

## Landmark Cases of Supreme Court of India

S. No.	Case Title	Case No.	Date of Decision	Page No.
1.	<a href="#"><u>Union of India &amp; Anr. vs Major Bahadur Singh</u></a>	Civil Appeal No. 4482 of 2003	22.11.2005	4-10
2.	<a href="#"><u>Dev Dutt vs Union of India &amp; Ors</u></a>	Civil Appeal No. 7631 of 2002	12.05.2008	11-33
3.	<a href="#"><u>Khanapuram Gandaiah vs Administrative Officers &amp; Ors</u></a>	SLP (C) No. 34868 of 2009	04.01.2010	34-40
4.	<a href="#"><u>Directorate of Enforcement vs Arun Kumar Agrawal &amp; Ors.</u></a>	SLP(C) No. 19649 of 2009	09.07.2010	41-42
5.	<a href="#"><u>Union Public Service Commission vs Shiv Shambu &amp; Ors</u></a>	SLP(C) No. 23250 of 2008	18.11.2010	43
6.	<a href="#"><u>P.C Wadhwa vs Central Information Commission &amp; Ors.</u></a>	SLP(C) No. 9592 of 2010	18.04.2011	44
7.	<a href="#"><u>Central Board of Secondary Education &amp; Anr. vs Aditya Bandopadhyay &amp; Ors.</u></a>	Civil Appeal Nos. 6454 of 2011	09.08.2011	45-98
8.	<a href="#"><u>The Institute of Chartered Accountants of India vs Shaunak H Satya &amp; Ors.</u></a>	Civil Appeal No. 7571 of 2011	02.09.2011	99-127
9.	<a href="#"><u>Chief Information Commissioner &amp; Another. vs State of Manipur And Another.</u></a>	Civil Appeal No. 10787-10788 of 2011	12.12.2011	128-157
10.	<a href="#"><u>Namit Sharma vs Union of India</u></a>	Writ Petition (Civil) No. 210 of 2012	13.09.2012	158-259
11.	<a href="#"><u>Girish Ramchandra Deshpande vs Central Information Commission &amp; Ors.</u></a>	Special Leave Petition (Civil) No. 27734 of 2012	03.10.2012	260-272
12.	<a href="#"><u>Manohar S/o Manikrao Anchule vs State of Maharashtra &amp; Anr.</u></a>	Civil Appeal No. 9095 of 2012	13.12.2012	273-306
13.	<a href="#"><u>Bihar Public Service Commission vs Saiyed Hussain Abbas Rizwi &amp; Anr.</u></a>	Civil Appeal No. 9052 of 2012	13.12.2012	307-336

14.	<a href="#"><u>Karnataka Information Commission vs State Public Information Officer &amp; Anr.</u></a>	SLP(C) No. 4876 of 2013	18.01.2013	337-341
15.	<a href="#"><u>R.K Jain vs Union of India &amp; Anr.</u></a>	Civil Appeal No. 3878 of 2013	16.04.2013	342-359
16.	<a href="#"><u>Sukhdev Singh vs Union of India &amp; Others.</u></a>	Civil Appeal No. 5892 of 2006	23.04.2013	360-369
17.	<a href="#"><u>Union Public Service Commission vs Gourhari Kamila</u></a>	Civil Appeal No. 6362 of 2013	06.08.2013	370-376
18.	<a href="#"><u>Thalappalam Ser. Coop Bank Ltd and Others. Vs State of Kerala &amp; Others.</u></a>	Civil Appeal No. 9017 of 2013	07.10.2013	377-433
19.	<a href="#"><u>Bilaspur Raipur Kshetriya Gramin Bank and Another vs Madanlal Tandon</u></a>	Civil Appeal No. 4467 of 2015	15.05.2015	434-442
20.	<a href="#"><u>Reserve Bank of India vs Jayantilal N. Mistry.</u></a>	Transferred Case (Civil) No. 91-101 of 2015	16.12.2015	443-560
21.	<a href="#"><u>Kerala Public Service Commission &amp; Ors. vs The State Information Commission &amp; Anr.</u></a>	Civil Appeal No. 823-854 of 2016	04.02.2016	561-568
22.	<a href="#"><u>Nisha Priya Bhatia vs Ajit Seth &amp; Ors.</u></a>	Civil Appeal No. 4913 of 2016	06.05.2016	569-574
23.	<a href="#"><u>Canara Bank Rep. by its Deputy Gen. Manager vs C.S Shyam &amp; Anr.</u></a>	Civil Appeal No. 22 of 2009	31.08.2017	575-583
24.	<a href="#"><u>Union Public Service Commission ETC vs Angesh Kumar &amp; Ors. ETC</u></a>	Civil Appeal No. 6159-6162 of 2013	20.02.2018	584-593
25.	<a href="#"><u>Common Cause vs High Court of Allahabad</u></a>	Writ Petition (Civil) No. 194 of 2012	20.03.2018	594-602
26.	<a href="#"><u>Central Public Information Officer Vs. Subhash Chandra Agarwal</u></a>	Civil Appeal No. 10044 of 2010	13.11.2019	603-710
27.	<a href="#"><u>D.A.V College Trust and Management Society &amp; Ors. Vs. Directorate of Public Instructions &amp; Ors.</u></a>	Civil Appeal No. 9828 of 2013	17.09.2019	711-730
28.	<a href="#"><u>Yashwant Sinha &amp; Ors. Vs. Central Bureau of Investigation Through Its Director &amp; Anr.</u></a>	Review Petition (Crl.) No. 46 of 2019 in Writ Petition (Crl.) No. 298 of 2018	10.04.2019	731-748

29.	<a href="#"><u>Aseer Jamal Vs. Union of India &amp; Ors.</u></a>	Writ Petition (Civil) No. 137 of 2018	27.09.2018	749-761
30.	<a href="#"><u>Ferani Hotels Pvt. Ltd. Vs. The State Information Commissioner, Greater Mumbai &amp; Ors.</u></a>	Civil Appeal No. 9064-9065 of 2018	27.09.2018	762-786
31.	<a href="#"><u>Institute of Companies Secretaries of India Vs. Paras Jain</u></a>	Civil Appeal No. 5665 of 2014	11.04.2019	787-794
32.	<a href="#"><u>Chief Information Commissioner Vs. High Court of Gujarat &amp; Anr.</u></a>	Civil Appeal No. 1966-1967 of 2020	04.03.2020	795-830
33.	<a href="#"><u>Saurav Das Vs. Union of India &amp; Ors.</u></a>	Writ Petition (Civil) No. 1126 of 2022	20.01.2023	831-841
34.	<a href="#"><u>Advocate Union &amp; Democracy and Social Justice Vs. High Court of Madhya Pradesh</u></a>	Special Leave Petition (Civil) No. 1034 of 2023	23.01.2023	842
35.	<a href="#"><u>Anjali Bhardwaj Vs. CPIO, Supreme Court of India, (RTI Cell)</u></a>	Special Leave Petition (Civil) No. 21019 of 2022	09.12.2022	843-851
36.	<a href="#"><u>HDFC Bank Pvt. Lts. &amp; Ors. Vs. Union of India &amp; Ors.</u></a>	Writ Petition (Civil) No. 1159 of 2019	30.09.2022	852-886
37.	<a href="#"><u>T. Takano Vs. Securities and Exchange Board of India</u></a>	Civil Appeal No. 487-488 of 2022	18.02.2022	887-936
38.	<a href="#"><u>Kishan Chand Jain Vs. Union of India &amp; Ors.</u></a>	Writ Petition (Civil) No. 990 of 2021	17.08.2023	937-952
39.	<a href="#"><u>Kishan Chand Jain Vs. Union of India &amp; Ors.</u></a>	Writ Petition (Civil) No. 360 of 2021	09.10.2023	953-967

CASE NO.:  
Appeal (civil) 4482 of 2003

PETITIONER:  
Union of India & Anr.

RESPONDENT:  
Major Bahadur Singh

DATE OF JUDGMENT: 22/11/2005

BENCH:  
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:  
J U D G M E N T

ARIJIT PASAYAT, J.

Union of India and the Chief of Army staff, Army Headquarters, South Block, New Delhi, call in question legality of the judgment rendered by a Division Bench of the Delhi High Court in a Letters Patent Appeal. The High Court by the impugned judgment held that though the Court cannot moderate the appraisal and grading given to an officer while exercising the power of judicial review yet the Annual Confidential Report (in short the 'ACR') for the year 1989-90 has an element of adverse reflection leading to denial of promotion and, therefore, the same ought to have been communicated to the writ petitioner-respondent which has not been done. Though a detailed statutory complaint was filed the same was summarily dismissed without assigning any reason. The sting of adverseness in all events has perilously affected and damaged the career of the writ-petitioner though not reflected in the variation of the marks. Accordingly, the entry in the ACR for the year 1989-90 was quashed and the matter was remanded back to the respondents in the writ petition i.e. the present appellants for re-consideration of the writ-petitioner's case for promotion to the post of Lieutenant Colonel. It is to be noted that the writ petition filed by the respondent was dismissed by a learned Single Judge and the same was challenged in the Letters Patent Appeal.

Background facts in a nutshell are as under:

The respondent was considered for promotion to the rank of Lieutenant Colonel by the Selection Boards held in August 1995, August 1996 and November 1996. He was not empanelled on the basis of overall profile and comparative batch merit. The respondent filed statutory complaint on 3.10.1995 for setting aside the ACRs of 1988-89 and 1989-90. According to him the then initiating officer resented the amalgamation of Food Inspection Cadre officers of ASC main stream and disliked the DFRL trained officers. Statutory complaint of the respondent was rejected on 27.9.1996. The respondent made second statutory complaint which was also rejected on 17.10.1996. The respondent filed writ petition No.1774 of 1997 before the Delhi High Court praying therein that a writ of mandamus be issued to the appellants herein to promote him or in the alternative he be assessed afresh by the

Selection Board and for setting aside ACRs. for the years 1988-1990. Writ petition of the respondent was dismissed by a learned Single Judge of the High Court by order dated 29.4.1997. Aggrieved by the order of dismissal respondent filed LPA No.148 of 1997 before the High Court. The appellants herein filed counter-affidavit in the said LPA.

The High Court after going through the records of the case came to the conclusion that there was an adverse element in the ACRs of the respondent for the years 1988-89 and 1989-90 and, therefore, in the terms of letter dated 21.8.1989 of the Sena Sachiv Shakha (no. 32301/34/F/MS/4) he ought to have been given performance counseling. The Hon'ble High Court quashed the entry of the CR for the year 1988-90 and remanded the case to the appellants for reconsideration.

The High Court was of the view that there was down grading which was adverse to the respondent and ought to have been communicated.

In support of the appeal learned counsel for the appellants submitted that the High Court has not kept in view the correct position in law. The fundamental mistake in the approach of the High Court is that it proceeded on the basis as if whenever there was allotment of marks at a figure lower than for the previous period, it was down gradation, resulted in adverse consequences and ought to have been communicated before the same was considered while considering the respondent's suitability for promotion. The High court proceeded to record that the parameters for recording of ACR was not specified and that being the position, the fact that for the year 1988-89 the respondent was awarded seven marks and for 1989-90 it was six marks amounted to down grading. Since there was no challenge in the writ petition to the effect that there were no parameters for assessment the High Court ought not to have introduced a fresh case of absence of parameters. Said conclusion is erroneous because elaborate guidelines and parameters have been prescribed. Additionally the ACR for 1989-90 was recorded when the respondent was holding the post of Major while for the previous period he was holding the post of Captain. The High Court erred in treating un-equals to be equal and proceeded on the basis as if allotment of marks at a figure lower than for the previous period amounted to down grading. This is in fact really not so. The question of any communication did not arise because there was no adverse entry as such. The circumstances when communications have to be made of adverse entries are elaborately provided for. As there was no averment that parameters did not exist in the counter filed, present appellants did not touch on that aspect. But the High Court overlooked this vital aspect and proceeded on the footing that no parameters existed. On that ground alone according to learned counsel for the appellants the High Court's judgment is vulnerable. It is also pointed out that the High Court relied on the decision of this Court in U.P. Jal Nigam and Ors. v. Prabhat Chandra Jain and others (1996 (2) SCC 363) to buttress its view. According to learned counsel for the appellants, bare reading of the said judgment clearly indicates that it was only applicable in the case of U.P. Jal Nigam and has no application to the facts of the present case.

Similarly, the decision in State of U.P. v. Yamuna Shanker Misra and Anr. (1997 (4) SCC 7) was rendered on a

different set of facts and has no application to the facts of the present case. The office memorandum on which the High Court relied upon i.e. the letter/circular dated 21st August, 1989 does not in any way help the respondent, and in fact goes against him. It only lays down the modalities to be followed when an officer is found to be not up to mark. The performance counseling is a continuous process and the concerned employee has to be given appropriate guidance for an improvement as and when a weakness is noticed. Only when the officer fails to show the desired improvement the adverse/advisory remarks can be included in the confidential report.

In response, learned counsel for the respondent submitted that the High Court has taken the correct view considering the fact that serious consequences were involved and directed communication of the entry which had adverse consequences. The reduction in marks for a subsequent period is a clear case of adverse consequences and, therefore, it was correct on the part of the High Court to give direction as contained in the impugned order. It was also submitted that the U.P. Jal Nigam's case (*supra*) clearly points out that when there is a down grading in the assessment by award of lesser marks, adverse consequences are involved.

As has been rightly submitted by learned counsel for the appellants, U.P. Jal Nigam's case (*supra*) has no universal application. The judgment itself shows that it was intended to be meant only for the employees of the U.P. Jal Nigam only.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

\*\*\*                    \*\*\*                    \*\*\*

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

The materials on records clearly reveal that the procedure adopted for recording of ACRs. has been elaborately provided for. There are different officers involved in the process, they are: Initiating Officer (in short the 'I.O.'), the Superior Reviewing Officer (in short 'the S.R.O.'), the First Technical Officer (in short the 'FTO') and Higher Technical officer (in short the 'HTO'). As submitted by learned counsel for the appellants the standards for demonstrated performance in the case of Major, Lieutenant Colonel and Colonel are different. The appellant had filed the writ application making a grievance that there were some adverse remarks which were not communicated. The absence of parameters was not specifically highlighted in the writ petition. It appears that on 6th May, 1987 a paper on the selection system was circulated. Paragraph 3 thereof reads as follows:

"Promotion upto the rank of substantive major is carried out based upon the length of service, provided the officer fulfills the mandatory requirements of such a promotion. However, promotions above the rank of Major are done through process of selection."

This is indicative that the promotion is virtually on merit-cum-seniority basis. The document in question elaborately provides the guidelines for assessment. Some of the relevant provisions need to be noted. They are as follows:

"Assessment of the officer is based on the comparative merit of the overall profile of the officers within his own batchee. Needless to say, the grading of the Board is to be assessed from the material placed before the board, and not from personal knowledge, if any.

In case of doubt, benefit must go to the "Service"."

Objectivity in the system of Selection is ensured by the MS Branch, by the following:

"Concealment of the identity of the officers being considered to the members of the Board. The MDS placed before the members does not contain the officer's particulars, date of birth, names of the reporting officers or the numbers of the fmn/unit the officer has served, thereby denying any identification of the officer under consideration. (Applicable for Nos. 2, 3 & 4 Selection Board)."

Instruction for Rendition of Confidential Reports of officer for 1989 has also been detailed and the following procedure of Assessment is relevant:-

"The Personal Qualities and variables of Demonstrated Performance have been selected after a considerable research on Confidential Reports over a period of years to cover the inherent attributes considered essential for the job content of an Army Officer. Each quality has been defined. Marks are required to be entered by the IO and the RO in the columns against each quality. Two marks each have been allotted for three gradation (viz. Above Average 8 or 7, High Average 6 or 5, Low Average 3 or 2) to differentiate within the same."

In the case of Majors, Lieutenant Colonels and Colonels, three sets of Demonstrated Performance variables have been provided in the CR forms. These variables correspond to "Regimental and Command Assignments".

The difference in approach from Captains and below and Major, Lieutenant Colonel and Colonel also spaced out from paragraphs 108 and 109. Paragraph 109 is of considerable importance so far as the present case concerned. The same reads as follows:

"109. Low and Below Average Assessment:  
When an officer is assessed 3 marks or

less in any Personal Quality or the aspect of Demonstrated Performance, then it is a matter of concern since, by an large, officers are required to demonstrate at least High Average performance. In order to establish the cause and for the purpose of natural justice, the assessment needs adequate and explicit elaboration. Further, such assessment should invariably be supported by verbal and written guidelines for improvement, details of which also need to be mentioned in the pen-picture."

A reading of para 109 shows that three marks or less is considered to be adverse and in such cases verbal and written guidelines for improvement are to be given and the details are to be mentioned in the pen picture. The brief contents (pen picture) and objectivity of the report is provided in paragraph 113.

A reference is also necessary to the instructions issued on 3rd February, 1989. Paragraph 103 is of considerable importance and reads as follows:

"103. Assessment contained in a CR will not to be communicated to the officer except in the following contingencies:-

(a) When figurative assessment anywhere in the CR is Low or Below Average (i.e. 3 marks). In such cases extract of figurative assessment (i.e. 3 or less) will be communicated to the officer.

