to guide PFCL in completing the process of Award of Contract for Sasan Ultra Mega Power project(SUMPP) and for certain reasons the original contract awarded to M/s.Globeleq Singapore Consortium(GS) had to be cancelled because GS did not qualify and then had to be awarded to Reliance Power Limited background on the above is given below:-

a) That the Ministry of Power decided to establish Ultra Mega Power Proj (UMPP) with a capacity of about 4000 MW at Sasan, Madhya Pradesh with a captive coal block and therefore, identified the Respondent's company as the nodal agency for the said initiative. For the development of ultra mega Power Project, the respondent's company incorporated a wholly owned subsidiary (SPV) namely Sasan Power Limited (SPL).

b) That to carry out the 'Bid Process Management' for developer for Sasan (Ultra Mega Power Project) a limited Notice Inviting Tender (NIT) was issued by the Respondent's company on 02.02.2006 and the Appellant's company E. & Y. was short listed for the award of Consultancy Assignment for selection of developers (Bi

Process Management) for Sasan Ultra Mega Power Project and accordingly the Letter of Award was issued on 16.02.2006 and the contract was executed between M/s. E & Y and PFC on 06.04.2006.

c) That the Appellant's company carried out detailed asses Request for Qualification (RfQ) bids submitted by 15 bidders and dec

including Lanco Globeleq Consortium as 'Qualified' and 3 bidders 'Not Qualified'. The Appellant's company in their RfQ response evaluation report, did not qualification of Lanco Globeleq Consortium, the bidder was conditional or subject to the bidder submitting further documents/information and/or its subsequent review by it. The Appellant's company recommended award of Letter of Intent (LOI) to Lanco Globeleq Consortium.

d) That subsequently, a controversy arose regarding qualification consortium of Globeleq Singapore Pte. Ltd., and Lanco Infratech Ltd. Reliance Energy Generation Ltd., one of the bidders stated that the LoI was wrongly awarded to Lanco Globeleq Consortium as it was not meeting qualification criteria. The said controversy was widely reported in newspapers also.

e) That after the eruption of the controversy, Appellant's company was asked to submit a factual report regarding status of qualification of i) Infratech and Globeleq; (ii) Reliance Power Ltd. (formerly Reliance Energy Ltd.); iii) Jindal Steel and Power Ltd. Appellant's company submitted the factual report dated May 21, 2007 along with its letter of May 28, 2007. As submitted by the petitioners, Globeleq Singapore Pte. Ltd, the Lead member did not meet the qualifying requirement as stated in the RfQ.

f) That an Empowered Group of Ministers (EGoM) was constituted by Government of India vide OM No.212/3/1/2007-Cab dated 14 June 2007 for expeditious decisions in all cases concerning UMPPs. All the facts relating to the award of Sasan UMPP were placed before the Empowered Group of Ministers. After considering all legal, commercial and contractual aspects of the case in detail with the help of Ministry of Power, Ministry of Coal, Ministry of Company Affairs, Ministry of Law & Justice etc.,

the matter was resolved by Empowered Group of Ministers in its various meetings held from June-July 2007. Empowered Group of Ministers found the bid of Globeleq

consortium void ab initio and recommended award of the project to Reliance power Ltd. (RPL) at an evaluated levelised tariff of Rs.1.196 per unit against Rs.1.296 per unit or quoted by RPL.

g) That on December 31, 2008, Ministry of Power constituted a committee under Shri P.S.Bami, Ex-Chairman and Managing Director of NTPC Ltd. To investigate the alleged manipulation in the award of Sasan UMPP, particularly the role of the Consultant and any kind of omission or commission in this regard, by the Appellant's company. The Bami Committee submitted its report on 25.03.2009 to the Ministry of Power. The Committee recommended actions against M/s.Ernst & Young.

h) That the Committee, came to the conclusion that the Consultant failed to examine the bid of Lanco Globeleq Consortium with due diligence and failed to disclose all the material facts regarding the said bid to its client. As a result of omissions, deliberate or otherwise, the bid of Lanco Globeleq Consortium was wrongly declared as qualified. The said bid was later on held to be void ab-initio and thereby rendering the entire bidding process for award of Sasan UMPP futile. SPL suffered seven months of delay in the implementation of Sasan UMPP.

2.2. That based on certain investigations/inquiries conducted by various committees constituted by the Ministry of Power, Govt. of India, and also on the recommendations of the Internal Inquiry conducted by the committee of Executive Directors of Power Finance Corporation Limited, it was found that there were lapses on the part of Ernst & Young Pvt. Limited and they needed to be debarred for a specified period.

2.3. Requisite show cause notice was issued to Ernst & Young pvt. Ltd. to which replies were received and thereafter necessary decisions were taken to debar them.

2.4. The above action is currently a subject matter of investigation before Hon'ble High court of Delhi, wherein the appellant is petitioner No.1 and Ernst & Young

pvt. Ltd. is petitioner No.2. Apart from impugning the decision of Power Finance Corporation Limited to debar Ernst & Young Pvt. Ltd., the petitioner in the writ petition have repeatedly complained of certain documents/information not being provided by Power Finance Corporation Limited despite request and have made an issue that the decision is hit for this reason, on various grounds and had also made an application as Annexure P-16 of the Writ petition where same list as is reproduced in paragraphs 7.1 to 7.32 of the present appeal. In this connection, it may be noted that Appellant's company vide its Board Resolution dated 29.06.2011 authorised the Appellant for filing court case against the Respondent Company and accordingly, he filed a case before Delhi High Court challenging the decision of Power Finance Corporation Limited which debarred him from all future assignments of the company w.e.f 03.06.2011 for a period of three years. The Appellant was also authorized by the said resolution for filing Applications in the Respondent Company under the Right to Information Act, 2005. A copy of the said resolution is already on record of the Hon'ble Commission and has also been filed by the Appellant's company as part of its writ petition on page no.-381."