(b) When the brief comments (pen picture) contains adverse or advisory remarks. In such cases completes pen picture (excluding the box grading) together with comments on Guidance for Improvements will be communicated to the officer. Further, the box grading will also need communication to the officer when assessment is low or Below Average (3 or less)."

According to the modalities provided for recording and communication of adverse entries clearly indicate as to in which cases the communication of adverse or advisory remarks are to be made. Word "Advisory" is not necessarily adverse. Great emphasis was laid on the instructions dated 21.8.1989 titled "Reflection and Communication of adverse and advisory remarks in the Confidential Reports". The same reads as follows:

"The actual pen picture comprises the brief comments given at Paragraphs 13(e)/19(a) of the ACR forms for Majors to Colonels or Paragraphs 13/15 of the

ACR Form for Captains and below. Therefore adverse/advisory remarks, if any, should be endorsed in these paragraphs/sub paragraphs only. The information to be given under the Column "Verbal or Written Guidance for Improvement" (i.e. Para 18(b)/19(b) or Para 15/16) is only to support the adverse/advisory remarks reflected in the pen picture. If there are no adverse/advisory remarks reflected in the pen picture, there is no requirement of including details of verbal or written guidance for improvement given to the ratees during the reporting period. It is reiterated that "Performance Counselling is a continuous process and, therefore, the ratee must be given appropriate "Guidance for improvement" as and when noticed."

A reading of the instructions clearly indicate that there are different stages: first is the counseling, second is the guidance and third is the consequences of the officer failing to show desired improvement. Only when an officer fails to show the desired improvement the adverse/advisory remarks are included in his Confidential Report so that cognizance is taken for his weakness while planning his future placements. The High Court has clearly overlooked these aspects and on that ground alone the judgment is vulnerable. Additionally, it is noticed that the writ-petitioner had merely made a grievance of non-communication but the High Court quashed the entry for 1989-90 which is clearly indefensible. In the fitness of things, therefore, the High Court should re-hear the matter and consider the grievances of the writ-petitioner in the background of the parameters which clearly exist. We make it clear that we have not expressed any opinion on the merits of the case as the matter is being remitted to the High Court for fresh consideration.

The appeal is accordingly disposed of.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7631 OF 2002

Dev Dutt .. Appellant

-vs-

Union of India & Ors. ..  
Respondents

JUDGMENT

Markandey Katju, J.

1. This appeal by special leave has been filed against the impugned judgment of the Gauhati High Court dated 26.11.2001 in Writ Appeal No.

447 of 2001. By the aforesaid judgment the Division Bench of the Gauhati High Court dismissed the Writ Appeal of the appellant filed against the judgment of the Learned Single Judge dated 21.8.2001.

2. Heard learned counsel for the parties and perused the record.

3. The appellant was in the service of the Border Roads Engineering Service which is governed by the Border Roads Engineering Service Group 'A' Rules, as amended. As per these rules, since the appellant was promoted as Executive Engineer on 22.2.1988, he was eligible to be considered for promotion to the post of Superintending Engineer on completion of 5 years on the grade of Executive Engineer, which he completed on 21.2.1993.

Accordingly the name of the appellant was included in the list of candidates eligible for promotion.

4. The Departmental Promotion Committee (DPC) held its meeting on 16.12.1994. In that meeting the appellant was not held to be eligible for promotion, but his juniors were selected and promoted to the rank of Superintending Engineer. Hence the appellant filed a Writ Petition before

the Gauhati High Court which was dismissed and his appeal before the Division Bench also failed. Aggrieved, this appeal has been filed by special leave before this Court.

5. The stand of the respondent was that according to para 6.3(ii) of the guidelines for promotion of departmental candidates which was issued by the Government of India, Ministry of Public Grievances and Pension, vide Office Memorandum dated 10.4.1989, for promotion to all posts which are in the pay scale of Rs.3700-5000/- and above, the bench mark grade should be 'very good' for the last five years before the D.P.C.. In other words, only those candidates who had 'very good' entries in their Annual Confidential Reports (ACRs) for the last five years would be considered for promotion. The post of Superintending Engineer carries the pay scale of Rs.3700-5000/- and since the appellant did not have 'very good' entry but only 'good' entry for the year 1993-94, he was not considered for promotion to the post of Superintending Engineer.

6. The grievance of the appellant was that he was not communicated the 'good' entry for the year 1993-94. He submitted that had he been communicated that entry he would have had an opportunity of making a

representation for upgrading that entry from 'good' to 'very good', and if that representation was allowed he would have also become eligible for promotion. Hence he submits that the rules of natural justice have been violated.

7. In reply, learned counsel for the respondent submitted that a 'good' entry is not an adverse entry and it is only an adverse entry which has to be communicated to an employee. Hence he submitted that there was no illegality in not communicating the 'good' entry to the appellant.

8. Learned counsel for the respondent relied on a decision of this Court in Vijay Kumar vs. State of Maharashtra & Ors. 1988 (Supp) SCC 674 in which it was held that an un-communicated adverse report should not form the foundation to deny the benefits to a government servant when similar benefits are extended to his juniors. He also relied upon a decision of this Court in State of Gujarat & Anr. vs. Suryakant Chunilal Shah 1999 (1) SCC 529 in which it was held:

"Purpose of adverse entries is primarily to forewarn the government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the

adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry, to improve his performance".

On the strength of the above decisions learned counsel for the respondent submitted that only an adverse entry needs to be communicated to an employee.

9. We do not agree. In our opinion every entry must be communicated to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.

10. In the present case the bench mark (i.e. the essential requirement) laid down by the authorities for promotion to the post of Superintending Engineer was that the candidate should have 'very good' entry for the last five years. Thus in this situation the 'good' entry in fact is an adverse entry because it eliminates the candidate from being considered for promotion. Thus, nomenclature is not relevant, it is the effect which the entry is having which determines whether it is an adverse entry or not. It is thus the rigours of the entry which is important, not the phraseology. The grant of a 'good'

entry is of no satisfaction to the incumbent if it in fact makes him ineligible for promotion or has an adverse effect on his chances.

11. Hence, in our opinion, the 'good' entry should have been communicated to the appellant so as to enable him to make a representation praying that the said entry for the year 1993-94 should be upgraded from 'good' to 'very good'. Of course, after considering such a representation it was open to the authority concerned to reject the representation and confirm the 'good' entry (though of course in a fair manner), but at least an opportunity of making such a representation should have been given to the appellant, and that would only have been possible had the appellant been communicated the 'good' entry, which was not done in this case. Hence, we are of the opinion that the non-communication of the 'good' entry was arbitrary and hence illegal, and the decisions relied upon by the learned counsel for the respondent are distinguishable.

12. Learned counsel for the respondent submitted that under the Office Memorandum 21011/4/87 [Estt.'A'] issued by the Ministry of Personnel/Public Grievance and Pensions dated 10/11.09.1987, only an adverse entry is to be communicated to the concerned employee. It is well settled that no rule or government instruction can violate Article 14 or any

other provision of the Constitution, as the Constitution is the highest law of the land. The aforesaid Office Memorandum, if it is interpreted to mean that only adverse entries are to be communicated to the concerned employee and not other entries, would in our opinion become arbitrary and hence illegal being violative of Article 14. All similar Rules/Government Orders/Office Memoranda, in respect of all services under the State, whether civil, judicial, police, or other service (except the military), will hence also be illegal and are therefore liable to be ignored.

13. It has been held in *Maneka Gandhi vs. Union of India & Anr.* AIR 1978 SC 597 that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an entry in the A.C.R. of a public servant is arbitrary because it deprives the concerned employee from making a representation against it and praying for its up-gradation. In our opinion, every entry in the Annual Confidential Report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits).

Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide State of U.P. vs. Yamuna Shankar Misra 1997 (4) SCC

7. Hence such non-communication is, in our opinion, arbitrary and hence violative of Article 14 of the Constitution.

14. In our opinion, every entry (and not merely a poor or adverse entry) relating to an employee under the State or an instrumentality of the State, whether in civil, judicial, police or other service (except the military) must be communicated to him, within a reasonable period, and it makes no difference whether there is a bench mark or not. Even if there is no bench mark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a 'good' or 'average' or 'fair' entry certainly has less chances of being selected than a person having a 'very good' or 'outstanding' entry.

15. In most services there is a gradation of entries, which is usually as follows:

- (i) Outstanding

- (ii) Very Good
- (iii) Good
- (iv) Average
- (v) Fair
- (vi) Poor

A person getting any of the entries at items (ii) to (vi) should be communicated the entry so that he has an opportunity of making a representation praying for its upgradation, and such a representation must be decided fairly and within a reasonable period by the concerned authority.

16. If we hold that only 'poor' entry is to be communicated, the consequences may be that persons getting 'fair', 'average', 'good' or 'very good' entries will not be able to represent for its upgradation, and this may subsequently adversely affect their chances of promotion (or get some other benefit).

17. In our opinion if the Office Memorandum dated 10/11.09.1987, is interpreted to mean that only adverse entries (i.e. 'poor' entry) need to be communicated and not 'fair', 'average' or 'good' entries, it would become arbitrary (and hence illegal) since it may adversely affect the incumbent's chances of promotion, or get some other benefit.

18. For example, if the bench mark is that an incumbent must have 'very good' entries in the last five years, then if he has 'very good' (or even 'outstanding') entries for four years, a 'good' entry for only one year may yet make him ineligible for promotion. This 'good' entry may be due to the personal pique of his superior, or because the superior asked him to do something wrong which the incumbent refused, or because the incumbent refused to do sycophancy of his superior, or because of caste or communal prejudice, or for some other extraneous consideration.

19. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka

Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.

20. Thus it is not only when there is a bench mark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder.

21. Learned counsel for the respondent has relied on the decision of this Court in U. P. Jal Nigam vs. Prabhat Chandra Jain AIR 1996 SC 1661. We have perused the said decision, which is cryptic and does not go into details. Moreover it has not noticed the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) which has held that all State action must be non-arbitrary, otherwise Article 14 of the Constitution will be violated. In our opinion the decision in U.P. Jal Nigam (supra) cannot be said to have laid down any legal principle that entries need not be communicated. As observed in Bharat Petroleum Corporation Ltd. vs. N.R. Vairamani AIR 2004 SC 4778 (vide para 9):

"Observations of Courts are neither to be read as Euclid's Theorems nor as provisions of the statute, and that too, taken out of their context".

22. In U.P. Jal Nigam's case (*supra*) there is only a stray observation "if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading". There is no discussion about the question whether such 'good' grading can also have serious adverse consequences as it may virtually eliminate the chances of promotion of the incumbent if there is a benchmark requiring 'very good' entry. And even when there is no benchmark, such downgrading can have serious adverse effect on an incumbent's chances of promotion where comparative merit of several candidates is considered.

23. Learned counsel for the respondent also relied upon the decision of this Court in Union of India & Anr. vs. S. K. Goel & Ors. AIR 2007 SC 1199 and on the strength of the same submitted that only an adverse entry need be communicated to the incumbent. The aforesaid decision is a 2-Judge Bench decision and hence cannot prevail over the 7-Judge Constitution Bench decision of this Court in *Maneka Gandhi vs. Union of India* (*supra*) in which it has been held that arbitrariness violates Article 14

of the Constitution. Since the aforesaid decision in Union of India vs. S.K. Goel (*supra*) has not considered the aforesaid Constitution Bench decision in Maneka Gandhi's case (*supra*), it cannot be said to have laid down the correct law. Moreover, this decision also cannot be treated as a Euclid's formula since there is no detailed discussion in it about the adverse consequences of non-communication of the entry, and the consequential denial of making a representation against it.

24. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.

25. In the present case, the action of the respondents in not communicating the 'good' entry for the year 1993-94 to the appellant is in

our opinion arbitrary and violative of natural justice, because in substance the 'good' entry operates as an adverse entry (for the reason given above).

26. What is natural justice? The rules of natural justice are not codified nor are they unvarying in all situations, rather they are flexible. They may, however, be summarized in one word : fairness. In other words, what they require is fairness by the authority concerned. Of course, what is fair would depend on the situation and the context.

27. Lord Esher M.R. in Voinet vs. Barrett (1885) 55 L.J. QB 39, 39 observed: "Natural justice is the natural sense of what is right and wrong."

28. In our opinion, our natural sense of what is right and wrong tells us that it was wrong on the part of the respondent in not communicating the 'good' entry to the appellant since he was thereby deprived of the right to make a representation against it, which if allowed would have entitled him to be considered for promotion to the post of Superintending Engineer. One may not have the right to promotion, but one has the right to be considered for promotion, and this right of the appellant was violated in the present case.

29. A large number of decisions of this Court have discussed the principles of natural justice and it is not necessary for us to go into all of them here. However, we may consider a few.

30. Thus, in A. K. Kraipak & Ors. vs. Union of India & Ors. AIR 1970 SC 150, a Constitution Bench of this Court held :

"The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (*Nemo debet csse judex propria causa*), and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice".

(emphasis supplied)

31. The aforesaid decision was followed by this Court in K. I. Shephard & Ors. vs. Union of India & Ors. AIR 1988 SC 686 (vide paras 12-15). It was held in this decision that even administrative acts have to be in accordance with natural justice if they have civil consequences. It was also held that natural justice has various facets and acting fairly is one of them.

32. In Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar

Pant AIR 2001 SC 24, this Court held (vide para 2):

The doctrine (natural justice) is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action".

(emphasis supplied)

33. In the same decision it was also held following the decision of Tucker, LJ in Russell vs. Duke of Norfolk (1949) 1 All ER 109:

"The requirement of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth".

34. In Union of India etc. vs. Tulsiram Patel etc. AIR 1985 SC 1416

(vide para 97) a Constitution Bench of this Court referred to with approval the following observations of Ormond, L.J. in Norwest Holst Ltd. vs. Secretary of State for Trade (1978) 1, Ch. 201 :

"The House of Lords and this court have repeatedly emphasized that the ordinary principles of natural justice must be kept flexible and must be adapted to the circumstances prevailing in any particular case".

(emphasis supplied)

Thus, it is well settled that the rules of natural justice are flexible. The question to be asked in every case to determine whether the rules of natural justice have been violated is : have the authorities acted fairly?

35. In Swadesh Cotton Mills etc. vs. Union of India etc. AIR 1981 SC 818, this Court following the decision in Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner & Ors. AIR 1978 SC 851 held that the soul of the rule (natural justice) is fair play in action.

36. In our opinion, fair play required that the respondent should have communicated the 'good' entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.

37. Originally there were said to be only two principles of natural justice : (1) the rule against bias and (2) the right to be heard (*audi alteram partem*). However, subsequently, as noted in A.K. Kraipak's case (*supra*) and K.L. Shephard's case (*supra*), some more rules came to be added to the rules of

natural justice, e.g. the requirement to give reasons vide S.N. Mukherji vs. Union of India AIR 1990 SC 1984. In Maneka Gandhi vs. Union of India (supra) (vide paragraphs 56 to 61) it was held that natural justice is part of Article 14 of the Constitution.

38. Thus natural justice has an expanding content and is not stagnant. It is therefore open to the Court to develop new principles of natural justice in appropriate cases.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of

the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

41. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in Union of India vs. Major Bahadur Singh 2006 (1) SCC 368. But they will apply to employees of statutory authorities, public sector

corporations and other instrumentalities of the State (in addition to Government servants).

42. In Canara Bank vs. V. K. Awasthy 2005 (6) SCC 321, this Court held that the concept of natural justice has undergone a great deal of change in recent years. As observed in para 8 of the said judgment:

"Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values".

43. In para 12 of the said judgment it was observed:

"What is meant by the term "principles of natural justice" is not easy to determine. Lord Summer (then Hamilton, L.J.) in R. v. Local Govt. Board (1914) 1 KB 160:83 LJKB 86 described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Spackman (1943) AC 627: (1943) 2 All ER 337, Lord Wright observed that it was not desirable to attempt "to force it into any Procrustean bed".

44. In State of Maharashtra vs. Public Concern for Governance Trust & Ors. 2007 (3) SCC 587, it was observed (vide para 39):

"In our opinion, when an authority takes a decision which may have civil consequences and affects the rights

of a person, the principles of natural justice would at once come into play".

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.

46. In view of the above, we are of the opinion that both the learned Single Judge as well as the learned Division Bench erred in law. Hence, we set aside the judgment of the Learned Single Judge as well as the impugned judgment of the learned Division Bench.

47. We are informed that the appellant has already retired from service. However, if his representation for upgradation of the 'good' entry is allowed, he may benefit in his pension and get some arrears. Hence we direct that the 'good' entry of 1993-94 be communicated to the appellant forthwith and he should be permitted to make a representation against the same praying for its upgradation. If the upgradation is allowed, the

appellant should be considered forthwith for promotion as Superintending Engineer retrospectively and if he is promoted he will get the benefit of higher pension and the balance of arrears of pay along with 8% per annum interest.

48. We, therefore, direct that the 'good' entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.

49. With these observations this appeal is allowed. No costs.

.....J.  
(H. K. Sema)

.....J.  
(Markandey Katju)

New Delhi;  
May 12, 2008



**REPORTABLE**

**IN THE SUPREME COURT OF INDIA CIVIL  
APPELLATE JURISDICTION SPECIAL LEAVE  
PETITION (CIVIL) NO.34868 OF 2009**

**Khanapuram Gandaiah**

**... Petitioner**

**Vs.**

**Administrative Officer & Ors.**

**... Respondents**

**ORDER**

1. This special leave petition has been filed against the judgment and order dated 24.4.2009 passed in Writ Petition No.28810 of 2008 by the High Court of Andhra Pradesh by which the writ petition against the order of dismissal of the petitioner's application and successive appeals under the Right to Information Act, 2005 (hereinafter called the "RTI Act") has been dismissed. In the said petition, the direction was sought by the Petitioner to the Respondent No.1 to provide information as asked by him vide his application dated 15.11.2006 from the Respondent No.4 – a Judicial Officer as for what reasons, the Respondent No.4 had decided his Miscellaneous Appeal dishonestly.

2. The facts and circumstances giving rise to this case are, that the petitioner claimed to be in exclusive possession of the land in respect of which civil suit No.854 of 2002 was filed before Additional Civil Judge, Ranga Reddy District praying for perpetual injunction by Dr. Mallikarjina Rao against the petitioner and another, from entering into the suit land. Application filed for interim relief in the said suit stood dismissed. Being aggrieved, the plaintiff therein preferred CMA No.185 of 2002 and the same was also dismissed. Two other suits were filed in respect of the same property impleading the Petitioner also as the defendant. In one of the suits i.e. O.S. No.875 of 2003, the Trial Court granted temporary injunction against the Petitioner. Being aggrieved, Petitioner preferred the CMA No.67 of 2005, which was dismissed by the Appellate Court – Respondent No.4 vide order dated 10.8.2006.

3. Petitioner filed an application dated 15.11.2006 under Section 6 of the RTI Act before the Administrative Officer-cum-Assistant State Public Information Officer (respondent no.1) seeking information to the queries mentioned therein. The said application was rejected vide order dated 23.11.2006 and an appeal against the said order was also dismissed vide order dated 20.1.2007. Second Appeal against the said order was also

dismissed by the Andhra Pradesh State Information Commission vide order dated 20.11.2007. The petitioner challenged the said order before the High Court, seeking a direction to the Respondent No.1 to furnish the information as under what circumstances the Respondent No.4 had passed the Judicial Order dismissing the appeal against the interim relief granted by the Trial Court. The Respondent No.4 had been impleaded as respondent by name. The Writ Petition had been dismissed by the High Court on the grounds that the information sought by the petitioner cannot be asked for under the RTI Act. Thus, the application was not maintainable. More so, the judicial officers are protected by the Judicial Officers' Protection Act, 1850 (hereinafter called the "Act 1850"). Hence, this petition.

4. Mr. V. Kanagaraj, learned Senior Counsel appearing for the petitioner has submitted that right to information is a fundamental right of every citizen. The RTI Act does not provide for any special protection to the Judges, thus petitioner has a right to know the reasons as to how the Respondent No. 4 has decided his appeal in a particular manner. Therefore, the application filed by the petitioner was maintainable. Rejection of the application by the Respondent No. 1 and Appellate authorities rendered the petitioner remediless. Petitioner vide application dated 15.11.2006 had asked

as under what circumstances the Respondent No.4 ignored the written arguments and additional written arguments, as the ignorance of the same tantamount to judicial dishonesty, the Respondent No.4 omitted to examine the fabricated documents filed by the plaintiff; and for what reason the respondent no.4 omitted to examine the documents filed by the petitioner. Similar information had been sought on other points.

5. At the outset, it must be noted that the petitioner has not challenged the order passed by the Respondent No. 4. Instead, he had filed the application under Section 6 of the RTI Act to know why and for what reasons Respondent No. 4 had come to a particular conclusion which was against the petitioner. The nature of the questions posed in the application was to the effect why and for what reason Respondent No. 4 omitted to examine certain documents and why he came to such a conclusion. Altogether, the petitioner had sought answers for about ten questions raised in his application and most of the questions were to the effect as to why Respondent No. 4 had ignored certain documents and why he had not taken note of certain arguments advanced by the petitioner's counsel.

6. Under the RTI Act “information” is defined under Section 2(f) which provides:

*“information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, report, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.”*

This definition shows that an applicant under Section 6 of the RTI Act can get any information which is already in existence and accessible to the public authority under law. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed, especially in matters pertaining to judicial decisions. A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion.

7. Moreover, in the instant case, the petitioner submitted his application under Section 6 of the RTI Act before the Administrative Officer-cum-Assistant State Public Information Officer seeking information in respect of the questions raised in his application. However, the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him. A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The application filed by the petitioner before the public authority is *per se* illegal and unwarranted. A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt judges, but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. If anything is done contrary to

this, it would certainly affect the independence of the judiciary. A judge should be free to make independent decisions.

8. As the petitioner has misused the provisions of the RTI Act, the High Court had rightly dismissed the writ petition.

9. In view of the above, the Special Leave Petition is dismissed accordingly.

.....CJI.  
(K.G. BALAKRISHNAN)

.....J.  
(Dr. B.S. CHAUHAN)

New Delhi,  
January 4, 2010

ITEM NO.56

COURT NO.11

SECTION XIV

S U P R E M E      C O U R T      O F      I N D I A  
 RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)

No(s). 19649/2009

(From the judgement and order dated 22.7.2009 in C.W.P.  
 No.857/2009 of The HIGH COURT OF DELHI AT NEW DELHI)

DIRECTORATE OF ENFORCEMENT

Petitioner(s)

VERSUS

ARUN KUMAR AGRAWAL & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 09/07/2010 This Petition was called on for hearing  
 today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s)	Mr. Gopal Subramanium, S.G. Mr. Rajshekhar Rao, Adv. Mr. Sreekumar, Adv. Mr. Senthil Jagadeesan, Adv.
-------------------	--

For Respondent(s)	Mr. Prashant Bhushan, Adv.
-------------------	----------------------------

	Mr. Rajiv Nanda, Adv. Mr. B.K. Prasad, Adv.
--	--

	Mr. Kamaldeep Dayal, Adv. Mr. Siddhartha Chowdhury, Adv.
--	---

## O R D E R

UPON hearing counsel the Court made the following

This petition is directed against order dated 22.7.2009 passed by the learned Single Judge of Delhi High Court, paragraph 11 of which reads thus:

"CIC is yet to decide the question whether the information sought for is covered by Section 24(1) of the Act, whether first proviso applies and exceptions can be claimed under Section 8(1) of the Act. Impugned order dated 29th December, 2008 makes a general observation on the basis of allegations made by the respondent No. 1 in the appeal and observes that allegations of corruption have been made. No final and determinative finding has been given by CIC. It is open to the petitioner to produce the original files and then press that the conditions mentioned in proviso to Section 24(1) of the Act are not satisfied in this case and thus provisions of Section 8(1) of the Act are not required to be examined. Dr. Arun Kumar Agrawal has contended that Mr. Virendera Dayal was not appointed by the Directorate of Enforcement and Section 24(1) of the Act is not applicable, even if the report is recently with the said Directorate. These aspects have not been decided by the CIC. It will not be appropriate for this Court to control the proceedings and flexibility and lactitude has to be allowed. The impugned orders can hardly be categorised as adverse orders against the Directorate of Enforcement."

We have heard learned counsel for the parties and perused the records. In our view, the impugned order does not suffer from any patent legal infirmity requiring interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed. However, it is made clear that the parties shall be entitled to make all legally permissible submissions before the Central Information Commissioner.

(A.D. Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master

ITEM NO.2

COURT NO.12

SECTION XIV

S U P R E M E      C O U R T      O F      I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)  
No(s).23250/2008  
(From the judgement and order dated 03/09/2008 in LPA No.  
313/2007 of The HIGH COURT OF DELHI AT N. DELHI)

UNION PUBLIC SERVICE COMMISSION

Petitioner(s)

VERSUS

SHIV SHAMBU & ORS.

Respondent(s)

(With appln(s) for stay and prayer for interim relief)  
(For final disposal)

Date: 18/11/2010 This Petition was called on for hearing  
today.

CORAM :

HON'BLE MR. JUSTICE AFTAB ALAM  
HON'BLE MR. JUSTICE R.M. LODHA

For Petitioner(s)                    Mr.L.N. Rao, Sr.Adv.  
    Ms. Binu Tamta, Adv.

For Respondent(s)                    Mr. Aman Lekhi, Sr.Adv.  
    Mr.Rajesh Pathak, Adv.  
    Mr. Sumit Kumar, Adv.  
    Mr. Prashant Bhushan , Adv.

UPON hearing counsel the Court made the following  
O R D E R

The Union Public Service Commission has completely changed the pattern of its examination and the next examination for the year 2011 shall be held according to the changed format. In view of this development, there is no need for any adjudication by this Court on this matter.

The Special Leave Petition is, accordingly, dismissed.

(Shiveraj Kaur)  
PS to Addl.Regr.

(S.S.R.Krishna)  
Court Master

ITEM NO.24

COURT NO.3

SECTION IVB

S U P R E M E      C O U R T      O F      I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)

No(s). 9592/2011

(From the judgement and order dated 29/11/2010 in LPA  
No.1252/2010 of The HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH)

P.C.WADHWA

Petitioner(s)

VERSUS

CENTRAL INFORMATION COMMN. & ORS.

Respondent(s)

Date: 18/04/2011 This Petition was called on for hearing  
today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE A.K. PATNAIK

For Petitioner(s)                    Mr. M.N. Krishnamani, Sr. Adv.  
    Mr. Vikramjeet, Adv.  
    Mr. Rajeev Kr. Singh, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R

Special leave petition is dismissed.

(Ravi P. Verma)  
Court Master

(Sneh Lata Sharma)  
Court Master

*Reportable*

IN THE SUPREME COURT OF INDIA

CIVIL APPEAL JURISDICTION

CIVIL APPEAL NO.6454 OF 2011  
[Arising out of SLP [C] No.7526/2009]

Central Board of Secondary Education & Anr. ... Appellants

Vs.

Aditya Bandopadhyay & Ors. ... Respondents

With

CA No. 6456 of 2011 (@ SLP (C) No.9755 of 2009)  
CA Nos.6457-6458 of 2011 (@ SLP (C) Nos.11162-11163 of 2009)  
CA No.6461 of 2011 (@ SLP (C) No.11670 of 2009)  
CA Nos.6462 of 2011 (@ SLP (C) No.13673 of 2009)  
CA Nos.6464 of 2011 (@ SLP (C) No.17409 of 2009)  
CA Nos. 6459 of 2011 (@ SLP (C) No.9776 of 2010)  
CA Nos.6465-6468 of 2011 (@ SLP (C) Nos.30858-30861 of 2009)

**JUDGMENT**

**R.V.RAVEENDRAN, J.**

Leave granted. For convenience, we will refer to the facts of the first case.

2. The first respondent appeared for the Secondary School Examination, 2008 conducted by the Central Board of Secondary Education (for short

‘CBSE’ or the ‘appellant’). When he got the mark sheet he was disappointed with his marks. He thought that he had done well in the examination but his answer-books were not properly valued and that improper valuation had resulted in low marks. Therefore he made an application for inspection and re-evaluation of his answer-books. CBSE rejected the said request by letter dated 12.7.2008. The reasons for rejection were:

- (i) The information sought was exempted under Section 8(1)(e) of RTI Act since CBSE shared fiduciary relationship with its evaluators and maintain confidentiality of both manner and method of evaluation.
- (ii) The Examination Bye-laws of the Board provided that no candidate shall claim or is entitled to re-evaluation of his answers or disclosure or inspection of answer book(s) or other documents.
- (iii) The larger public interest does not warrant the disclosure of such information sought.
- (iv) The Central Information Commission, by its order dated 23.4.2007 in appeal no. ICPB/A-3/CIC/2006 dated 10.2.2006 had ruled out such disclosure.”

3. Feeling aggrieved the first respondent filed W.P. No.18189(W)/2008 before the Calcutta High Court and sought the following reliefs : (a) for a declaration that the action of CBSE in excluding the provision of re-evaluation of answer-sheets, in regard to the examinations held by it was illegal, unreasonable and violative of the provisions of the Constitution of

India; (b) for a direction to CBSE to appoint an independent examiner for re-evaluating his answer-books and issue a fresh marks card on the basis of re-evaluation; (c) for a direction to CBSE to produce his answer-books in regard to the 2008 Secondary School Examination so that they could be properly reviewed and fresh marks card can be issued with re-evaluation marks; (d) for quashing the communication of CBSE dated 12.7.2008 and for a direction to produce the answer-books into court for inspection by the first respondent. The respondent contended that section 8(1)(e) of Right to Information Act, 2005 ('RTI Act' for short) relied upon by CBSE was not applicable and relied upon the provisions of the RTI Act to claim inspection.

4. CBSE resisted the petition. It contended that as per its Bye-laws, re-evaluation and inspection of answer-books were impermissible and what was permissible was only verification of marks. They relied upon the CBSE Examination Bye-law No.61, relevant portions of which are extracted below:

**"61. Verification of marks obtained by a Candidate in a subject**

(i) A candidate who has appeared at an examination conducted by the Board may apply to the concerned Regional Officer of the Board for verification of marks in any particular subject. The verification will be restricted to checking whether all the answer's have been evaluated and that there has been no mistake in the totalling of marks for each question in that subject and that the marks have been transferred correctly on the title page of the answer book and to the award list and whether the

supplementary answer book(s) attached with the answer book mentioned by the candidate are intact. No revaluation of the answer book or supplementary answer book(s) shall be done.

(ii) Such an application must be made by the candidate within 21 days from the date of the declaration of result for Main Examination and 15 days for Compartment Examination.

(iii) All such applications must be accompanied by payment of fee as prescribed by the Board from time to time.

**(iv) No candidate shall claim, or be entitled to, revaluation of his/her answers or disclosure or inspection of the answer book(s) or other documents.**

XXXX

(vi) In no case the verification of marks shall be done in the presence of the candidate or anyone else on his/her behalf, nor will the answer books be shown to him/her or his/her representative.

(vii) Verification of marks obtained by a candidate will be done by the officials appointed by or with the approval of the Chairman.

(viii) The marks, on verification will be revised upward or downward, as per the actual marks obtained by the candidate in his/her answer book.

XXXX

## **62. Maintenance of Answer Books**

The answer books shall be maintained for a period of three months and shall thereafter be disposed of in the manner as decided by the Chairman from time to time.”

(emphasis supplied)

CBSE submitted that 12 to 13 lakhs candidates from about 9000 affiliated schools across the country appear in class X and class XII examinations conducted by it and this generates as many as 60 to 65 lakhs of answer-books; that as per Examination Bye-law No.62, it maintains the answer

books only for a period of three months after which they are disposed of. It was submitted that if candidates were to be permitted to seek re-evaluation of answer books or inspection thereof, it will create confusion and chaos, subjecting its elaborate system of examinations to delay and disarray. It was stated that apart from class X and class XII examinations, CBSE also conducts several other examinations (including the All India Pre-Medical Test, All India Engineering Entrance Examination and Jawahar Navodaya Vidyalaya's Selection Test). If CBSE was required to re-evaluate the answer-books or grant inspection of answer-books or grant certified copies thereof, it would interfere with its effective and efficient functioning, and will also require huge additional staff and infrastructure. It was submitted that the entire examination system and evaluation by CBSE is done in a scientific and systemic manner designed to ensure and safeguard the high academic standards and at each level utmost care was taken to achieve the object of excellence, keeping in view the interests of the students. CBSE referred to the following elaborate procedure for evaluation adopted by it :

"The examination papers are set by the teachers with at least 20 years of teaching experience and proven integrity. Paper setters are normally appointed from amongst academicians recommended by then Committee of courses of the Board. Every paper setter is asked to set more than one set of question papers which are moderated by a team of moderators who are appointed from the academicians of the University or from amongst the Senior Principals. The function of the moderation team is to ensure correctness and consistency of different sets of question papers with the curriculum and to assess the difficulty level to cater to the students of

different schools in different categories. After assessing the papers from every point of view, the team of moderators gives a declaration whether the whole syllabus is covered by a set of question papers, whether the distribution of difficulty level of all the sets is parallel and various other aspects to ensure uniform standard. The Board also issues detailed instructions for the guidance of the moderators in order to ensure uniform criteria for assessment.

The evaluation system on the whole is well organized and fool-proof. All the candidates are examined through question papers set by the same paper setters. Their answer books are marked with fictitious roll numbers so as to conceal their identity. The work of allotment of fictitious roll number is carried out by a team working under a Chief Secrecy Officer having full autonomy. The Chief Secrecy Officer and his team of assistants are academicians drawn from the Universities and other autonomous educational bodies not connected with the Board. The Chief Secrecy Officer himself is usually a person of the rank of a University professor. No official of the Board at the Central or Regional level is associated with him in performance of the task assigned to him. The codes of fictitious roll numbers and their sequences are generated by the Chief Secrecy Officer himself on the basis of mathematical formula which randomize the real roll numbers and are known only to him and his team. This ensures complete secrecy about the identification of the answer book so much so, that even the Chairman, of the Board and the Controller of Examination of the Board do not have any information regarding the fictitious roll numbers granted by the Chief Secrecy Officer and their real counterpart numbers.