Hearing in Appeal No.CIC/LS/A/2012/001120

22. We heard the parties on 12th December, 2012 and remanded the matter to the Appellate Authority for deciding the matter afresh after hearing the parties. The operative part of the order are extracted below:

"5. This matter is heard by the Full Bench of this Commission consisting of Ms.Annapurna Dixit, Information Commissioner; Shri M.L. Sharma, Information Commissioner and Ms. Sushma Singh, Information Commissioner. Appellant is not present but is represented by Advocates Vikramjit Bannerjee and Ms Barsha Mishra. It is their contentions that the decision of the Appellate Authority is hit for this reason, on various grounds and had also made an application as Annexure P-16 of the Writ petition where same list as is reproduced in paragraphs 7.1 to 7.32 of the present appeal. In this connection, it may be noted that Appellant's company vide its Board Resolution dated 29.06.2011 authorised the Appellant for filing court case against the Respondent Company and accordingly, he filed a case before Delhi High Court challenging the decision of Power Finance Corporation Limited which debarred him from all future assignments of the company w.e.f 03.06.2011 for a period of three years. The Appellant was also authorized by the said resolution for filing Applications in the Respondent Company under the Right to Information Act, 2005. A copy of the said resolution is already on record of the Hon'ble Commission and has also been filed by the Appellant's company as part of its writ petition on page no.-381."

Appellate Authority has not passed a speaking order. Besides, they a reference to the Appellate Authority having decided similar issues thrice earlier has no bearing whatsoever on the first appeal filed by him and, therefore, nonapplication of mind on the part of the Appellate Authority. It is also his contention that the purported pendency of two appeals on similar matters before the Central Administrative Tribunal Commission, again, is no ground for dismissing the appeal.

6. We find merit in the submission of Adv. Bannerjee and Adv. Mishra that the Appellate Authority has not passed a speaking order. Hence, we deem it expedient to remand the matter to the first Appellate Authority with the direction to decide the matter afresh in 15 days time from the date of receipt of this order, after giving an opportunity of hearing to the appellant or his counsel.

7. The appellant, however, will have the liberty to move this Commission again if he is dissatisfied with the decision of the first Appellate Authority. A copy of this order is being handed over to the appellant's counsel 'dasti' with the direction to serve it on the first Appellate Authority."

23. The Appellant has not come in appeal before us so far. Hence, the matter is deemed to have been finally disposed of.

24. The result is that the Commission is now called upon to decide the appeals registered vide Appeal Nos.000570; 003966 & 001314.

ARGUMENTS BY THE PARTIES

25. During the hearing, Adv. Suman J.Khaitan appearing for appellant pleaded that the contract for the construction of Sasan Ultra Mega Madhya Pradesh, has finally been awarded to Reliance Power Limited proceedings whatsoever are pending. Therefore, the requisite information is disclosure under any of the provisions of the RTI Act. He, therefore, seeks direction Commission to the PIO to provide para-wise information to the appellant.

26. We drew Adv. Khaitan's attention to the huge number of queries raised by the appellant in the three RTI applications - the number of queries being 33 in RTI application dated 18.7.11 (Appeal No.000570); 32 in RTI application dated 2.9.11 (Appeal No.001314) - (74 queries in total). and suggested to him to narrow down his requirement for information, if possible. Adv. Khaitan sought time to seek instructions from his client. On resumption of the hearing, Adv. Khaitan agreed to delete a few queries from the RTI applications and insisted that his client was interested in seeking information on the remaining queries. As the concession made by Adv. Khaitan was inconsequential, we decided to proceed with all the queries on merits.

27. Adv. Jagdeep Kishore, appearing for PFCL, has strongly objected to the disclosure of the requisite information. His first and foremost submission is that Appellant Kuljit Singh has not sought any specific information; he has sought vague and omnibus information. Further, he has not indicated the purpose for which he is seeking this information, that is, whether for a private purpose or for a public purpose. According to him, information sought has to be specific and pointed and it cannot be vague and omnibus. Besides, while adjudicating such matters, the Commission cannot be oblivious of the requirement of various operations. The appellant submits that 15 bidders participated in the tender process and three were disqualified and the remaining 12 bidders remained in the reckoning. These bidders had furnished technical and financial bids to PFCL. The technical bids contain technical information, involving

property rights of the bidders. According to him, Appellant Kuljit Singh is seeking t
information and, therefore, even if the Commission decides to disclose information, it i

to follow the procedure prescribed u/s 11(1) of the RTI Act as held by the Delhi High
decision dated 23.3.12 in LPA No.900/2010 (BSNL Vs. Chander Shekhar).

28. His further contention is that if the Commission were to de
information, it is required to pass order on each para.

29. Adv. Jagdeep Kishore has relied on the CIC decision dated 27.07.2009 in the ca
Milap Choraria Vs. CBDT (No.CIC/AT/C/2008/00025). Para 33 of the said decision is repro
below:

"A Public Authority as a 3rd party is, therefore, entitled to protect from dis
an information which relates to it and which it has considered confidential. The disclo
of such an information by the PIO is possible only after hearing the party and taking in
account the objections, if any, raised by it to the intended disclosure. The PIO can or
disclosure only if the public authority decides that public interest in disclosure outwe
any possible harm or injury to the interest of such Public Authority as third party".

30. Besides, Adv. Kishore has relied on CIC decision dated 1.12.2
F.No.CIC/MA/A/2006/00787 & 788 in which the Commission had held that as the matter was
already before the Court, the exemption claimed u/s 8(1)(h) of the RTI Act was justified

31. He has also relied on CIC decision dated 26.10.07 in Shri P.C.Sekh
Assurance Company (No.CIC/AT/A/2007/00712). Para 8 of the said decisio
below:

".....In the Commission's view, once it is established that a certain informati
set of information has the characteristics of a commercial information
matter whether it is of a third party or of a respondent or appellant-public authority,
disclosure should be exempted u/s 8(1)(d)".

According to him, based on this logic, audit related information by a commercia

was denied to the information seeker.

32. Adv. Jagdeep Kishore has also relied on the Delhi High Court judgement dated 13.12.2007 in UPSC Vs. R.K.Jain in W.P(C)1243/2011 & C.M. No.2618/2011 and judgement dated 23.3.2007 of the Bombay High Court in Surup Singh Hrya Naik Vs. State of Maharashtra to canvass his case.