At the evaluation stage, the Board ensures complete fairness and uniformity by providing a marking scheme which is uniformly applicable to all the examiners in order to eliminate the chances of subjectivity. These marking schemes are jointly prepared at the Headquarters of the Board in Delhi by the Subject Experts of all the regions. The main purpose of the marking scheme is to maintain uniformity in the evaluation of the answer books.

The evaluation of the answer books in all major subjects including mathematics, science subjects is done in centralized “on the spot” evaluation centers where the examiners get answer book in interrupted serial orders. Also, the answer books are jumbled together as a result of which the examiners, say in Bangalore may be marking the answer book of a candidate who had his examination in Pondicherry, Goa, Andaman and Nicobar islands, Kerala, Andhra Pradesh, Tamil Nadu or Karnataka itself but he has no way of knowing exactly which answer book he is examining. The answer books having been marked with fictitious roll numbers give no clue to any examiner about the state or territory it

belongs to. It cannot give any clue about the candidate's school or centre of examination. The examiner cannot have any inclination to do any favour to a candidate because he is unable to decode his roll number or to know as to which school, place or state or territory he belongs to.

The examiners check all the questions in the papers thoroughly under the supervision of head examiner and award marks to the sub parts individually not collectively. They take full precautions and due attention is given while assessing an answer book to do justice to the candidate. Re-evaluation is administratively impossible to be allowed in a Board where lakhs of students take examination in multiple subjects.

There are strict instructions to the additional head examiners not to allow any shoddy work in evaluation and not to issue more than 20-25 answer books for evaluation to an examiner on a single day. The examiners are practicing teachers who guard the interest of the candidates. There is no ground to believe that they do unjust marking and deny the candidates their due. It is true that in some cases totaling errors have been detected at the stage of scrutiny or verification of marks. In order to minimize such errors and to further strengthen and to improve its system, from 1993 checking of totals and other aspects of the answers has been trebled in order to detect and eliminate all lurking errors.

The results of all the candidates are reviewed by the Results Committee functioning at the Head Quarters. The Regional Officers are not the number of this Committee. This Committee reviews the results of all the regions and in case it decides to standardize the results in view of the results shown by the regions over the previous years, it adopts a uniform policy for the candidates of all the regions. No special policy is adopted for any region, unless there are some special reasons. This practice of awarding standardized marks in order to moderate the overall results is a practice common to most of the Boards of Secondary Education. The exact number of marks awarded for the purpose of standardization in different subjects varies from year to year. The system is extremely impersonalized and has no room for collusion infringement. It is in a word a scientific system."

CBSE submitted that the procedure evolved and adopted by it ensures fairness and accuracy in evaluation of answer-books and made the entire process as foolproof as possible and therefore denial of re-evaluation or

inspection or grant of copies cannot be considered to be denial of fair play or unreasonable restriction on the rights of the students.

5. A Division Bench of the High Court heard and disposed of the said writ petition along with the connected writ petitions (relied by West Bengal Board of Secondary Education and others) by a common judgment dated 5.2.2009. The High Court held that the evaluated answer-books of an examinee writing a public examination conducted by statutory bodies like CBSE or any University or Board of Secondary Education, being a ‘document, manuscript record, and opinion’ fell within the definition of “information” as defined in section 2(f) of the RTI Act. It held that the provisions of the RTI Act should be interpreted in a manner which would lead towards dissemination of information rather than withholding the same; and in view of the right to information, the examining bodies were bound to provide inspection of evaluated answer books to the examinees. Consequently it directed CBSE to grant inspection of the answer books to the examinees who sought information. The High Court however rejected the prayer made by the examinees for re-evaluation of the answer-books, as that was not a relief that was available under RTI Act. RTI Act only provided a right to access information, but not for any consequential reliefs.

Feeling aggrieved by the direction to grant inspection, CBSE has filed this appeal by special leave.

6. Before us the CBSE contended that the High Court erred in (i) directing CBSE to permit inspection of the evaluated answer books, as that would amount to requiring CBSE to disobey its Examination Bye-law 61(4), which provided that no candidate shall claim or be entitled to re-evaluation of answer books or disclosure/inspection of answer books; (ii) holding that Bye-law 61(4) was not binding upon the examinees, in view of the overriding effect of the provisions of the RTI Act, even though the validity of that bye-law had not been challenged; (iii) not following the decisions of this court in *Maharashtra State Board of Secondary Education vs. Paritosh B. Sheth* [1984 (4) SCC 27], *Parmod Kumar Srivastava vs. Chairman, Bihar PAC* [2004 (6) SCC 714], *Board of Secondary Education vs. Pavan Ranjan P* [2004 (13) SCC 383], *Board of Secondary Education vs. S* [2007 (1) SCC 603] and *Secretary, West Bengal Council of Higher Secondary Education vs. I Dass* [2007 (8) SCC 242]; and (iv) holding that the examinee had a right to inspect his answer book under section 3 of the RTI Act and the examining bodies like CBSE were not exempted from disclosure of information under section 8(1)(e) of the RTI Act. The appellants contended that they were holding the “information” (in this case, the evaluated answer

books) in a fiduciary relationship and therefore exempted under section 8(1)(e) of the RTI Act.

7. The examinees and the Central Information Commission contended that the object of the RTI Act is to ensure maximum disclosure of information and minimum exemptions from disclosure; that an examining body does not hold the evaluated answer books, in any fiduciary relationship either with the student or the examiner; and that the information sought by any examinee by way of inspection of his answer books, will not fall under any of the exempted categories of information enumerated in section 8 of the RTI Act. It was submitted that an examining body being a public authority holding the ‘information’, that is, the evaluated answer-books, and the inspection of answer-books sought by the examinee being exercise of ‘right to information’ as defined under the Act, the examinee as a citizen has the right to inspect the answer-books and take certified copies thereof. It was also submitted that having regard to section 22 of the RTI Act, the provisions of the said Act will have effect notwithstanding anything inconsistent in any law and will prevail over any rule, regulation or bye law of the examining body barring or prohibiting inspection of answer books.

8. On the contentions urged, the following questions arise for our consideration :

- (i) Whether an examinee's right to information under the RTI Act includes a right to inspect his evaluated answer books in a public examination or taking certified copies thereof?
- (ii) Whether the decisions of this court in *Maharashtra State Board of Secondary Education* [1984 (4) SCC 27] and other cases referred to above, in any way affect or interfere with the right of an examinee seeking inspection of his answer books or seeking certified copies thereof?
- (iii) Whether an examining body holds the evaluated answer books "in a fiduciary relationship" and consequently has no obligation to give inspection of the evaluated answer books under section 8 (1)(e) of RTI Act?
- (iv) If the examinee is entitled to inspection of the evaluated answer books or seek certified copies thereof, whether such right is subject to any limitations, conditions or safeguards?

### **Relevant Legal Provisions**

9. To consider these questions, it is necessary to refer to the statement of objects and reasons, the preamble and the relevant provisions of the RTI

Act. RTI Act was enacted in order to ensure smoother, greater and more effective access to information and provide an effective framework for effectuating the right of information recognized under article 19 of the Constitution. The preamble to the Act declares the object sought to be achieved by the RTI Act thus:

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Whereas the Constitution of India has established democratic Republic;

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

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal.”

Chapter II of the Act containing sections 3 to 11 deals with right to information and obligations of public authorities. Section 3 provides for right to information and reads thus: “*Subject to the provisions of this Act, all citizens shall have the right to information.*” This section makes it clear

that the RTI Act gives a right to a citizen to only access information, but not seek any consequential relief based on such information. Section 4 deals with obligations of public authorities to maintain the records in the manner provided and publish and disseminate the information in the manner provided. Section 6 deals with requests for obtaining information. It provides that applicant making a request for information shall not be required to give any reason for requesting the information or any personal details except those that may be necessary for contacting him. Section 8 deals with exemption from disclosure of information and is extracted in its entirety:

**“8. Exemption from disclosure of information -- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-**

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (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;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(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:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before

the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.”

(emphasis supplied)

Section 9 provides that without prejudice to the provisions of section 8, a request for information may be rejected if such a request for providing access would involve an infringement of copyright. Section 10 deals with severability of exempted information and sub-section (1) thereof is extracted below:

“(1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.”

Section 11 deals with third party information and sub-section (1) thereof is extracted below:

“(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to

disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.”

The definitions of *information, public authority, record and right to information* in clauses (f), (h), (i) and (j) of section 2 of the RTI Act are extracted below:

“(f) “**information**” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

(h) “**public authority**” means any authority or body or institution of self-government established or constituted-

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any-

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

(i) "record" includes-

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (d) any other material produced by a computer or any other device;

(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

Section 22 provides for the Act to have overriding effect and is extracted below:

"The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

10. It will also be useful to refer to a few decisions of this Court which considered the importance and scope of the right to information. In *State of Uttar Pradesh v. Raj Narain* - (1975) 4 SCC 428, this Court observed:

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

(emphasis supplied)

In *Dinesh Trivedi v. Union of India* – (1997) 4 SCC 306, this Court held:

“In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognised limitations; it is, by no means, absolute. .... Implicit in this assertion is the proposition that in transaction which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated.

To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers is Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.”

In *People’s Union for Civil Liberties v. Union of India* - (2004) 2 SCC 476,

this Court held that right of information is a facet of the freedom of “speech

and expression" as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions.

### **Re : Question (i)**

11. The definition of 'information' in section 2(f) of the RTI Act refers to any material in any form which includes records, documents, opinions, papers among several other enumerated items. The term 'record' is defined in section 2(i) of the said Act as including any document, manuscript or file among others. When a candidate participates in an examination and writes his answers in an answer-book and submits it to the examining body for evaluation and declaration of the result, the answer-book is a document or record. When the answer-book is evaluated by an examiner appointed by the examining body, the evaluated answer-book becomes a record containing the 'opinion' of the examiner. Therefore the evaluated answer-book is also an 'information' under the RTI Act.

12. Section 3 of RTI Act provides that subject to the provisions of this Act all citizens shall have *the right to information*. The term '*right to information*' is defined in section 2(j) as the right to information accessible

under the Act which is held by or under the control of any public authority. Having regard to section 3, the citizens have the right to access to all information held by or under the control of any public authority except those excluded or exempted under the Act. The object of the Act is to empower the citizens to fight against corruption and hold the Government and their instrumentalities accountable to the citizens, by providing them access to information regarding functioning of every public authority. Certain safeguards have been built into the Act so that the revelation of information will not conflict with other public interests which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidential and sensitive information. The RTI Act provides access to information held by or under the control of public authorities and not in regard to information held by any private person. The Act provides the following exclusions by way of exemptions and exceptions (under sections 8, 9 and 24) in regard to information held by public authorities:

- (i) Exclusion of the Act in entirety under section 24 to intelligence and security organizations specified in the Second Schedule even though they may be “public authorities”, (except in regard to information with reference to allegations of corruption and human rights violations).

- (ii) Exemption of the several categories of information enumerated in section 8(1) of the Act which no public authority is under an obligation to give to any citizen, notwithstanding anything contained in the Act [however, in regard to the information exempted under clauses (d) and (e), the competent authority, and in regard to the information excluded under clause (j), Central Public Information Officer/State Public Information Officer/the Appellate Authority, may direct disclosure of information, if larger public interest warrants or justifies the disclosure].
- (iii) If any request for providing access to information involves an infringement of a copyright subsisting in a person other than the State, the Central/State Public Information Officer may reject the request under section 9 of RTI Act.

Having regard to the scheme of the RTI Act, the right of the citizens to access any information held or under the control of any public authority, should be read in harmony with the exclusions/exemptions in the Act.

13. The examining bodies (Universities, Examination Boards, CBSC etc.) are neither security nor intelligence organisations and therefore the exemption under section 24 will not apply to them. The disclosure of information with reference to answer-books does not also involve infringement of any copyright and therefore section 9 will not apply.

Resultantly, unless the examining bodies are able to demonstrate that the evaluated answer-books fall under any of the categories of exempted ‘information’ enumerated in clauses (a) to (j) of sub-section (1) section 8, they will be bound to provide access to the information and any applicant can either inspect the document/record, take notes, extracts or obtain certified copies thereof.

14. The examining bodies contend that the evaluated answer-books are exempted from disclosure under section 8(1)(e) of the RTI Act, as they are ‘information’ held in its fiduciary relationship. They fairly conceded that evaluated answer-books will not fall under any other exemptions in sub-section (1) of section 8. Every examinee will have the right to access his evaluated answer-books, by either inspecting them or take certified copies thereof, unless the evaluated answer-books are found to be exempted under section 8(1)(e) of the RTI Act.

**Re : Question (ii)**

15. In *Maharashtra State Board*, this Court was considering whether denial of re-evaluation of answer-books or denial of disclosure by way of inspection of answer books, to an examinee, under Rule 104(1) and (3) of

the Maharashtra Secondary and Higher Secondary Board Rules, 1977 was violative of principles of natural justice and violative of Articles 14 and 19 of the Constitution of India. Rule 104(1) provided that no re-evaluation of the answer books shall be done and on an application of any candidate verification will be restricted to checking whether all the answers have been examined and that there is no mistake in the totalling of marks for each question in that subject and transferring marks correctly on the first cover page of the answer book. Rule 104(3) provided that no candidate shall claim or be entitled to re-evaluation of his answer-books or inspection of answer-books as they were treated as confidential. This Court while upholding the validity of Rule 104(3) held as under :

“.... the “process of evaluation of answer papers or of subsequent verification of marks” under Clause (3) of Regulation 104 does not attract the principles of natural justice since no decision making process which brings about adverse civil consequences to the examinees is involved. The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer-books and determining whether there has been a proper and fair valuation of the answers by the examiners.”

So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations.... The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act ...

and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

It was perfectly within the competence of the Board, rather it was its plain duty, to apply its mind and decide as a matter of policy relating to the conduct of the examination as to whether disclosure and inspection of the answer books should be allowed to the candidates, whether and to what extent verification of the result should be permitted after the results have already been announced and whether any right to claim revaluation of the answer books should be recognised or provided for. All these are undoubtedly matters which have an intimate nexus with the objects and purposes of the enactment and are, therefore, within the ambit of the general power to make regulations....”

This Court held that Regulation 104(3) cannot be held to be unreasonable merely because in certain stray instances, errors or irregularities had gone unnoticed even after verification of the concerned answer books according to the existing procedure and it was only after further scrutiny made either on orders of the court or in the wake of contentions raised in the petitions filed before a court, that such errors or irregularities were ultimately discovered. This court reiterated the view that “the test of reasonableness is not applied in vacuum but in the context of life’s realities” and concluded that realistically and practically, providing all the candidates inspection of their answer books or re-evaluation of the answer books in the presence of the candidates would not be feasible. Dealing with the contention that every

student is entitled to fair play in examination and receive marks matching his performance, this court held :

“What constitutes fair play depends upon the facts and circumstances relating to each particular given situation. If it is found that every possible precaution has been taken and all necessary safeguards provided to ensure that the answer books inclusive of supplements are kept in safe custody so as to eliminate the danger of their being tampered with and that the evaluation is done by the examiners applying uniform standards with checks and crosschecks at different stages and that measures for detection of malpractice, etc. have also been effectively adopted, in such cases it will not be correct on the part of the Courts to strike down, the provision prohibiting revaluation on the ground that it violates the rules of fair play. It appears that the procedure evolved by the Board for ensuring fairness and accuracy in evaluation of the answer books has made the system as fool proof as can be possible and is entirely satisfactory. The Board is a very responsible body. The candidates have taken the examination with full awareness of the provisions contained in the Regulations and in the declaration made in the form of application for admission to the examination they have solemnly stated that they fully agree to abide by the regulations issued by the Board. In the circumstances, when we find that all safeguards against errors and malpractices have been provided for, there cannot be said to be any denial of fair play to the examinees by reason of the prohibition against asking for revaluation.... “

This Court concluded that if inspection and verification in the presence of the candidates, or revaluation, have to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidate, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. This court concluded :

“... the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded.”

16. The above principles laid down in *Maharashtra State Board* have been followed and reiterated in several decisions of this Court, some of which are referred to in para (6) above. But the principles laid down in decisions such as *Maharashtra State Board* depend upon the provisions of the rules and regulations of the examining body. If the rules and regulations of the examining body provide for re-evaluation, inspection or disclosure of the answer-books, then none of the principles in *Maharashtra State Board* or other decisions following it, will apply or be relevant. There has been a gradual change in trend with several examining bodies permitting inspection and disclosure of the answer-books.

17. It is thus now well settled that a provision barring inspection or disclosure of the answer-books or re-evaluation of the answer-books and restricting the remedy of the candidates only to re-totalling is valid and binding on the examinee. In the case of CBSE, the provisions barring re-

evaluation and inspection contained in Bye-law No.61, are akin to Rule 104 considered in *Maharashtra State Board*. As a consequence if an examination is governed only by the rules and regulations of the examining body which bar inspection, disclosure or re-evaluation, the examinee will be entitled only for re-totalling by checking whether all the answers have been evaluated and further checking whether there is no mistake in totaling of marks for each question and marks have been transferred correctly to the title (abstract) page. The position may however be different, if there is a superior statutory right entitling the examinee, as a citizen to seek access to the answer books, as information.