33. The arguments advanced by Adv. Kishore are refuted by Adv. Subramanian. His submissions are as follows:

(i) That PFCL is a Public Authority and request for information from Public Authority cannot be considered to be a personal information and, in fact, no personal information whatsoever is being sought from PFCL. What is being sought is information based on the official records of PFCL.

(ii) Appellant had preferred W.P. No.5146/2011(Kuljit Singh Vs.PFCL) wherein he sought was for quashing and/or setting aside the impugned order dated 19.7.11 issued by the Commission whereby the Petitioner's firm was blacklisted. According to him, the matter pending before the High Court has no bearing whatsoever on the appeals pending before this Commission. In any case, the pendency of an appeal in a judicial forum does not take away the jurisdiction of the Commission to adjudicate a matter under RTI Act.

(iii) He also submits that as the contract has attained finality, Sec.8(1)(d) & (h) of the RTI Act is not applicable.

REPRESENTATIONS MADE ON BEHALF OF APPELLANT

34. Adv. Khaitan has submitted two representations, both dated 8.1.2012 before the Commission in Appeal Nos.000570 and 003966 which have been taken on record. It would be pertinent to crystallise the salient points made therein.

35. Representation in Appeal No.000570

i) The orders passed by CPIO and FAA, denying information u/s 8(1)(h) of the RTI Act, are not sustainable in law as the intention of the RTI Act is to provide information, probity and transparency in public life.

ii) The orders passed by CPIO & FAA are couched in technical language and are curbing transparency and accountability which the RTI Act aims to promote.

iii) FAA has 'erroneously, malafidely and arbitrarily relied upon section 8(1)(h) of the RTI Act to reject his first appeal'. This exemption is not applicable in the present case.

iv) The Respondent PFCL has raised a frivolous ground that since Writ Petition pending before Delhi High Court, disclosure of requested information would have a bearing on the current proceedings under the RTI Act.

v) The burden of proof rests on the PFC to show how disclosure of information would impede the process of investigation or prosecution. No such ground has been adduced by the FAA in his order. Further, no investigation or prosecution whatsoever is pending anywhere.

vi) The Writ Petition pending in the Delhi High Court has challenged the order of PFCL in blacklisting Ernst & Young Private Limited and it has no bearing on Appellant's request for information. In any case, the cause of action in the Writ Petition is different from that of the present appeal.

vii) The Writ Petition pending in the High Court cannot be termed as investigation u/s 8(1)(h) as the term investigation would mean a criminal proceeding and not a civil proceeding. In Bhagat Singh Vs. Chief Information Commissioner and Ors, the Delhi High Court has held that disclosure is a rule and non-disclosure is an exception under the RTI Act. Therefore, provisions of Section 8 of the RTI Act have to be strictly construed. It should not be interpreted as to shadow the very right itself.

viii) In appeal No.CIC/SM/A/2011/000308/SG, this Commission has held that

section 8(1)(h) of the RTI Act, only that information is exempted from disclosure which impede the process of investigation or apprehension or prosecution of offenders. Merely the process of investigation or prosecution of offenders is continuing, the bar stipulated of the RTI Act is not attracted.

ix) Invoking of sec.8(1)(j) in the facts and circumstances of the case is incorrect. Information relating to a corporate entity, institution or an association can in no way be treated as personal information. The term 'personal' clearly reflects something pertaining to the private life of an individual and since a corporate entity is neither an individual nor can it possess a private life, information pertaining to its activities can in no way be considered personal. Respondent PFCL is obliged to prove the damage that the diffusion of information has effectively caused to the legal interest of any third party. He has failed to do so.

Commission's decision dated 1.5.12 in Appeal No.CIC/SG/A/2012/000879(Smt. Anita Singh Vs. MEA)

x) He has placed reliance on this Commission's decision in Shatmanyu Sharma Vs. Mumbai Customs, Mumbai(CIC/AT/A/2006/000653 and 000654) wherein it was held that blanket ban on disclosure of information on grounds of it being confidential or involving third parties may lead to miscarriage of justice and give protection to individuals who are involved in corrupt acts.

xi) The plea of the Respondent PFC that they are holding certain information in a fiduciary capacity is not correct. He has relied on the decision of the Delhi High Court in Court Vs. Subhash Chandra Agarwal (162(2009)DLT 135) wherein the true meaning of fiduciary relationship has been expounded. The Respondent PFC does not fall in any of the categories of fiduciary relationship enumerated in this order.

xii) The judgements relied upon by the Counsel for PFCL are incorrect and misconceived and have no bearing in the present case.

xiii) The plea of public interest versus private interest Respondent PFCL is mis-conceived for the reason that public interest is not capable of a definition and does not have a rigid meaning and is elastic and take its colour from the which it occurs.

xiv) He has challenged the stand taken by the Counsel for PFC that some documents are not held by PFCL and are being held by Sasan Power Limited. According to SPL was a subsidiary of PFCL and was controlled by it at the relevant time. Information relates to the period preceding SPL's transfer to Reliance Power Limited in 2007. The period which information has been sought is the period when PFCL used to interact and take decision on behalf of SPL. In any case, if the PFCL did not have the requested information, it should have transferred the RTI application to the concerned public authority u/s 6(3) with intimation to Appellant.

xv) Information sought falls u/s 2(f) of the Act and PFCL is fully empowered by law to call for these documents from SPL.

xvi) FAA has passed a non-reasoned and non-speaking order and there has been no application of mind. It is a settled principle that reasons introduce clarity in the order and are bound to have set forth his independent reasons, howsoever brief, in support of the application of mind. The absence of reasons has vitiated the orders passed by FAA.

xvii) And lastly, this Commission does not lose its jurisdiction in the face of the Writ Petition in the High Court..

36. Representation made in Appeal No.003966

We have carefully gone through this representation filed by Adv. Khaitan and find that he has taken the same grounds as in Appeal No.000570. Additionally, he has the contention of the counsel for PFCL that Ernst & Young being a company and, therefore, not being a natural person, is not entitled to seek information u/s 3 of the RTI Act. According to

contention is misconceived, baseless and erroneous. It has been argued that representatives of the companies have a right to seek documents/information for the company. He has relied on this Commission's decision dated 30-3-2007 in Compl. No. CIC/WB/C/2007/00104 & 105, wherein it was held that if the Courts allow the companies, societies and associations, PIOs also should not throw out the request for information on the mere technical ground that applicant/appellant happens to be a legal person and not a natural person. The representation emphasises that in law and in the eyes of law, the firm consists of individual partners who go to constitute that firm. Therefore, the persons appearing before the tribunal are the individual partners of the firm and not the legal entity. He contended that even if appellant has filed the RTI application in the letter head of Ernst & Young, he has clearly mentioned his name in the RTI application and he, being a citizen of India, is entitled to seek information u/s 3 of the RTI Act in his individual capacity.

REPRESENTATIONS MADE ON BEHALF OF PFCL

37. Adv. Jagdeep Kishore appearing for the PFC has filed three representations on 15.2.13, 28.2.13 and 12.3.13 to buttress his case. Besides, he has also submitted a copy of judgements of the constitutional courts and that of CIC for the consideration of the Commission. It would be apt to crystallise the representations submitted by Adv. Kishore. Representation in Appeal No.000570

(i) Appellant Kuljit Singh has not sought this information in his personal capacity but has sought information in the letter head of Ernst & Young, having the address of said firm which is a legal entity and not a natural person. Rights u/s 3 of the Act are available to citizens, being natural persons, and not to a corporation or company or any other form of legal entity. Such legal entities do not have a right under Article 19 of the Constitution. Hence, the appeal should be dismissed off-hand on this short ground alone.

(ii) There is a challenge to the contention made by the appellant that CPIO and FAA pass speaking orders. It is contended that RTI Application is not entertainable only on the ground that Ernst & Young is not a natural person. In other words, appellant has sought information from the letter head of Ernst & Young and on behalf of Ernst & Young and, therefore, he is not entitled to information u/s 3 of the RTI Act.

(iii) The following core issues have been raised in the representation:

"a) The present appeal is an abuse of the process of law as the information has been sought on behalf of the company and not by the individual for himself, but has applied for information based on authority from Ernst & Young Private Limited.

b) Appellant is making a roving and fishing inquiry without mentioning specifically the existence of documents and what is the definition and meaning of 'information' u/s 2(f) of RTI Act.

c) Whether the appellant can seek information from the Public Authority to be used in litigation against the Public Authority itself.

d) The non disclosure of information and its effect in the subject investigation/inquest by Hon'ble High Court of Delhi in a writ petition filed by Ernst & Young Pvt. Ltd. and the appellant herein wherein the blacklisting of Ernst & Young Pvt. Ltd. has been challenged and in support of case of the petitioners, the appellant has filed Annexure P/16 wherein all these documents disclosure of which has been sought, have been mentioned as one of the grounds for impugning the blacklisting. In such circumstances section 8(1)(h) is attracted.

e) Whether the right under RTI Act can be exercised to promote private interest and whether the appeal maintainable for not disclosing public interest?

f) What is the scope of RTI Act. Whether Section 8 and Section 3 of RTI Act have to be interpreted harmoniously with a view to create a balance. What is the effect of various sub-sections of Section 8 on the other provisions of RTI Act.

- g) Whether RTI Act contemplates multiple proceedings in view of Section 7(9) of RTI Act.
- h) Sasan Power Limited is not a Public Authority and outside the purview of RTI Act and notice to it would be necessary, if the Learned CIC decides that information sought has to be disclosed, despite preliminary objections.
- i) In view of writ petition having been filed earlier, and even through appeal (0005700) the proceedings in the second appeal (0005700) are hit by Section 10 of CPC and ought to be stayed.
- j) Whether the principles of Article 19(2) of the Constitution of India can be applied in the way of reasonable restrictions on the rights akin to those under the constitution of India.
- k) Preliminary objections to be heard and decided first, before dealing with the appeal on merits.
- l) In appropriate cases, disclosure exempted under section 8(1)(e), 8(1)(h) and 8(1)(g) of the RTI Act.
- m) When the existence of the document is not known, whether the Learned CIC is supposed to conduct an inquiry as to its identification and existence, before passing an order in that regard."

(iv) It has been contended that information sought by the appellant in this RTI application does not fall in the ambit of Section 2(f) of the RTI Act. The information as defined under the RTI Act means 'specific identifiable material in any of the prescribed formats which is under the control of the Public Authority and does not include non-descript, unknown, unrecorded material requiring a detailed enquiry for which the RTI Act does not provide. Reliance is placed on the Supreme Court judgement in CBSE Vs. Aditya Bandopadhyay case wherein the apex court observed as follows:

"The Act does not cast an obligation upon the Public Authority, to collect or c
such non available information and then furnish it to an applicant. A Public Authority
also not required to furnish information which requires drawing of i
making of assumptions."

Information sought

is non-specific, lacking clarity, unidentifiable and nothing being known
to its existence and, therefore, it is to be excluded from scope of disclosure.

(v) Revelation of information should not conflict with other public interests which
include efficient operations of Government; preservation of confidentiality of sensitive
information; optimum use of limited fiscal resources etc, as held by the Supreme Court
in the above judgement.

(vi) Reliance has been placed on the Supreme Court judgement in Institute of Chartered
Accountants of India Vs. Shaunak H. Satya and Ors, wherein the Court has drawn a distinction
between the information intended to bring transparency, to improve accountability and to reduce
corruption, falling u/s 4(1)(b) and (c) and other information which may not have a bearing on
accountability or reducing corruption. This judgement goes on to say that competent authorities
under the RTI Act will have to maintain a proper balance so that while achieving transparency, the
demand for information does not reach unmanageable proportions affecting other public interests.
Para 26 of the order is extracted below:

"We however agree that it is necessary to make a distinction in regard
to information intended to bring transparency, to improve accountability
a n d t o r e d u c e
corruption, falling under Section 4(1)(b) and (c) and other information which may not have
a bearing on accountability or reducing corruption. The competent authorities under the
RTI Act will have to maintain a proper balance so that while achieving transparency, the
demand for information does not reach unmanageable proportions affecting other public
interests, which include efficient operation of public authorities and
g o v e r n m e n t ,
preservation of confidentiality of sensitive information and optimum use of limited fiscal
resources."