18. In these cases, the High Court has rightly denied the prayer for re-evaluation of answer-books sought by the candidates in view of the bar contained in the rules and regulations of the examining bodies. It is also not a relief available under the RTI Act. Therefore the question whether re-evaluation should be permitted or not, does not arise for our consideration. What arises for consideration is the question whether the examinee is entitled to inspect his evaluated answer-books or take certified copies thereof. This right is claimed by the students, not with reference to the rules or bye-laws of examining bodies, but under the RTI Act which enables them

and entitles them to have access to the answer-books as ‘information’ and inspect them and take certified copies thereof. Section 22 of RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer-books fall under the exempted category of information described in clause (e) of section 8(1) of RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer-books, even if such inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations. Therefore, the decision of this Court in *Maharashtra State Board* (supra) and the subsequent decisions following the same, will not affect or interfere with the right of the examinee seeking inspection of answer-books or taking certified copies thereof.

**Re : Question (iii)**

19. Section 8(1) enumerates the categories of information which are exempted from disclosure under the provisions of the RTI Act. The

examining bodies rely upon clause (e) of section 8(1) which provides that there shall be no obligation on any public authority to give any citizen, information available to it in its fiduciary relationship. This exemption is subject to the condition that if the competent authority (as defined in section 2(e) of RTI Act) is satisfied that the larger public interest warrants the disclosure of such information, the information will have to be disclosed. Therefore the question is whether the examining body holds the evaluated answer-books in its fiduciary relationship.

20. The term ‘fiduciary’ and ‘fiduciary relationship’ refer to different capacities and relationship, involving a common duty or obligation.

20.1) *Black’s Law Dictionary* (7<sup>th</sup> Edition, Page 640) defines ‘fiduciary relationship’ thus:

“A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships – such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client – require the highest duty of care. Fiduciary relationships usually arise in one of four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.”

20.2) The *American Restatements* (Trusts and Agency) define ‘fiduciary’ as one whose intention is to act for the benefit of another as to matters relevant to the relation between them. The *Corpus Juris Secundum* (Vol. 36A page 381) attempts to define *fiduciary* thus :

“A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil, or Roman, law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.

The word ‘fiduciary,’ as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for another’s benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust, or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note.”

20.3) *Words and Phrases, Permanent Edition* (Vol. 16A, Page 41) defines ‘fiducial relation’ thus :

“There is a technical distinction between a ‘fiducial relation’ which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and ‘confidential relation’ which includes the legal relationships, and also every other relationship wherein confidence is rightly reposed and is exercised.

Generally, the term ‘fiduciary’ applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and

fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations.”

20.4) In *Bristol and West Building Society vs. Mothew* [1998 Ch. 1] the term *fiduciary* was defined thus :

“A *fiduciary* is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty..... A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.”

20.5) In *Wolf vs. Superior Court* [2003 (107) California Appeals, 4<sup>th</sup> 25] the California Court of Appeals defined *fiduciary relationship* as under :

“any relationship existing between the parties to the transaction where one of the parties is duty bound to act with utmost good faith for the benefit of the other party. Such a relationship ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interests of the other party without the latter’s knowledge and consent.”

21. The term ‘fiduciary’ refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term ‘*fiduciary relationship*’ is used to describe a situation or

transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are : a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only

if the employee's conduct or acts are found to be prejudicial to the employer.

22. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words 'information available to a person in his fiduciary relationship' are used in section 8(1)(e) of RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary – a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically/infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a share-holder, an executor with reference to a legatee, a receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between

the examining body and the examinee, with reference to the evaluated answer-books, that come into the custody of the examining body.

23. The duty of examining bodies is to subject the candidates who have completed a course of study or a period of training in accordance with its curricula, to a process of verification/examination/testing of their knowledge, ability or skill, or to ascertain whether they can be said to have successfully completed or passed the course of study or training. Other specialized Examining Bodies may simply subject candidates to a process of verification by an examination, to find out whether such person is suitable for a particular post, job or assignment. An examining body, if it is a public authority entrusted with public functions, is required to act fairly, reasonably, uniformly and consistently for public good and in public interest. This Court has explained the role of an examining body in regard to the process of holding examination in the context of examining whether it amounts to 'service' to a consumer, in *Bihar School Examination Board vs. Suresh Prasad Sinha – (2009) 8 SCC 483*, in the following manner:

"The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its "services" to any candidate. Nor does a

student who participates in the examination conducted by the Board, hires or avails of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-a-vis other examinees. The process is not therefore availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination..... The fact that in the course of conduct of the examination, or evaluation of answer-scripts, or furnishing of mark-books or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service-provider for a consideration, nor convert the examinee into a consumer ....."

It cannot therefore be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer-books are evaluated by the examining body.

24. We may next consider whether an examining body would be entitled to claim exemption under section 8(1)(e) of the RTI Act, even assuming that it is in a fiduciary relationship with the examinee. That section provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen *information available to a person in his fiduciary relationship*. This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information

held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself. One of the duties of the fiduciary is to make thorough disclosure of all relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer-books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer-books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer-book, section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer-book, seeking inspection or disclosure of it.

25. An evaluated answer book of an examinee is a combination of two different ‘informations’. The first is the answers written by the examinee and

second is the marks/assessment by the examiner. When an examinee seeks inspection of his evaluated answer-books or seeks a certified copy of the evaluated answer-book, the information sought by him is not really the answers he has written in the answer-books (which he already knows), nor the total marks assigned for the answers (which has been declared). What he really seeks is the information relating to the break-up of marks, that is, the specific marks assigned to each of his answers. When an examinee seeks 'information' by inspection/certified copies of his answer-books, he knows the contents thereof being the author thereof. When an examinee is permitted to examine an answer-book or obtain a certified copy, the examining body is not really giving him some information which is held by it in trust or confidence, but is only giving him an opportunity to read what he had written at the time of examination or to have a copy of his answers. Therefore, in furnishing the copy of an answer-book, there is no question of breach of confidentiality, privacy, secrecy or trust. The real issue therefore is not in regard to the answer-book but in regard to the marks awarded on evaluation of the answer-book. Even here the total marks given to the examinee in regard to his answer-book are already declared and known to the examinee. What the examinee actually wants to know is the break-up of marks given to him, that is how many marks were given by the examiner to

each of his answers so that he can assess how his performance has been evaluated and whether the evaluation is proper as per his hopes and expectations. Therefore, the test for finding out whether the information is exempted or not, is not in regard to the answer book but in regard to the evaluation by the examiner.

26. This takes us to the crucial issue of evaluation by the examiner. The examining body engages or employs hundreds of examiners to do the evaluation of thousands of answer books. The question is whether the information relating to the ‘evaluation’ (that is assigning of marks) is held by the examining body in a fiduciary relationship. The examining bodies contend that even if fiduciary relationship does not exist with reference to the examinee, it exists with reference to the examiner who evaluates the answer-books. On a careful examination we find that this contention has no merit. The examining body entrusts the answer-books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer-book is an assignment given by the examining body to the examiner which he discharges for a consideration. Sometimes, an examiner may assess answer-books, in the course of his employment, as a part of his duties without any specific or special

remuneration. In other words the examining body is the ‘principal’ and the examiner is the agent entrusted with the work, that is, evaluation of answer-books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner. On the other hand, when an answer-book is entrusted to the examiner for the purpose of evaluation, for the period the answer-book is in his custody and to the extent of the discharge of his functions relating to evaluation, the examiner is in the position of a fiduciary with reference to the examining body and he is barred from disclosing the contents of the answer-book or the result of evaluation of the answer-book to anyone other than the examining body. Once the examiner has evaluated the answer books, he ceases to have any interest in the evaluation done by him. He does not have any copy-right or proprietary right, or confidentiality right in regard to the evaluation. Therefore it cannot be said that the examining body holds the evaluated answer books in a fiduciary relationship, qua the examiner.

27. We, therefore, hold that an examining body does not hold the evaluated answer-books in a fiduciary relationship. Not being information available to an examining body in its fiduciary relationship, the exemption under section 8(1)(e) is not available to the examining bodies with reference to evaluated answer-books. As no other exemption under section 8 is

available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees.

**Re : Question (iv)**

28. When an examining body engages the services of an examiner to evaluate the answer-books, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer-books are evaluated by him. In the event of such information being made known, a disgruntled examinee who is not satisfied with the evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies not only to the examiner, but also to the scrutiniser, co-ordinator, and head-examiner who deal with the answer book. The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/co-ordinator/head examiner. The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore

exempted from disclosure under section 8(1)(g) of RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer-books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer-book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under section 8(1)(g) of RTI Act. Those portions of the answer-books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer-books, under section 10 of RTI Act.

29. The right to access information does not extend beyond the period during which the examining body is expected to retain the answer-books. In the case of CBSE, the answer-books are required to be maintained for a period of three months and thereafter they are liable to be disposed of/destroyed. Some other examining bodies are required to keep the answer-books for a period of six months. The fact that right to information is available in regard to answer-books does not mean that answer-books will have to be maintained for any longer period than required under the rules

and regulations of the public authority. The obligation under the RTI Act is to make available or give access to *existing information* or information which is expected to be preserved or maintained. If the rules and regulations governing the functioning of the respective public authority require preservation of the information for only a limited period, the applicant for information will be entitled to such information only if he seeks the information when it is available with the public authority. For example, with reference to answer-books, if an examinee makes an application to CBSE for inspection or grant of certified copies beyond three months (or six months or such other period prescribed for preservation of the records in regard to other examining bodies) from the date of declaration of results, the application could be rejected on the ground that such information is not available. The power of the Information Commission under section 19(8) of the RTI Act to require a public authority to take any such steps as may be necessary *to secure compliance with the provision of the Act*, does not include a power to direct the *public authority* to preserve the information, for any period larger than what is provided under the rules and regulations of the public authority.

30. On behalf of the respondents/examinees, it was contended that having regard to sub-section (3) of section 8 of RTI Act, there is an implied duty on

the part of every public authority to maintain the information for a minimum period of twenty years and make it available whenever an application was made in that behalf. This contention is based on a complete misreading and misunderstanding of section 8(3). The said sub-section nowhere provides that records or information have to be maintained for a period of twenty years. The period for which any particular records or information has to be maintained would depend upon the relevant statutory rule or regulation of the public authority relating to the preservation of records. Section 8(3) provides that information relating to any occurrence, event or matters which has taken place and occurred or happened *twenty years before the date* on which any request is made under section 6, shall be provided to any person making a request. This means that where any information required to be maintained and preserved for a period beyond twenty years under the rules of the public authority, is exempted from disclosure under any of the provisions of section 8(1) of RTI Act, then, notwithstanding such exemption, access to such information shall have to be provided by disclosure thereof, after a period of twenty years except where they relate to information falling under clauses (a), (c) and (i) of section 8(1). In other words, section 8(3) provides that any protection against disclosure that may be available, under clauses (b), (d) to (h) and (j) of section 8(1) will cease to

be available after twenty years in regard to records which are required to be preserved for more than twenty years. Where any record or information is required to be destroyed under the rules and regulations of a public authority prior to twenty years, section 8(3) will not prevent destruction in accordance with the Rules. Section 8(3) of RTI Act is not therefore a provision requiring all ‘information’ to be preserved and maintained for twenty years or more, nor does it override any rules or regulations governing the period for which the record, document or information is required to be preserved by any public authority.

31. The effect of the provisions and scheme of the RTI Act is to divide ‘information’ into the three categories. They are :

- (i) Information which promotes *transparency and accountability* in the working of every public authority, disclosure of which may also help in containing or discouraging corruption (enumerated in clauses (b) and (c) of section 4(1) of RTI Act).
- (ii) Other information held by public authority (that is all information other than those falling under clauses (b) and (c) of section 4(1) of RTI Act).
- (iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.

Information under the third category does not fall within the scope of RTI Act. Section 3 of RTI Act gives every citizen, the right to ‘information’ held

by or under the control of a public authority, which falls either under the first or second category. In regard to the information falling under the first category, there is also a special responsibility upon public authorities to *suo moto publish and disseminate such information* so that they will be easily and readily accessible to the public without any need to access them by having recourse to section 6 of RTI Act. There is no such obligation to publish and disseminate the other information which falls under the second category.

32. The information falling under the first category, enumerated in sections 4(1)(b) & (c) of RTI Act are extracted below :

**“4. Obligations of public authorities.-**(1) Every public authority shall--

- |       |  |
|-------|--|
| (a)   | xxxxxx   |
| (b)   | publish within one hundred and twenty days from the enactment of this Act,--   |
| (i)   | the particulars of its organisation, functions and duties;   |
| (ii)  | the powers and duties of its officers and employees;   |
| (iii) | <b>the procedure followed in the decision making process, including channels of supervision and accountability;</b>                                |
| (iv)  | <b>the norms set by it for the discharge of its functions;</b>   |
| (v)   | the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; |
| (vi)  | a statement of the categories of documents that are held by it or under its control;   |

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

*(emphasis supplied)*

Sub-sections (2), (3) and (4) of section 4 relating to dissemination of information enumerated in sections 4(1)(b) & (c) are extracted below:

**“(2)** It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) **to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.**

**(3)** For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

**(4)** All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.--For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority."

*(emphasis supplied)*

33. Some High Courts have held that section 8 of 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 fulfilment and preservation of democratic ideals.

34. 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 visualise 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 Freedom to Information Act, 2002. The Courts and Information

Commissions enforcing the provisions of 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.

35. 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 authority has any information in the form of data or analysed data, or abstracts, or statistics, an 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. It is also not required to provide ‘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 definition of ‘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.

36. Section 19(8) of RTI Act has entrusted the Central/State Information Commissions, with the power to require any public authority to take any such steps as may be necessary to secure the compliance with the provisions of the Act. Apart from the generality of the said power, clause (a) of section 19(8) refers to six specific powers, to implement the provision of the Act. Sub-clause (i) empowers a Commission to require the public authority to provide access to information if so requested in a particular ‘form’ (that is either as a document, micro film, compact disc, pendrive, etc.). This is to secure compliance with section 7(9) of the Act. Sub-clause (ii) empowers a Commission to require the public authority to appoint a Central Public Information Officer or State Public Information Officer. This is to secure compliance with section 5 of the Act. Sub-clause (iii) empowers the Commission to require a public authority to publish certain information or categories of information. This is to secure compliance with section 4(1) and (2) of RTI Act. Sub-clause (iv) empowers a Commission to require a public

authority to make necessary changes to its practices relating to the maintenance, management and destruction of the records. This is to secure compliance with clause (a) of section 4(1) of the Act. Sub-clause (v) empowers a Commission to require the public authority to increase the training for its officials on the right to information. This is to secure compliance with sections 5, 6 and 7 of the Act. Sub-clause (vi) empowers a Commission to require the public authority to provide annual reports in regard to the compliance with clause (b) of section 4(1). This is to ensure compliance with the provisions of clause (b) of section 4(1) of the Act. The power under section 19(8) of the Act however does not extend to requiring a public authority to take any steps which are not required or contemplated to secure compliance with the provisions of the Act or to issue directions beyond the provisions of the Act. The power under section 19(8) of the Act is intended to be used by the Commissions to ensure compliance with the Act, in particular ensure that every public authority maintains its records duly catalogued and indexed in the manner and in the form which facilitates the right to information and ensure that the records are computerized, as required under clause (a) of section 4(1) of the Act; and to ensure that the information enumerated in clauses (b) and (c) of sections 4(1) of the Act are published and disseminated, and are periodically updated as provided in sub-

sections (3) and (4) of section 4 of the Act. If the ‘information’ enumerated in clause (b) of section 4(1) of the Act are effectively disseminated (by publications in print and on websites and other effective means), apart from providing transparency and accountability, citizens will be able to access relevant information and avoid unnecessary applications for information under the Act.

37. 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 Act should be 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 information 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 directions 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 be counter-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 prioritising ‘information furnishing’, at the cost of their normal and regular duties.

### **Conclusion**

38. In view of the foregoing, the order of the High Court directing the examining bodies to permit examinees to have inspection of their answer books is affirmed, subject to the clarifications regarding the scope of the RTI

Act and the safeguards and conditions subject to which ‘information’ should be furnished. The appeals are disposed of accordingly.

.....J  
[R. V. Raveendran]

.....J  
[A. K. Patnaik]

New Delhi;  
August 9, 2011.

Reportable

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 7571 OF 2011  
[Arising out of SLP (C) No.2040/2011]**

The Institute of Chartered Accountants of India ... Appellant

Vs.

Shaunak H.Satya & Ors. ... Respondents

**JUDGMENT**

**R.V.RAVEENDRAN,J.**

Leave granted.

2. The appellant Institute of Chartered Accountants of India (for short 'ICAI') is a body corporate established under section 3 of the Chartered Accountants Act, 1949. One of the functions of the appellant council is to conduct the examination of candidates for enrolment as Chartered Accountants. The first respondent appeared in the Chartered Accountants' final examination conducted by ICAI in November, 2007. The results were declared in January 2008. The first respondent who was not successful in the examination applied for verification of marks. The appellant carried out the verification in accordance with the provisions of the Chartered Accountants

Regulations, 1988 and found that there was no discrepancy in evaluation of answerscripts. The appellant informed the first respondent accordingly.