(vii) Reliance has also been placed on Para 37 of the Supreme Court Judgement in Aditya
Bandhopadhyay case which is extracted below:

"The right to information is a cherished right. Information and right to information
are intended to be formidable tools in the hands of responsible citizens to fight corruption
and to bring in transparency and accountability. The provisions of RTI

A c t s h o u l d b e enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information (that is nformation other than those enumerated in section 4(1)

(b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments etc). indiscriminate and impractical demands or d i r e c t i o n s under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would b e c o u n t e r □ productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non□ productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing 'information furnishing' at the cost of their normal and regular duties."

(viii) It has been further contended that Apex Court has disagreed with the observation of Delhi High Court in Bhagat Singh's case that section 3 is the rule and Section 8, an exception.

(ix) The representation raises yet another issue: whether Appellant is seeking this information in public interest or private interest. It is the contention of Adv. Kishore that Ernst & Young Pvt. Ltd was blacklisted by PFC for its acts of omission and commission and Writ Petition filed by Ernst & Young is pending in the Delhi High Court. He has relied on this commission's d e c i s i o n d a t e d 2 7 □ 0 7 □ 2009 in Milap choraria Vs. CBDT (CIC/AT/C/2008/00025). The facts in that case were that Appellant Milap Choraria had sought certain information from CBDT which had declined to disclose this information as the matter was pending in the court. The Commission had come to the conclusion that in such a scenario, disclosure of information would tilt t h e balance against the public authority. The Full Bench of the Commission had denied disclosure of information as appellant Milap Choraria had failed to demonstrate any public interest in seeking information. In other words, it is his contention that information can be disclosed by the Public Authority only if it is desirable to do so in the larger public interest.

(x) It has also been argued that the appellant has not sought any specific information and that information sought is vague, unspecific and lacking clarity. To illustrate, the appellant has sought information under the following heads: □□Order elaborating the scope of work.

- Letter elaborating the scope of work
- Assigned to each committee or assigned to a group
- Set up by PFC Limited
- Set up by Sasan Power Ltd. or
- Set up by any other Government agency
- For evaluation of RFQ Bids.

It clearly shows that the appellant is not sure whether there is any order or letter regarding the scope of work and whether the said scope of work has been assigned to any Committee or Group and whether such assignment to a committee or group was made by PFC Limited or SPL or any other Government agency. As such, appellant does not know whether the said information exists or not. As the request for information lacks clarity, it renders disclosure unworkable.

(xi) PFCL was only a facilitating agency whereas SPL was created as a Special Purpose Vehicle. The conditions were finalised by SPL. The SPL is the holder of a large chunk of information sought by the appellant which is now a private entity and, therefore, not subject to the rigour of RTI Act and, hence, PFC is not liable to disclose information that is being held by SPL.

(xii) Without prejudice to the above,, the Commission has to examine whether information sought in each query is barred from disclosure u/s 8(1)(d), (e) and (j) of the RTI Act. Besides, Commission has also to examine whether rigour of Section 11(1) of the RTI Act is required to be followed in this case and, if yes, this exercise has to be done in respect of each para of the RTI application.

(xiii) The representation also places reliance on BSNL Vs. Chandra Shekhar case passed by the Delhi High Court which has underlined that rigour of Section 11(1) is to be followed when there is request for third party information.

(xiv) Adv. Kishore has also dealt with each para of the RTI application in his representation and has attempted to demonstrate how and why information is not disclosable as per his understanding of law.

(xv) Adv. Kishore has also adverted to Section 10 of the Civil Procedure Code which provides that during the pendency of a matter in one court, the same matter cannot be agitated in another court. It is his contention that as the Writ Petition is pending before the Delhi High Court, this matter can not be agitated before this Commission.

(xvi) Adv. Kishore has relied on following cases to buttress his case.

- Shri P.C.Sekhar Vs. Shri S.H.Gejji;
- Milap Choraria Vs. CBDT;
- V.R.Gokhale Vs. CVC;
- Kishur J. Aggarwal Vs. Corporation Bank;
- BSNL Vs. Shri Chander Shekhar;
- K.L.Bablani Vs. DG of Vigilance, Customs and Central Excise;
- UPSC Vs. R.K.Jain; &

- Girish Ramachandra Deshpandey Vs. CIC and Ors etc.

Representation in Appeal No.003966

38. Adv. Kishore has filed a detailed representation running into seventy two pages along with annexures. We have carefully perused this representation and find that submissions made in this representation are essentially and substantially the same as in Appeal No.000570. Representation in Appeal No.001314

39. In this representation, it is contended that appellant had sought information from the Ministry of Power and certain paras thereof were transferred to PFCL for action as per law. The information sought in this RTI application is overlapping with other two RTI applications corresponding to Appeal Nos.000570 and 003966. The Ministry of Power has provided 73 pages of information to the appellant but the paras which have been transferred to PFCL are vague, indefinite and unspecific and, therefore, unworkable under the RTI Act.

DECISION NOTICE & REASONS

40. It may be profitable to advert to the relevant legal provisions and the precedents at this stage. Under Section 3 of the RTI Act, all citizens have the right to seek information, subject to the provisions of this Act. Section 8 carves out ten exemptions under which information can be denied. Clauses (d), (e) and (j) of Section 8(1) are extracted below:

"(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information."

41. Delhi High Court in Bhagat Singh Vs. CIC and Ors. has liberally construed provisions of RTI Act and has held that this Act is the effectuation of the freedom of speech and expression. Access to the information under Section 3 of the Act is the rule and exemptions under Section 8, the exception. Paras 12 and 13 of the judgement are extracted below:

"12. The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy. By one fell stroke, under the Act, the maze of procedures and official barriers that had previously impeded information, has been swept aside. The citizen and information seekers have, subject to a few exceptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act. As is reflected in its preambular paragraphs, the enactment seeks to promote transparency, arrest corruption and to hold the Government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein.

13. Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself. Under Section 8, exemption from releasing information is granted if it would impede the process of investigation or the prosecution of the offenders. It is apparent that the mere existence of an investigation process cannot be a ground for refusal of the information; the authority withholding information must show satisfactory overruling reasons as to why the release of such information would hamper the investigation process. Such reasons should be germane, and the opinion of the process being hampered should be reasonable and based on some material. Sans this consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information."

42. However, the Supreme court of India in CBSE Vs. Aditya Bandhopadhyay case has taken a different view in the matter. Para 61 of the order is extracted below:

"61. Some High Courts have held that Section 8 of the RTI Act is in the nature of an exception to Section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that, therefore, Section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information.

The Preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore, when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfillment and preservation of democratic ideals."

43. In this judgement, the apex court has also observed that implementation of right to information must not conflict with several other public interests, including efficient operations of the Governments, preservation of confidentiality of sensitive information, optimum use of limited physical resources etc. Para 62 and 63 of the judgement are extracted below:

"62. When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the Governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualize and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act, that is, Section 8 of the Freedom to Information Act, 2002. The courts and Information Commissions enforcing the provisions of the RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting Section 8 and the other provisions of the Act.

63. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of Section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of Section 2 of the Act. If a public information has any information in the form of data or analysed data, or abstracts, or s t a t i s t i c s , a n applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions.

I t i s a l s o n o t r e q u i r e d t o p r o v i d e 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the d e f i n i t i o n o f 'information' in Section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."

44. In the said judgement, the Apex Court had also taken an adverse view of the indiscriminate and impractical demand for disclosure of all and sundry information, unrelated to transparency and accountability in the functioning of public authorities and eradication o f corruption etc. It has cautioned that the RTI Act cannot be permitted to be converted into a tool of oppression or intimidation of honest officials trying to do their duty. Para 67 of the order is extracted below:

"67. Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would b e

counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spend 75% of their time in collecting and furnishing information to applicants instead of discharging their r e g u l a r

duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing 'information furnishing' at the cost of their normal and regular duties.:

45. It has been argued on behalf of the PFCL that PFCL is holding this information in fiduciary capacity. If a public authority is holding information in a fiduciary capacity, it can certainly refuse to disclose information under clause (e) of Section 8(1). In Supreme Court Vs. Subash Chandra Agarwal (162 (2009) DLT 135), the Delhi High Court has expounded as to what is fiduciary capacity. The relevant portion of the order is extracted below:

"The following kinds of relationships may broadly be categorized as 'fiduciary' ☐ Trustee/beneficiary (Section 88, Indian Trusts Act, 1882) ☐ Legal guardians/wards (Section 20, Guardians and Wards Act, 1890) ☐ Lawyer/Client;

☐ Executors and administrators/legatees and heirs

☐ Board of directors/company

☐ Liquidator/company

☐ Receivers, trustees in bankruptcy and assignees in insolvency/creditors

☐ Doctor/patient

☐ Parent/child"

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It has also been contended on behalf of PFCL that some of the information sought by the appellant is personal in nature.

Personal information can be denied to an information seeker under clause (j) of Section 8(1). However, this is subject to public interest override.

In other words, even personal information can be disclosed in the larger public interest. It may be pertinent to mention that while upholding the decision of CIC in Girish Ramachandra Deshpande Vs. CIC, the Supreme court has held that personal information is not liable to be disclosed unless public interest so warrants. Para 12 and 13 of the order are extracted below:

"12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details

viz. movable and immovable properties and also the details of his investments, lending

and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is whether the above-mentioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right."

47. We are also tempted to advert to the landmark judgement dated 23.3.12 of the Division Bench of the Delhi High Court in BSNL Vs. Chandra Shekhar. The legal principles expounded in this judgement are enumerated below:

(i) First and foremost, confidentiality or secrecy is the essence of sealed bids. It helps the contract awarding party to have the most competitive and best rates or offer. Every bidder wants to keep his bid secret so that other bidders do not know of his bid and they bid blindly. When a bidder submits his bid, he does so in the expectation that his bid would not be disclosed to the rival. Secret bids, thus, promote competition and guard against favouritism; fraud and corruption and lead to award of contract, to secure the best of work at the lowest price practicable.

(ii) The secret bids are not confined to the price only. It may cease to be of any value or lose confidentiality once the bids are opened.

The bids/tenders today require the bidders to submit in the bids a host of information which may help and be required by the tender calling institution to evaluate the suitability and reliability of the contracting party. The secret bids/tenders are often divided into technical and financial bids.

The technical part of the bids may contain information about the technology and the processes evolved and developed by the bidders which technology and the process may not otherwise be in public domain and which the bidders may not want revealed to the competitors.

If a bidder were to be disclosed the entire information submitted by another rival bidders, the possibility of unscrupulous businessmen participating in the tender merely for acquiring such information cannot be ruled out. Such disclosure may lead to the competitors undercutting in future bids.

It would be pertinent to extract para 11 of the decision in extenso:□

"11. Over the years the secret bids are not confined to the price only, which may cease to be of any value or lose confidentiality once the bids are opened. The bids/tenders today require the bidders to submit in the bids a host of information which may help and be required by the tender calling institution to evaluate the suitability and reliability of the contracting party. The bidders are often required to, in their bids disclose

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about themselves, their processes, turnover and other factors which may help the tender calling institution to evaluate the capability of the bidder to perform the contracted work.

The secret bids/tenders are often divided into technical and financial parts. The bidders in the technical part may reveal to the tender calling institution their technology and processes evolved and developed by them and which technology and processes may not otherwise be in public domain and which the bidder may not want revealed to the competitors and which technology/processes the bidder may be using works for the other clients also and which technology/processes if revealed to the competitors may lead to the bidder losing the competitive edge in subsequent awards of contracts. If it were to be held that a bidder by virtue of participating in the tender becomes entitled to all particulars in the bids of all the bidders, the possibility of unscrupulous businessmen participating in the tender merely for acquiring such information, cannot be ruled out. Such disclosure may lead to the competitors undercutting in future bids. We may at this stage notice that the Freedom of Information Act prevalent in United States of America as well as the Freedom of Information Act, 2000 in force in United Kingdom, both carve out an exception qua trade secrets and commercial or financial information obtained from a person and which is privileged or confidential. The tests laid down in those jurisdictions also, is of „if disclosure of information is likely to impair government s ability to obtain necessary information in future or to cause substantial harm to competitive position of person from whom information is obtained. It has been held that unless persons having necessary information are assured that it will remain confidential, they may decline to cooperate with officials and the ability of government to make intelligent well□informed decisions will be impaired.