3. On 18.1.2008 the appellant submitted an application seeking the following information under 13 heads, under the Right to Information Act, 2005 ('RTI Act' for short) :

- "1) Educational qualification of the examiners & Moderators with subject wise classifications. (you may not give me the names of the examiners & moderators).
- 2) Procedure established for evaluation of exam papers.
- 3) Instructions issued to the examiners, and moderators oral as well as written if any.**
- 4) Procedure established for selection of examiners & moderators.
- 5) Model answers if any given to the examiners & moderators if any.**
- 6) Remuneration paid to the examiners & moderators.
- 7) Number of students appearing for exams at all levels in the last 2 years (i.e. PE1/PE2/PCC/CPE/Final with break up)
- 8) Number of students that passed at the 1<sup>st</sup> attempt from the above.
- 9) From the number of students that failed in the last 2 years (i.e. PE1/PE2/PCC/CPE/Final with break up) from the above, how many students opted for verification of marks as per regulation 38.
- 10) Procedure adopted at the time of verification of marks as above.
- 11) Number of students whose marks were positively changed out of those students that opted for verification of marks.
- 12) Educational qualifications of the persons performing the verification of marks under Regulation 38 & remuneration paid to them.
- 13) Number of times that the council has revised the marks of any candidate, or any class of candidates, in accordance with regulation**

**39(2) of the Chartered Accountants Regulations, 1988, the criteria used for such discretion, the quantum of such revision, the quantum of such revision, the authority that decides such discretion, and the number of students along with the quantum of revision affected by such revision in the last 5 exams, held at all levels (i.e. PE1/PE2/PCC/CPE/Final with break up.)"**

*(emphasis supplied)*

4. The appellant by its reply dated 22.2.2008 gave the following

responses/information in response to the 13 queries :

"1. Professionals, academicians and officials with relevant academic and practical experience and exposure in relevant and related fields.

**2&3. Evaluation of answer books is carried out in terms of the guidance including instructions provided by Head Examiners appointed for each subject(s). Subsequently, a review thereof is undertaken for the purpose of moderators.**

4. In terms of (1) above, a list of examiners is maintained under Regulation 42 of the Chartered Accountants Regulations, 1988. Based on the performance of the examiners, moderators are appointed from amongst the examiners.

**5. Solutions are given in confidence of examiners for the purpose of evaluation. Services of moderators are utilized in our context for paper setting.**

6. Rs.50/- per answer book is paid to the examiner while Rs.10,000/- is paid to the moderator for each paper.

7. The number of students who appeared in the last two years is as follow:

Month & Year	Number of students Appeared				
	PE-I	PE-II	PCC	CPE*	FINAL
Nov.,2005	16228	47522	Not held	Not held	28367
May,2006	32215	49505	Not held	Not held	26254
Nov.,2006	16089	49220	Not held	27629	24704
May,2007	6194	56624	51	42910	23490

\*CPE is read as Common Proficiency Test (CPT).

8. Since such a data is not compiled, it is regretted that the number of students who passed Final Examination at the 1<sup>st</sup> attempt cannot be made available.

9. The number of students who applied for the verification of answer books is as follows:-

Month & Year	Number of students who applied for verification from among the failed candidates*				
	PE-I	PE-II	PCC	CPE	FINAL
Nov.,2005	598	4150	Not held	Not held	4432
May,2006	1607	4581	Not held	Not held	4070
Nov.,2006	576	4894	Not held	205	3352
May,2007	204	5813	07	431	3310

\* This figure may contain some pass candidates also.

10. Each request for verification is processed in accordance with Regulation 39(4) of the Chartered Accountants Regulation, 1988 through well laid down scientific and meticulous procedure and a comprehensive checking is done before arriving at any conclusion. The process of verification starts after declaration of result and each request is processed on first come first served basis. The verification of the answer books, as requested, is done by two independent persons separately and then, reviewed by an Officer of the Institute and upon his satisfaction, the letter informing the outcome of the verification exercise is issued after the comprehensive check has been satisfactorily completed.

11. The number of students who were declared passed consequent to the verification of answer books is as given below:-

Month & Year	Number of students who applied for verification from among the failed candidates*				
	PE-I	PE-II	PCC	CPE	FINAL
Nov.,2005	14	40	Not held	Not held	37
May,2006	24	86	Not held	Not held	30
Nov.,2006	07	61	Not held	02	35
May,2007	03	56	Nil	Nil	27

\* This figure may contain some pass candidates also.

12. Independent persons such as retired Govt. teachers/Officers are assigned the task of verification of answer books work. A token

honorarium of Rs.6/- per candidate besides lump sum daily conveyance allowance is paid.

**13. The Examination Committee in terms of Regulation 39(2) has the authority to revise the marks based on the findings of the Head Examiners and incidental information in the knowledge of the Examination Committee, in its best wisdom. Since the details sought are highly confidential in nature and there is no larger public interest warrants disclosure, the same is denied under Section 8(1)(e) of the Right to Information Act, 2005.”**

*(emphasis supplied)*

5. Not being satisfied with the same, the respondent filed an appeal before the appellate authority. The appellate authority dismissed the appeal, by order dated 10.4.2008, concurring with the order of the Chief Public Information Officer of the appellant. The first respondent thereafter filed a second appeal before the Central Information Commission (for short ‘CIC’) in regard to queries (1) to (5) and (7) to (13). CIC by order dated 23.12.2008 rejected the appeal in regard to queries 3, 5 and 13 (as also Query 2) while directing the disclosure of information in regard to the other questions. We extract below the reasoning given by the CIC to refuse disclosure in regard to queries 3,5 and 13.

**“Re: Query No.3.**

**Decision:**

This request of the Appellant cannot be without seriously and perhaps irretrievably compromising the entire examination process. An instruction issued by a public authority – in this case, examination conducting authority – to its examiners is strictly confidential. There is an implied contract between the examiners and the examination conducting public

authority. It would be inappropriate to disclose this information. This item of information too, like the previous one, attracts section 8(1)(d) being the intellectual property of the public authority having been developed through careful empirical and intellectual study and analysis over the years. I, therefore, hold that this item of query attracts exemption under section 8(1)(e) as well as section 8(1)(d) of the RTI Act.

Re : Query No.5.

Decision:

Respondents have explained that what they provide to the examiners is “solutions” and not “model answers” as assumed by the appellant. For the aid of the students and examinees, “suggested answers” to the questions in an exam are brought out and sold in the market.

It would be wholly inappropriate to provide to the students the solutions given to the questions only for the exclusive use of the examiners and moderators. Given the confidentiality of interaction between the public authority holding the examinations and the examiners, the “solutions” qualifies to be items barred by section 8(1)(e) of the RTI Act. This item of information also attracts section 8(1)(d) being the exclusive intellectual property of the public authority. Respondents have rightly advised the appellant to secure the “suggested answers” to the questions from the open market, where these are available for sale.

Re : Query No.13.

Decision:

I find no infirmity in the reply furnished to the appellant. It is a categorical statement and must be accepted as such. Appellant seems to have certain presumptions and assumptions about what these replies should be. Respondents are not obliged to cater to that. It is therefore held that there shall be no further disclosure of information as regards this item of query.”

6. Feeling aggrieved by the rejection of information sought under items 3, 5 and 13, the first respondent approached the Bombay High Court by filing a writ petition. The High Court allowed the said petition by order

dated 30.11.2010 and directed the appellant to supply the information in regard to queries 3, 5 and 13, on the following reasoning :

“According to the Central Information Commission the solutions which have been supplied by the Board to the examiners are given in confidence and therefore, they are entitled to protection under Section 8(1)(e) of the RTI Act. Section 8(1)(e) does not protect confidential information and the claim of intellectual property has not made by the respondent No.2 anywhere. In the reply it is suggested that the suggested answers are published and sold in open market by the Board. Therefore, there can be no confidentiality about suggested answers. It is nowhere explained what is the difference between the suggested answers and the solutions. In our opinion, the orders of both Authorities in this respect also suffer from non-application of mind and therefore they are liable to be set aside. We find that the right given under the Right to Information Act has been dealt with by the Authorities under that Act in most casual manner without properly applying their minds to the material on record. In our opinion, therefore, information sought against queries Nos.3,5 and 13 could not have been denied by the Authorities to the petitioner. The principal defence of the respondent No.2 is that the information is confidential. Till the result of the examination is declared, the information sought by the petitioner has to be treated as confidential, but once the result is declared, in our opinion, that information cannot be treated as confidential. We were not shown anything which would even indicate that it is necessary to keep the information in relation to the examination which is over and the result is also declared as confidential.”

7. The said order of the High Court is challenged in this appeal by special leave. The appellant submitted that it conducts the following examinations: (i) the common proficiency test; (ii) professional education examination-II (till May 2010); (iii) professional competence examination; (iv) integrated professional competence examination; (v) final examination; and (vi) post qualification course examinations. A person is enrolled as a Chartered Accountant only after passing the common proficiency test,

professional educational examination-II/professional competence examination and final examination. The number of candidates who applied for various examinations conducted by ICAI were 2.03 lakhs in 2006, 4.16 lakhs in 2007; 3.97 lakh candidates in 2008 and 4.20 lakhs candidates in 2009. ICAI conducts the examinations in about 343 centres spread over 147 cities throughout the country and abroad. The appellant claims to follow the following elaborate system with established procedures in connection with its examinations, taking utmost care with regard to valuation of answer sheets and preparation of results and also in carrying out verification in case a student applies for the same in accordance with the following Regulations:

“Chartered Accountants with a standing of minimum of 5-7 years in the profession or teachers with a minimum experience of 5-7 years in university education system are empanelled as examiners of the Institute. The eligibility criteria to be empanelled as examiner for the examinations held in November, 2010 was that a chartered accountant with a minimum of 3 years’ standing, if in practice, or with a minimum of 10 years standing, if in service and University lecturers with a minimum of 5 years’ teaching experience at graduate/post graduate level in the relevant subjects with examiner ship experience of 5 years. The said criteria is continued to be followed. The bio-data of such persons who wish to be empanelled are scrutinized by the Director of Studies of the Institute in the first instance. Thereafter, Examination Committee considers each such application and takes a decision thereon. The examiners, based on their performance and experience with the system of the ICAI, are invited to take up other assignments of preparation of question paper, suggested solution, marking scheme, etc. and also appointed as Head Examiners to supervise the evaluation carried out by the different examiners in a particular subject from time to time.

A question paper and its solution are finalized by different experts in the concerned subject at 3 stages. In addition, the solution is also vetted by Director of Studies of the Institute after the examination is held and before the evaluation of the answer sheets are carried out by examiners. All

possible alternate solutions to a particular question as intimated by different examiners in a subject are also included in the solution. Each examiner in a particular subject is issued detailed instructions on marking scheme by the Head Examiners and general guidelines for evaluation issued by the ICAI. In addition, performance of each examiner, to ascertain whether the said examiner has complied with the instructions issued as also the general guidelines of the Institute, is assessed by the Head Examiner at two stages before the declaration of result. The said process has been evolved based on the experience gained in the last 60 years of conducting examinations and to ensure all possible uniformity in evaluation of answer sheets carried out by numerous examiners in a particular subject and to provide justice to the candidates.

The examination process/procedure/systems of the ICAI are well in place and have been evolved over several decades out of experience gained. The said process/procedure/systems have adequate checks to ensure fair results and also ensure that due justice is done to each candidate and no candidate ever suffers on any count.”

8. The appellant contends that the information sought as per queries (3) and (5) - that is, instructions and model answers, if any, issued to the examiners and moderators by ICAI cannot be disclosed as they are exempted from disclosure under clauses (d) and (e) of sub-section (1) of Section 8 of RTI Act. It is submitted that the request for information is also liable to be rejected under section 9 of the Act. They also contended that in regard to query No.(13), whatever information available had been furnished, apart from generally invoking section 8(1)(e) to claim exemption.

9. On the said contentions, the following questions arise for our consideration:

- (i) Whether the instructions and solutions to questions (if any) given by ICAI to examiners and moderators, are intellectual property of the ICAI, disclosure of which would harm the competitive position of third parties and therefore exempted under section 8(1)(d) of the RTI Act?
- (ii) Whether providing access to the information sought (that is instructions and solutions to questions issued by ICAI to examiners and moderators) would involve an infringement of the copyright and therefore the request for information is liable to be rejected under section 9 of the RTI Act?
- (iii) Whether the instructions and solutions to questions are information made available to examiners and moderators in their fiduciary capacity and therefore exempted under section 8(1)(e) of the RTI Act?
- (iv) Whether the High Court was justified in directing the appellant to furnish to the first respondent five items of information sought (in query No.13) relating to Regulation 39(2) of Chartered Accountants Regulations, 1988?

**Re: Question (i)**

10. The term ‘intellectual property’ refers to a category of intangible rights protecting commercially valuable products of human intellect comprising primarily trade mark, copyright and patent right, as also trade secret rights, publicity rights, moral rights and rights against unfair

competition (vide Black's Law Dictionary, 7<sup>th</sup> Edition, page 813). Question papers, instructions regarding evaluation and solutions to questions (or model answers) which are furnished to examiners and moderators in connection with evaluation of answer scripts, are literary works which are products of human intellect and therefore subject to a copyright. The paper setters and authors thereof (other than employees of ICAI), who are the first owners thereof are required to assign their copyright in regard to the question papers/solutions in favour of ICAI. We extract below the relevant standard communication sent by ICAI in that behalf:

“The Council is anxious to prevent the unauthorized circulation of Question Papers set for the Chartered Accountants Examinations as well as the solutions thereto. With that object in view, the Council proposes to reserve all copy-rights in the question papers as well as solutions. In order to enable the Council to retain the copy-rights, it has been suggested that it would be advisable to obtain a specific assignment of any copy-rights or rights of publication that you may be deemed to possess in the questions set by you for the Chartered Accountants Examinations and the solutions thereto in favour of the Council. I have no doubt that you will appreciate that this is merely a formality to obviate any misconception likely to arise later on.”

In response to it, the paper setters/authors give declarations of assignment, assigning their copyrights in the question papers and solutions prepared by them, in favour of ICAI. Insofar as instructions prepared by the employees of ICAI, the copyright vests in ICAI. Consequently, the question papers, solutions to questions and instructions are the intellectual properties of ICAI.

The appellant contended that if the question papers, instructions or solutions to questions/model answers are disclosed before the examination is held, it would harm the competitive position of all other candidates who participate in the examination and therefore the exemption under section 8(1)(d) is squarely attracted.

11. The first respondent does not dispute that the appellant is entitled to claim a copyright in regard to the question papers, solutions/model answers, instructions relating to evaluation and therefore the said material constitute intellectual property of the appellant. But he contends that the exemption under section 8(1)(d) will not be available if the information is merely an intellectual property. The exemption under section 8(1)(d) is available only in regard to such intellectual property, the disclosure of which would harm the competitive position of any third party. It was submitted that the appellant has not been able to demonstrate that the disclosure of the said intellectual property (instructions and solutions/model answers) would harm the competitive position of any third party.

12. Information can be sought under the RTI Act at different stages or different points of time. What is exempted from disclosure at one point of time may cease to be exempted at a later point of time, depending upon the

nature of exemption. For example, any information which is exempted from disclosure under section 8, is liable to be disclosed if the application is made in regard to the occurrence or event which took place or occurred or happened twenty years prior to the date of the request, vide section 8(3) of the RTI Act. In other words, information which was exempted from disclosure, if an application is made within twenty years of the occurrence, may not be exempted if the application is made after twenty years. Similarly, if information relating to the intellectual property, that is the question papers, solutions/model answers and instructions, in regard to any particular examination conducted by the appellant cannot be disclosed before the examination is held, as it would harm the competitive position of innumerable third parties who are taking the said examination. Therefore it is obvious that the appellant examining body is not liable to give to any citizen any information relating to question papers, solutions/model answers and instructions relating to a particular examination before the date of such examination. But the position will be different once the examination is held. Disclosure of the question papers, model answers and instructions in regard to any particular examination, would not harm the competitive position of any third party once the examination is held. In fact the question papers are disclosed to everyone at the time of examination. The appellant

voluntarily publishes the “suggested answers” in regard to the question papers in the form of a book for sale every year, after the examination. Therefore section 8(1)(d) of the RTI Act does not bar or prohibit the disclosure of question papers, model answers (solutions to questions) and instructions if any given to the examiners and moderators after the examination and after the evaluation of answerscripts is completed, as at that stage they will not harm the competitive position of any third party. We therefore reject the contention of the appellant that if an information is exempt at any given point of time, it continues to be exempt for all time to come.

**Re : Question (ii)**

13. Section 9 of the RTI Act provides that a Central or State Public Information Officer may reject a request for information where providing access to such information would involve an infringement of copyright subsisting in a person other than the State. The word ‘State’ used in section 9 of RTI Act refers to the Central or State Government, Parliament or Legislature of a State, or any local or other authorities as described under Article 12 of the Constitution. The reason for using the word ‘State’ and not ‘public authority’ in section 9 of RTI Act is apparently because the

definition of ‘public authority’ in the Act is wider than the definition of ‘State’ in Article 12, and includes even non-government organizations financed directly or indirectly by funds provided by the appropriate government. Be that as it may. An application for information would be rejected under section 9 of RTI Act, only if information sought involves an infringement of copyright subsisting in a *person other than the State*. ICAI being a statutory body created by the Chartered Accountants Act, 1948 is ‘State’. The information sought is a material in which ICAI claims a copyright. It is not the case of ICAI that anyone else has a copyright in such material. In fact it has specifically pleaded that even if the question papers, solutions/model answers, or other instructions are prepared by any third party for ICAI, the copyright therein is assigned in favour of ICAI. Providing access to information in respect of which ICAI holds a copyright, does not involve infringement of a copyright subsisting in a *person other than the State*. Therefore ICAI is not entitled to claim protection against disclosure under section 9 of the RTI Act.

14. There is yet another reason why section 9 of RTI Act will be inapplicable. The words ‘infringement of copyright’ have a specific connotation. Section 51 of the Copyright Act, 1957 provides when a

copyright in a work shall be deemed to be infringed. Section 52 of the Act enumerates the acts which are not infringement of a copyright. A combined reading of sections 51 and 52(1)(a) of Copyright Act shows that furnishing of information by an examining body, in response to a query under the RTI Act may not be termed as an infringement of copyright. Be that as it may.

### **Re : Question (iii)**

15. We will now consider the third contention of ICAI that the information sought being an *information available to a person in his fiduciary relationship*, is exempted under section 8(1)(e) of the RTI Act. This Court in *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors.* [2011 (8) SCALE 645] considered the meaning of the words *information available to a person in his fiduciary capacity* and observed thus:

“But the words ‘information available to a person in his fiduciary relationship’ are used in section 8(1)(e) of RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary – a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically/infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a share-holder, an executor with reference to a legatee, a receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the

employee, and an employee with reference to business dealings/transaction of the employer.”

16. The instructions and ‘solutions to questions’ issued to the examiners and moderators in connection with evaluation of answer scripts, as noticed above, is the intellectual property of ICAI. These are made available by ICAI to the examiners and moderators to enable them to evaluate the answer scripts correctly and effectively, in a proper manner, to achieve uniformity and consistency in evaluation, as a large number of evaluators and moderators are engaged by ICAI in connection with the evaluation. The instructions and solutions to questions are given by the ICAI to the examiners and moderators to be held in confidence. The examiners and moderators are required to maintain absolute secrecy and cannot disclose the answer scripts, the evaluation of answer scripts, the instructions of ICAI and the solutions to questions made available by ICAI, to anyone. The examiners and moderators are in the position of agents and ICAI is in the position of principal in regard to such information which ICAI gives to the examiners and moderators to achieve uniformity, consistency and exactness of evaluation of the answer scripts. When anything is given and taken in trust or in confidence, requiring or expecting secrecy and confidentiality to be

maintained in that behalf, it is held by the recipient in a *fiduciary relationship*.

17. It should be noted that section 8(1)(e) uses the words “*information available to a person in his fiduciary relationship*”. Significantly section 8(1)(e) does not use the words “*information available to a public authority in its fiduciary relationship*”. The use of the words “*person*” shows that the holder of the information in a fiduciary relationship need not only be a ‘public authority’ as the word ‘person’ is of much wider import than the word ‘public authority’. Therefore the exemption under section 8(1)(e) is available not only in regard to information that is held by a public authority (in this case the examining body) in a fiduciary capacity, but also to any information that is given or made available by a public authority to anyone else for being held in a fiduciary relationship. In other words, anything given and taken in confidence expecting confidentiality to be maintained will be information available to a person in fiduciary relationship. As a consequence, it has to be held that the instructions and solutions to questions communicated by the examining body to the examiners, head-examiners and moderators, are information available to such persons in their fiduciary relationship and therefore exempted from disclosure under section 8(1)(d) of RTI Act.

18. The information to which RTI Act applies falls into two categories, namely, (i) information which promotes *transparency and accountability* in the working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in clauses (b) and (c) of section 4(1) of RTI Act; and (ii) other information held by public authorities not falling under section 4(1)(b) and (c) of RTI Act. In regard to information falling under the first category, the public authorities owe a duty to disseminate the information widely *suo moto* to the public so as to make it easily accessible to the public. In regard to information enumerated or required to be enumerated under section 4(1)(b) and (c) of RTI Act, necessarily and naturally, the competent authorities under the RTI Act, will have to act in a pro-active manner so as to ensure accountability and ensure that the fight against corruption goes on relentlessly. But in regard to other information which do not fall under Section 4(1)(b) and (c) of the Act, there is a need to proceed with circumspection as it is necessary to find out whether they are exempted from disclosure. One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources,

preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of RTI Act is to harmonize the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. 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 fulfilment and preservation of democratic ideals. Therefore in dealing with information not falling under section 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests.

19. Among the ten categories of information which are exempted from disclosure under section 8 of RTI Act, six categories which are described in clauses (a), (b), (c), (f), (g) and (h) carry absolute exemption. Information enumerated in clauses (d), (e) and (j) on the other hand get only conditional exemption, that is the exemption is subject to the overriding power of the competent authority under the RTI Act in larger public interest, to direct disclosure of such information. The information referred to in clause (i) relates to an exemption for a specific period, with an obligation to make the said information public after such period. The information relating to intellectual property and the information available to persons in their fiduciary relationship, referred to in clauses (d) and (e) of section 8(1) do not enjoy absolute exemption. Though exempted, if the competent authority under the Act is satisfied that larger public interest warrants disclosure of such information, such information will have to be disclosed. It is needless to say that the competent authority will have to record reasons for holding that an exempted information should be disclosed in larger public interest.

20. In this case the Chief Information Commissioner rightly held that the information sought under queries (3) and (5) were exempted under section 8(1)(e) and that there was no larger public interest requiring denial of the statutory exemption regarding such information. The High Court fell into an

error in holding that the information sought under queries (3) and (5) was not exempted.

**Re : Question (iv)**

21. Query (13) of the first respondent required the appellant to disclose the following information: (i) The number of times ICAI had revised the marks of any candidate or any class of candidates under Regulation 39(2); (ii) the criteria used for exercising such discretion for revising the marks; (iii) the quantum of such revisions; (iv) the authority who decides the exercise of discretion to make such revision; and (v) the number of students (with particulars of quantum of revision) affected by such revision held in the last five examinations at all levels.

22. Regulation 39(2) of the Chartered Accountants Regulations, 1988 provides that the council may in its discretion, revise the marks obtained by all candidates or a section of candidates in a particular paper or papers or in the aggregate, in such manner as may be necessary for maintaining its standards of pass percentage provided in the Regulations. Regulation 39(2) thus provides for what is known as ‘moderation’, which is a necessary concomitant of evaluation process of answer scripts where a large number of examiners are engaged to evaluate a large number of answer scripts. This

Court explained the standard process of moderation in *Sanjay Singh v. U.P. Public Service Commission - 2007* (3) SCC 720 thus:

"When a large number of candidates appear for an examination, it is necessary to have uniformity and consistency in valuation of the answer-scripts. Where the number of candidates taking the examination are limited and only one examiner (preferably the paper-setter himself) evaluates the answer-scripts, it is to be assumed that there will be uniformity in the valuation. But where a large number of candidates take the examination, it will not be possible to get all the answer-scripts evaluated by the same examiner. It, therefore, becomes necessary to distribute the answer-scripts among several examiners for valuation with the paper-setter (or other senior person) acting as the Head Examiner. When more than one examiner evaluate the answer-scripts relating to a subject, the subjectivity of the respective examiner will creep into the marks awarded by him to the answer-scripts allotted to him for valuation. Each examiner will apply his own yardstick to assess the answer-scripts. Inevitably therefore, even when experienced examiners receive equal batches of answer scripts, there is difference in average marks and the range of marks awarded, thereby affecting the merit of individual candidates. This apart, there is 'Hawk-Dove' effect. Some examiners are liberal in valuation and tend to award more marks. Some examiners are strict and tend to give less marks. Some may be moderate and balanced in awarding marks. Even among those who are liberal or those who are strict, there may be variance in the degree of strictness or liberality. This means that if the same answer-script is given to different examiners, there is all likelihood of different marks being assigned. If a very well written answer-script goes to a strict examiner and a mediocre answer-script goes to a liberal examiner, the mediocre answer-script may be awarded more marks than the excellent answer-script. In other words, there is 'reduced valuation' by a strict examiner and 'enhanced valuation' by a liberal examiner. This is known as 'examiner variability' or 'Hawk-Dove effect'. Therefore, there is a need to evolve a procedure to ensure uniformity inter se the Examiners so that the effect of 'examiner subjectivity' or 'examiner variability' is minimised. The procedure adopted to reduce examiner subjectivity or variability is known as moderation. The classic method of moderation is as follows:

xxx

xxx

xxx

(ii) To achieve uniformity in valuation, where more than one examiner is involved, a meeting of the Head Examiner with all the examiners is held soon after the examination. They discuss thoroughly the question paper, the possible answers and the weightage to be given to various aspects of

the answers. They also carry out a sample valuation in the light of their discussions. The sample valuation of scripts by each of them is reviewed by the Head Examiner and variations in assigning marks are further discussed. After such discussions, a consensus is arrived at in regard to the norms of valuation to be adopted. On that basis, the examiners are required to complete the valuation of answer scripts. But this by itself, does not bring about uniformity of assessment inter se the examiners. In spite of the norms agreed, many examiners tend to deviate from the expected or agreed norms, as their caution is overtaken by their propensity for strictness or liberality or eroticism or carelessness during the course of valuation. Therefore, certain further corrective steps become necessary.

(iii) After the valuation is completed by the examiners, the Head Examiner conducts a random sample survey of the corrected answer scripts to verify whether the norms evolved in the meetings of examiner have actually been followed by the examiners.....

(iv) After ascertaining or assessing the standards adopted by each examiner, the Head Examiner may confirm the award of marks without any change if the examiner has followed the agreed norms, or suggest upward or downward moderation, the quantum of moderation varying according to the degree of liberality or strictness in marking. In regard to the top level answer books revalued by the Head Examiner, his award of marks is accepted as final. As regards the other answer books below the top level, to achieve maximum measure of uniformity inter se the examiners, the awards are moderated as per the recommendations made by the Head Examiner.

(v) If in the opinion of the Head Examiner there has been erratic or careless marking by any examiner, for which it is not feasible to have any standard moderation, the answer scripts valued by such examiner are revalued either by the Head Examiner or any other Examiner who is found to have followed the agreed norms.

(vi) Where the number of candidates is very large and the examiners are numerous, it may be difficult for one Head Examiner to assess the work of all the Examiners. In such a situation, one more level of Examiners is introduced. For every ten or twenty examiners, there will be a Head Examiner who checks the random samples as above. The work of the Head Examiners, in turn, is checked by a Chief Examiner to ensure proper results.

The above procedure of 'moderation' would bring in considerable uniformity and consistency. It should be noted that absolute uniformity or consistency in valuation is impossible to achieve where there are several examiners and the effort is only to achieve maximum uniformity."

Each examining body will have its own standards of ‘moderation’, drawn up with reference to its own experiences and the nature and scope of the examinations conducted by it. ICAI shall have to disclose the said standards of moderation followed by it, if it has drawn up the same, in response to part (ii) of first respondent’s query (13).

23. In its communication dated 22.2.2008, ICAI informed the first respondent that under Regulation 39(2), its Examining Committee had the authority to revise the marks based on the findings of the Head Examiners and any incidental information in its knowledge. This answers part (iv) of query (13) as to the authority which decides the exercise of the discretion to make the revision under Regulation 39(2).

24. In regard to parts (i), (iii) and (v) of query (13), ICAI submits that such data is not maintained. Reliance is placed upon the following observations of this Court in *Aditya Bandopadhyay*:

“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 authority has any information in the form of data or analysed data, or abstracts, or statistics, an 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.”

As the information sought under parts (i), (iii) and (v) of query (13) are not maintained and is not available in the form of data with the appellant in its records, ICAI is not bound to furnish the same.

### **General submissions of ICAI**

25. The learned counsel of ICAI submitted that there are several hundred examining bodies in the country. With the aspirations of young citizens to secure seats in institutions of higher learning or to qualify for certain professions or to secure jobs, more and more persons participate in more and more examinations. It is quite common for an examining body to conduct examinations for lakhs of candidates that too more than once per year. Conducting examinations involving preparing the question papers, conducting the examinations at various centres all over the country, getting the answer scripts evaluated and declaring results, is an immense task for examining bodies, to be completed within fixed time schedules. If the examining bodies are required to frequently furnish various kinds of information as sought in this case to several applicants, it will add an enormous work load and their existing staff will not be able to cope up with

the additional work involved in furnishing information under the RTI Act. It was submitted by ICAI that it conducts several examinations every year where more than four lakhs candidates participate; that out of them, about 15-16% are successful, which means that more than three and half lakhs of candidates are unsuccessful; that if even one percent at those unsuccessful candidates feel dissatisfied with the results and seek all types of unrelated information, the working of ICAI will come to a standstill. It was submitted that for every meaningful user of RTI Act, there are several abusers who will attempt to disrupt the functioning of the examining bodies by seeking huge quantity of information. ICAI submits that the application by the first respondent is a classic case of improper use of the Act, where a candidate who has failed in an examination and who does not even choose to take the subsequent examination has been engaging ICAI in a prolonged litigation by seeking a bundle of information none of which is relevant to decide whether his answer script was properly evaluated, nor have any bearing on accountability or reducing corruption. ICAI submits that there should be an effective control and screening of applications for information by the competent authorities under the Act. We do not agree that first respondent had indulged in improper use of RTI Act. His application is intended to bring about transparency and accountability in the functioning of ICAI. How

far he is entitled to the information is a different issue. Examining bodies like ICAI should change their old mindsets and tune them to the new regime of disclosure of maximum information. Public authorities should realize that in an era of transparency, previous practices of unwarranted secrecy have no longer a place. Accountability and prevention of corruption is possible only through transparency. Attaining transparency no doubt would involve additional work with reference to maintaining records and furnishing information. Parliament has enacted the RTI Act providing access to information, after great debate and deliberations by the Civil Society and the Parliament. In its wisdom, the Parliament has chosen to exempt only certain categories of information from disclosure and certain organizations from the applicability of the Act. As the examining bodies have not been exempted, and as the examination processes of examining bodies have not been exempted, the examining bodies will have to gear themselves to comply with the provisions of the RTI Act. Additional workload is not a defence. If there are practical insurmountable difficulties, it is open to the examining bodies to bring them to the notice of the government for consideration so that any changes to the Act can be deliberated upon. Be that as it may.

26. We however agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and

to reduce 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 government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.

27. In view of the above, this appeal is allowed in part and the order of the High Court is set aside and the order of the CIC is restored, subject to one modification in regard to query (13): *ICAI to disclose to the first respondent, the standard criteria, if any, relating to moderation, employed by it, for the purpose of making revisions under Regulation 39(2).*

## JUDGMENT

.....J.  
(R V Raveendran)

New Delhi; .....J.  
September 2, 2011. (A K Patnaik)

**REPORTABLE**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NOs.10787-10788 OF 2011**

(Arising out of S.L.P(C) No.32768-32769/2010)

Chief Information Commr. and Another                   ...Appellant(s)

- *Versus* -

State of Manipur and Another                   ...Respondent(s)

**JUDGMENT**

**GANGULY, J.**

1. Leave granted.
2. These appeals have been filed by the Chief Information Commissioner, Manipur and one Mr. Wahangbam Joykumar impugning the judgment dated 29<sup>th</sup> July 2010 passed by the High Court in Writ Appeal Nos. 11 and 12 of 2008 in connection with two Writ Petition No.733 of 2007 and Writ Petition

No. 478 of 2007. The material facts giving rise to the controversy in this case can be summarized as follows:

3. Appellant No.2 filed an application dated 9<sup>th</sup> February, 2007 under Section 6 of the Right to Information Act ("Act") for obtaining information from the State Information Officer relating to magisterial enquiries initiated by the Govt. of Manipur from 1980-2006. As the application under Section 6 received no response, appellant No. 2 filed a complaint under Section 18 of the Act before the State Chief Information Commissioner, who by an order dated 30<sup>th</sup> May, 2007 directed respondent No. 2 to furnish the information within 15 days. The said direction was challenged by the State by filing a Writ Petition.
4. The second complaint dated 19<sup>th</sup> May, 2007 was filed by the appellant No. 2 on 19<sup>th</sup> May, 2007 for obtaining similar information for the period between 1980 - March 2007. As no response was

received this time also, appellant No. 2 again filed a complaint under Section 18 and the same was disposed of by an order dated 14<sup>th</sup> August, 2007 directing disclosure of the information sought for within 15 days. That order was also challenged by way of a Writ Petition by the respondents.

5. Both the Writ Petitions were heard together and were dismissed by a common order dated 16<sup>th</sup> November, 2007 by learned Single Judge of the High Court by *inter alia* upholding the order of the Commissioner. The Writ Appeal came to be filed against both the judgments and were disposed of by the impugned order dated 29<sup>th</sup> July 2010. By the impugned order, the High Court held that under Section 18 of the Act the Commissioner has no power to direct the respondent to furnish the information and further held that such a power has already been conferred under Section 19(8) of the Act on the basis of an exercise under Section 19 only. The Division Bench further came to hold that the direction to furnish information is without

jurisdiction and directed the Commissioner to dispose of the complaints in accordance with law.