Yet another test of whether the information submitted with the bids is confidential or not is of 'whether such information is generally available for public perusal' and of whether such information "is customarily made available to the public by the business submitter". If it is not so customarily made available, it is treated as confidential. "

(iii) A balance has to be struck between the principle of promoting honest and open

Government by ensuring access to information on the one hand and the principle of confidentiality breach whereof is likely to cause substantial harm to the competitive position of a person from whom information is obtained. Para 13 of the order is extracted below: □

"13. What thus emerges is that a balance has to be struck between the principle of promoting honest and open government by ensuring public access to information created by the government on the one hand and the principle of confidentiality breach whereof is likely to cause substantial harm to competitive position of the person from whom information is obtained and the disclosure impairing the government's

ability to obtain necessary information in future on the other hand. Also, what has been discussed above may not apply in a proceeding challenge wherein is to the evaluation process. It will then be up to the Court before which such challenge is made, to decide as to what part of the evaluation process is to be disclosed to the challengers."

(iv) Even though the tender process in this case has been scrapped, the information which is being sought, relates to evaluation of the bids by the appellant BSNL. Even when the period of non-disclosure agreement has expired, the court took the view that disclosure of third party

information would warrant rigour of section 11(1) of the RTI Act. Para 16 of the order is extracted below: □ "16. What we find in the present case is that the tender process has been scrapped. The information which is being sought relates to the evaluation of the bids by the appellant. Though the Non Disclosure Agreement extended the obligation of confidentiality beyond the date of opening of the tenders also but only for a period of two years from the date of disclosure or to the completion of business purpose whichever is later. The business purpose stands abandoned with the scrapping of the tenders. More than two years have elapsed from the date when the information was submitted. Thus the said agreement now does not come in the way of the appellant disclosing the information. However, we are of the opinion that disclosure of such information which would be part of the evaluation process would still require the third party information procedure under Section 11 of the Act to be followed. As aforesaid, besides the bid price, there may still be information in the bid and which may have been discussed in the evaluation process, of commercial confidence and containing trade secret or intellectual property of the bidders whose bids were evaluated."

48. After outlining the relevant legal provisions and the case law, we now proceed to frame the following questions: □

- i) Whether appellant Kuljit Singh is entitled to seek information on behalf of Ernst & Young;
- ii) Whether appellant Kuljit Singh is seeking third party information;
- iii) Whether pendency of Writ Petition in the Delhi High Court can be a ground to deny information to the appellant.

iv) Whether the matter in hand involves any public interest;

v) Whether requested information is liable to be denied under
Sec.8(1);

vi) Whether any information presently being held by SUMPP, the then subsidiary of P
liable to be disclosed;

vii) What orders?

49. We will now take up these issues one by one

Issue No.1: Whether appellant Kuljit Singh is entitled to seek
information on behalf of Ernst & Young;

50. It has been vehemently contended by the counsel for Respondent that appellant is not entitled to seek information on behalf of Ernst & Young. It is his contention that Board of Directors of Ernst & Young has no legal authority to authorise the appellant to seek information under section 3 of the RTI Act. Information can be sought only by a citizen of India under section 3. It cannot be sought by a legal entity such as Ernst & young. He, therefore, pleads that all the appeals must be dismissed offhand on this ground alone.

51. The counsel for appellant vehemently challenges this contention. According to him, officers and representatives of the company have a right to seek information for the company. He has relied on this Commission's decision dated 30.3.2007 in Complaint No.CIC/WB/C/2007/00104 & 105, wherein it was held that if the courts could give relief to the companies, societies and associations, PIOs should not throw out the request for information on the mere technical ground that applicant/appellant happens to be a legal person and not a natural person.

52. We are not inclined to accept the submission made by the counsel for the Respondent. It is true that appellant has sought the impugned information on behalf of M/s.Ernst & young and has regularly appeared before the Commission to canvass his case. The fact, however, remains that appellant is a citizen of India and this proposition has not been challenged on behalf of PFCL. Even if the appellant is seeking this information on behalf of M/s.Ernst & Young, he is doing so as a citizen of India u/s 3 of the Act. The Commission, therefore, is not inclined to take a hyper-technical view in the matter. In view of the precedent cited by the counsel for the appellant

adverted to herein above and also by taking a pragmatic view in the matter, we hold that the appellant is well within his rights u/s 3 to seek the impugned information. Issue No.2: Whether appellant Kuljit Singh is seeking third party information;

53. As mentioned herein above, appellant has raised 74 queries in the three RTI applications which form the basis of three appeals under consideration. On a careful perusal of the RTI applications, we find that queries mostly pertain to the affairs of PFCL and its subsidiary Sasan Ultra Mega Power Project (SUMPP) (as it then was when the tender was floated). PFCL is a PSU of the Central Govt. The funds of PFCL are public funds. The executives and employees of PFCL are public servants under the law. PFCL, therefore, is required to conduct its official transactions with utmost transparency and accountability. The information held by it regarding the tender process and other allied matters are nothing but its official records. These are the records of public transactions.

54. Notwithstanding the above, it is to be noted that appellant is an employee of M/s.Ernst & Young which was given the task of processing the tenders. Its work was found to be deficient and it was blacklisted. Appellant is seeking this information as a citizen of India about the tender process and other allied matters. He is, thus, seeking third party information on most of the paras but not on all. This information can also be said to contain elements of commercial confidence disclosure of which may harm the competitive position of the third party. Such information can be disclosed only in the larger public interest. We, therefore, have no objection in concluding that appellant is seeking third party information on most of the paras which is exempted from disclosure u/s 8(1)(d) as no larger public interest has been established before us..

Issue No.3: Whether pendency of Writ Petition in the Delhi High Court can be a ground to deny information to the appellant.

55. The Commission is informed that M/s.Ernst & Young has filed a Writ Petition in Delhi High Court against its blacklisting by PFCL. Needless to say, this Writ Petition covers a different field. Pendency of this Writ Petition does not come in the way of this Commission in exercising its appellate jurisdiction under the provisions of the RTI Act. The subject matter of the Writ petition covers a different field from that of this Commission under the RTI Act. We are, therefore, of the opinion that the contention of the respondent's counsel that information cannot be provided since the matter is sub judice does not have any legal sanctity.