6. Before dealing with controversy in this case, let us consider the object and purpose of the Act and the evolving mosaic of jurisprudential thinking which virtually led to its enactment in 2005.

7. As its preamble shows the Act was enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic. It is clear that the Parliament enacted the said Act keeping in mind the rights of an informed citizenry in which transparency of information is vital in curbing corruption and making the Government and its instrumentalities accountable. The Act is meant to harmonise the conflicting interests of Government to preserve the confidentiality of sensitive information with the right of citizens to know the functioning of the governmental process in such a

way as to preserve the paramountcy of the democratic ideal.

8. The preamble would obviously show that the Act is based on the concept of an open society.
9. On the emerging concept of an 'open Government', about more than three decades ago, the Constitution Bench of this Court in The State of Uttar Pradesh v. Raj Narain & others - AIR 1975 SC 865 speaking through Justice Mathew held:

"...The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. ... To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired."

(para 74, page 884)

10. Another Constitution Bench in S.P.Gupta & Ors. v.

President of India and Ors. (AIR 1982 SC 149)

relying on the ratio in **Raj Narain** (supra) held:

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

(para 66, page 234)

11. It is, therefore, clear from the ratio in the above decisions of the Constitution Bench of this Court that the right to information, which is basically founded on the right to know, is an intrinsic part of the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution. The said Act was,

thus, enacted to consolidate the fundamental right of free speech.

12. In Secretary, Ministry of Information &

Broadcasting, Govt. of India and Ors. v. Cricket Association of Bengal and Ors. - (1995) 2 SCC 161,

this Court also held that right to acquire information and to disseminate it is an intrinsic component of freedom of speech and expression.

(See para 43 page 213 of the report).

13. Again in Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. & others - (1988) 4 SCC 592 this Court

recognised that the Right to Information is a fundamental right under Article 21 of the Constitution.

14. This Court speaking through Justice Sabyasachi Mukharji, as His Lordship then was, held:

"...We must remember that the people at large have a right to know in order to be able to take part in a participatory development in

the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform."

(para 34, page 613 of the report)

15. In **People's Union for Civil Liberties and Anr. v. Union of India and Ors.** - (2004) 2 SCC 476 this

Court reiterated, relying on the aforesaid judgments, that right to information is a facet of the right to freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India and also held that right to information is definitely a fundamental right. In coming to this conclusion, this Court traced the origin of the said right from the Universal Declaration of Human Rights, 1948 and also Article 19 of the International Covenant on Civil and Political Rights, which was ratified by India in 1978. This Court also found a similar enunciation of principle in the Declaration of European Convention for the Protection of Human Rights

(1950) and found that the spirit of the Universal Declaration of 1948 is echoed in Article 19(1)(a) of the Constitution. (See paras 45, 46 & 47 at page 495 of the report)

16. The exercise of judicial discretion in favour of free speech is not only peculiar to our jurisprudence, the same is a part of the jurisprudence in all the countries which are governed by rule of law with an independent judiciary. In this connection, if we may quote what Lord Acton said in one of his speeches:

"Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity"

17. It is, therefore, clear that a society which adopts openness as a value of overarching significance not only permits its citizens a wide range of freedom of expression, it also goes

further in actually opening up the deliberative process of the Government itself to the sunlight of public scrutiny.

18. Justice Frankfurter also opined:

"The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. "We live by symbols." The flag is the symbol of our national unity, transcending all internal differences, however large, within the framework of the Constitution."

19. Actually the concept of active liberty, which is structured on free speech, means sharing of a nation's sovereign authority among its people. Sovereignty involves the legitimacy of a governmental action. And a sharing of sovereign authority suggests intimate correlation between the functioning of the Government and common man's knowledge of such functioning.

(*Active Liberty by Stephen Breyer - page 15*)

20. However, while considering the width and sweep of this right as well as its fundamental importance in a democratic republic, this Court is also conscious that such a right is subject to reasonable restrictions under Article 19(2) of the Constitution.

21. Thus note of caution has been sounded by this Court in Dinesh Trivedi, M.P. & Others v. Union of India & others - (1997) 4 SCC 306 where it has been held as follows:

"...Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realize that undue popular pressure brought to bear on decision makers in Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest."

(para 19, page 314)

22. The Act has six Chapters and two Schedules. Right to Information has been defined under Section 2(j) of the Act to mean as follows:

"(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

## JUDGMENT

23. Right to Information has also been statutorily recognised under Section 3 of the Act as follows:

**"3. Right to information.-** Subject to the provisions of this Act, all citizens shall have the right to information."

24. Section 6 in this connection is very crucial. Under Section 6 a person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed. Such request may be made to the Central Public Information Officer or State Public Information Officer, as the case may be, or to the Central Assistant Public Information Officer or State Assistant Public Information Officer. In making the said request the applicant is not required to give any reason for obtaining the information or any other personal details excepting those which are necessary for contacting him.

25. It is quite interesting to note that even though under Section 3 of the Act right of all citizens, to receive information, is statutorily recognised but Section 6 gives the said right to any person.

Therefore, Section 6, in a sense, is wider in its ambit than Section 3.

26. After such a request for information is made, the primary obligation of consideration of the request is of the Public Information Officer as provided under Section 7. Such request has to be disposed of as expeditiously as possible. In any case within 30 days from the date of receipt of the request either the information shall be provided or the same may be rejected for any of the reasons provided under Sections 8 and 9. The proviso to Section 7 makes it clear that when it concerns the life or liberty of a person, the information shall be provided within forty-eight hours of the receipt of the request. Sub-section (2) of Section 7 makes it clear that if the Central Public Information Officer or the State Public Information Officer, as the case may be, fails to give the information, specified in sub-section (1), within a period of 30 days it shall be deemed that such request has been rejected. Sub-section

(3) of Section 7 provides for payment of further fees representing the cost of information to be paid by the person concerned. There are various sub-sections in Section 7 with which we are not concerned. However, Sub-section (8) of Section 7 is important in connection with the present case.

Sub-section (8) of Section 7 provides:

"(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall communicate to the person making the request,-

- (i) The reasons for such rejection;
- (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the particulars of the appellate authority.

27. Sections 8 and 9 enumerate the grounds of exemption from disclosure of information and also grounds for rejection of request in respect of some items of information respectively. Section 11 deals with third party information with which we are not concerned in this case.

28. The question which falls for decision in this case is the jurisdiction, if any, of the Information Commissioner under Section 18 in directing disclosure of information. In the impugned judgment of the Division Bench, the High Court held that the Chief Information Commissioner acted beyond his jurisdiction by passing the impugned decision dated 30<sup>th</sup> May, 2007 and 14<sup>th</sup> August, 2007. The Division Bench also held that under Section 18 of the Act the State Information Commissioner is not empowered to pass a direction to the State Information Officer for furnishing the information sought for by the complainant.

29. If we look at Section 18 of the Act it appears that the powers under Section 18 have been categorized under clauses (a) to (f) of Section 18(1). Under clauses (a) to (f) of Section 18(1) of the Act the Central Information Commission or the State Information Commission, as the case may be, may receive and inquire into complaint of any person who has been refused access to any

information requested under this Act [Section 18(1)(b)] or has been given incomplete, misleading or false information under the Act [Section 18(1)(e)] or has not been given a response to a request for information or access to information within time limits specified under the Act [Section 18(1)(c)]. We are not concerned with provision of Section 18(1)(a) or 18(1)(d) of the Act. Here we are concerned with the residuary provision under Section 18(1)(f) of the Act. Under Section 18(3) of the Act the Central Information Commission or State Information Commission, as the case may be, while inquiring into any matter in this Section has the same powers as are vested in a civil court while trying a suit in respect of certain matters specified in Section 18(3)(a) to (f). Under Section 18(4) which is a non-obstante clause, the Central Information Commission or the State Information Commission, as the case may be, may examine any record to which the Act applies and which is under the control of the public authority and such records cannot be

withheld from it on any ground.

30. It has been contended before us by the respondent that under Section 18 of the Act the Central Information Commission or the State Information Commission has no power to provide access to the information which has been requested for by any person but which has been denied to him. The only order which can be passed by the Central Information Commission or the State Information Commission, as the case may be, under Section 18 is an order of penalty provided under Section 20. However, before such order is passed the Commissioner must be satisfied that the conduct of the Information Officer was not bona fide.

31. We uphold the said contention and do not find any error in the impugned judgment of the High court whereby it has been held that the Commissioner while entertaining a complaint under Section 18 of the said Act has no jurisdiction to pass an order providing for access to the information.

32. In the facts of the case, the appellant after having applied for information under Section 6 and then not having received any reply thereto, it must be deemed that he has been refused the information. The said situation is covered by Section 7 of the Act. The remedy for such a person who has been refused the information is provided under Section 19 of the Act. A reading of Section 19(1) of the Act makes it clear. Section 19(1) of the Act is set out below:-

"19. Appeal. - (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

33. A second appeal is also provided under sub-section (3) of Section 19. Section 19(3) is also set out below:-

"(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

34. Section 19(4) deals with procedure relating to information of a third party. Sections 19(5) and 19(6) are procedural in nature. Under Section 19(8) the power of the Information Commission has been specifically mentioned. Those powers are as follows:-

"19(8). In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,--

- (a) require the public authority to take any such steps as may be necessary to secure

compliance with the provisions of this Act,  
including--

- (i) by providing access to information, if so requested, in a particular form;
  - (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
  - (iii) by publishing certain information or categories of information;
  - (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
  - (v) by enhancing the provision of training on the right to information for its officials;
  - (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) impose any of the penalties provided under this Act;
- (d) reject the application."

35. The procedure for hearing the appeals have been framed in exercise of power under clauses (e) and (f) of sub-section (2) of Section 27 of the Act. They are called the Central Information Commission (Appeal Procedure) Rules, 2005. The procedure of

deciding the appeals is laid down in Rule 5 of the said Rules.

Therefore, the procedure contemplated under Section 18 and Section 19 of the said Act is substantially different. The nature of the power under Section 18 is supervisory in character whereas the procedure under Section 19 is an appellate procedure and a person who is aggrieved by refusal in receiving the information which he has sought for can only seek redress in the manner provided in the statute, namely, by following the procedure under Section 19. This Court is, therefore, of the opinion that Section 7 read with Section 19 provides a complete statutory mechanism to a person who is aggrieved by refusal to receive information. Such person has to get the information by following the aforesaid statutory provisions. The contention of the appellant that information can be accessed through Section 18 is contrary to the express provision of Section 19 of the Act. It is well known when a procedure is laid down statutorily and there is no challenge to the

said statutory procedure the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. It is a time honoured principle as early as from the decision in Taylor v. Taylor [(1876) 1 Ch. D. 426] that where statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden. This principle has been followed by the Judicial Committee of the Privy Council in Nazir Ahmad v. Emperor [AIR 1936 PC 253(1)] and also by this Court in Deep Chand v. State of Rajasthan - [AIR 1961 SC 1527, (para 9)] and also in State of U.P. v. Singhara Singh reported in AIR 1964 SC 358 (para 8).

36. This Court accepts the argument of the appellant that any other construction would render the provision of Section 19(8) of the Act totally redundant. It is one of the well known canons of interpretation that no statute should be

interpreted in such a manner as to render a part of it redundant or surplusage.

37. We are of the view that Sections 18 and 19 of the Act serve two different purposes and lay down two different procedures and they provide two different remedies. One cannot be a substitute for the other.

38. It may be that sometime in statute words are used by way of abundant caution. The same is not the position here. Here a completely different procedure has been enacted under Section 19. If the interpretation advanced by the learned counsel for the respondent is accepted in that case Section 19 will become unworkable and especially Section 19(8) will be rendered a surplusage. Such an interpretation is totally opposed to the fundamental canons of construction. Reference in this connection may be made to the decision of this Court in Aswini Kumar Ghose and another v. Arabinda Bose and another.

Arabinda Bose and another - AIR 1952 SC 369. At

page 377 of the report Chief Justice Patanjali

Sastri had laid down:

"It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute".

39. Same was the opinion of Justice Jagannadhadas in

Rao Shiv Bahadur Singh and another v. State of U.P. - AIR 1953 SC 394 at page 397:

"It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application".

40. Justice Das Gupta in J.K. Cotton Spinning &

Weaving Mills Co. Ltd. v. State of Uttar Pradesh

and others - AIR 1961 SC 1170 at page 1174

virtually reiterated the same principles in the following words:

"the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect".-

41. It is well-known that the legislature does not waste words or say anything in vain or for no purpose. Thus a construction which leads to redundancy of a portion of the statute cannot be accepted in the absence of compelling reasons. In the instant case there is no compelling reason to accept the construction put forward by the respondents.

42. Apart from that the procedure under Section 19 of the Act, when compared to Section 18, has several safeguards for protecting the interest of the person who has been refused the information he has sought. Section 19(5), in this connection, may be referred to. Section 19(5) puts the onus to justify the denial of request on the information officer. Therefore, it is for the officer to justify the denial. There is no such safeguard in Section 18. Apart from that the procedure under Section 19 is a time bound one but no limit is

prescribed under Section 18. So out of the two procedures, between Section 18 and Section 19, the one under Section 19 is more beneficial to a person who has been denied access to information.

43. There is another aspect also. The procedure under Section 19 is an appellate procedure. A right of appeal is always a creature of statute. A right of appeal is a right of entering a superior forum for invoking its aid and interposition to correct errors of the inferior forum. It is a very valuable right. Therefore, when the statute confers such a right of appeal that must be exercised by a person who is aggrieved by reason of refusal to be furnished with the information. In that view of the matter this Court does not find any error in the impugned judgment of the Division Bench. In the penultimate paragraph the Division Bench has directed the Information Commissioner, Manipur to dispose of the complaints of the respondent no.2 in accordance with law as expeditiously as possible.

44. This Court, therefore, directs the appellants to file appeals under Section 19 of the Act in respect of two requests by them for obtaining information vide applications dated 9.2.2007 and 19.5.2007 within a period of four weeks from today. If such an appeal is filed following the statutory procedure by the appellants, the same should be considered on merits by the appellate authority without insisting on the period of limitation.

45. However, one aspect is still required to be clarified. This Court makes it clear that the notification dated 15.10.2005 which has been brought on record by the learned counsel for the respondent vide I.A. No.1 of 2011 has been perused by the Court. By virtue of the said notification issued under Section 24 of the Act, the Government of Manipur has notified the exemption of certain organizations of the State Government from the purview of the said Act. This Court makes it clear

that those notifications cannot apply retrospectively. Apart from that the same exemption does not cover allegations of corruption and human right violations. The right of the respondents to get the information in question must be decided on the basis of the law as it stood on the date when the request was made. Such right cannot be defeated on the basis of a notification if issued subsequently to time when the controversy about the right to get information is pending before the Court. Section 24 of the Act does not have any retrospective operation. Therefore, no notification issued in exercise of the power under Section 24 can be given retrospective effect and especially so in view of the object and purpose of the Act which has an inherent human right content.

46. The appeals which the respondents have been given liberty to file, if filed within the time specified, will be decided in accordance with Section 19 of the Act and as early as possible,

preferably within three months of their filing.

With these directions both the appeals are disposed of.

47. There will be no order as to costs.

J.  
(ASOK KUMAR GANGULY)

J.  
(GYAN SUDHA MISRA)

New Delhi

December 12, 2011



JUDGMENT

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO. 210 of 2012**

---

**Namit Sharma**

**... Petitioner**

**Versus**

**Union of India**

**... Respondent**

**JUDGMENT**

**Swatanter Kumar, J.**

1. The value of any freedom is determined by the extent to which the citizens are able to enjoy such freedom. Ours is a constitutional democracy and it is axiomatic that citizens have the right to know about the affairs of the Government which, having been elected by them, seeks to formulate some policies of governance aimed at their welfare. However, like any other freedom, this freedom also has limitations. It is a settled proposition that the Right to Freedom of Speech and Expression enshrined under Article 19(1)(a) of the Constitution of India (for

short ‘the Constitution’) encompasses the right to impart and receive information. The Right to Information has been stated to be one of the important facets of proper governance. With the passage of time, this concept has not only developed in the field of law, but also has attained new dimensions in its application. This court while highlighting the need for the society and its entitlement to know has observed that public interest is better served by effective application of the right to information. This freedom has been accepted in one form or the other in various parts of the world. This Court, in absence of any statutory law, in the case of *Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. Cricket Association of Bengal & Anr.* [(1995) 2 SCC 161] held as under :

“The democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchy organizations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 ½

per cent of the population has an access to the print media which is not subject to pre-censorship.”

2. The legal principle of ‘A man’s house is his castle. The midnight knock by the police bully breaking into the peace of the citizen’s home is outrageous in law’, stated by Edward Coke has been explained by Justice Douglas as follows:

“The free State offers what a police state denies – the privacy of the home, the dignity and peace of mind of the individual. That precious right to be left alone is violated once the police enter our conversations.”

3. The States which are governed by Policing and have a policy of greater restriction and control obviously restrict the enjoyment of such freedoms. That, however, does not necessarily imply that this freedom is restriction-free in the States where democratic governance prevails. Article 19(1)(a) of the Constitution itself is controlled by the reasonable restrictions imposed by the State by enacting various laws from time to time.

4. The petitioner, a public spirited citizen, has approached this Court under Article 32 of the