Issue No.4: Whether the matter in hand involves any public interest;

56. The respondent's counsel has tenaciously argued that the appellant's request for information is not in public interest and that he is seeking this information for

extraneous considerations. The question is whether information is disclosable under the RTI Act or not. It is only in public interest and not otherwise. Suffice to say that RTI Act does not draw a distinction between demand for information in public interest and private interest. The Act provides for disclosure of information to the citizens of India subject to the provisions of section 8, 9, 10 & 11 of the RTI Act. In other words, appellant is not required to establish any larger public interest in his search for all classes of information. He is required to establish public interest only in particular clauses of section 8(1) of the RTI Act. In view of the above, we hold that appellant need not establish public interest while seeking information for all classes of information. Issue No.5: Whether requested information is liable to be denied under clauses (d) and (e) of Sec.8(1);

57. We have carefully perused the queries raised by the appellant in the three RTI applications. Needless to say, we are guided and bound by the statute and the law laid down by the constitutional courts. It is noticed that in para (ee) of the RTI application corresponding to Appeal No.000570, the appellant has sought copy of the opinion/advice given by the then Attorney General Milon Bannerjee to PFCL indicating that M/s.Globeq Singapore Consortium could be disqualified. The appellant has sought this very information in para (dd) of the RTI application corresponding to Appeal No.003966 and in Para (h) of the RTI application corresponding to Appeal No.001314. Suffice to say that the senior most law officer of the country has rendered his advice to PFCL in a fiduciary capacity. In our opinion, his advice is exempted from disclosure under clause (e) of Section 8(1) of the RTI Act. We are of the considered opinion that information requested for in the above said paras is not disclosable to the appellant.

58. Now we come to the question of applicability of clause (d) in these matters. All the queries raised by the appellant relates to the impugned tender process and issues arising therefrom.

It needs to be recalled that tender was initially awarded to M/s.Globeq Singapore Consortium. On detection of irregularities in the award of contract, the competent authority reversed its decision and awarded the contract to Reliance Power Limited. The appellant is not a bidder. He has sought information on 74 paras with which he has no concern. Obviously, he is seeking third party information in most of the paras but not all. Besides, the information sought by him on most of the paras is of commercial confidence. It is important to bear in mind that SUMPP is a huge project with investment of about 20,000 crores of rupees. Various bidders submitted their bids in this connection. The bids were analysed at various levels. When the competent authority came to know of irregularity in the initial award of contract to M/s.Globeq Singapore Consortium, an enquiry was instituted and based on inquiry report, contract awarded to M/s.Globeq was cancelled and was awarded to Reliance Power Limited. The competent authority in its wisdom also blacklisted M/s.Ernst and Young for three years for its acts of omission and commission. We need not go into the merits of the matter.

The fact, however, remains that most of the information sought by the appellant is of commercial confidence. It is also third party information. It is important to mention that such information can only be

disclosed in larger public interest. The appellant's counsel has pleaded larger public interest in the name of transparency in public life. We are not impressed by this argument. He is seeking confidential information of third party involving commercial confidence for reasons best known to him. Ironically, the appellant is seeking all this information on behalf of M/s.Ernst & Young. On a careful perusal of the RTI applications, we find that he has sought information on only one or two paras about the blacklisting of M/s.Ernst & Young. Rest of the information sought by him is about the processing of the tenders and other allied matters. Therefore, plea of public interest ex facie is ill-founded. Hence, on a thoughtful consideration of the matter, we are of the opinion that information on most of the paras is barred from disclosure under clause (d) of the section 8(1) of the Act.

Issue No.6: Whether any information presently being held
SUMPP, the then subsidiary of PFCL, is liable to be

59. We are of the opinion that the plea of the Respondent PFCL that some of the information cannot, anyway be provided since it is being held by SUMPP which is presently a subsidiary of RPL, is not tenable as far as the disclosure obligation under the RTI Act is concerned. We have observed in para 53 hereinabove that the PFCL, being a Public Authority, is expected to conduct its official transactions, including those related to awarding of contracts, with utmost transparency and accountability and, therefore, information being held by it can be authorized for disclosure under the RTI Act. Consequently, we are also of the opinion that all records p e r t a i n i n g t o transactions with public money conducted by SUMPP, which was a subsidiary of PFCL at the time the tenders were initially floated, are also subject to the RTI regime, regardless of whether it is now a subsidiary of a private entity or otherwise. In other words, in our opinion change of legal status of SUMPP does not diminish the legal liability of PFCL under the law.

60. We, therefore, hold that any information that is authorized for disclosure by the Commission, if being held presently by SUMPP, is liable to be obtained from SUMPP by PFCL and provided to the appellant.

Vague/Repeated Information

61. We have perused the RTI applications with great care and find that information sought in some of the paras is, indeed, vague and unworkable under the RTI Act.

Issue No.7: What orders?

62. In view of the volume of the information sought; the repetition of queries in the RTI applications and the attempt to seek information against non-specific queries, we a r e o f t h e opinion that it is neither expedient nor necessary for us to pronounce decision on each and every query separately. The contentions of the parties have been summed up in the preceding paras.

Besides, the law, including the case law, applicable to the present case has also been outlined herein above. Keeping in view the factual matrix of the case and the relevant provisions of law, we hereby order as follows:

A) Information to be disclosed.
Appeal No.000570

□ Paras (a), (b), (c), (d), (f), (i) and (j)

Appeal No.003966

□ Paras (a), (b), (d), (g), (h), (y) and (z)

B) Vague queries

Appeal No.000570

□ Paras (y), (dd) and (gg)

Appeal No.003966

□ Paras (w), (cc) and (ff)

C) Information against rest of the paras in all the RTI application is not to be disclosed under clauses (d) and (e) of the RTI Act..

Order reserved & pronounced on 20th day of May, 2013.

(M.L.Sharma)
Information Commissioner

(Sushma Singh)
Information Commissioner

(Annapurna Dixit)
Information Commissioner

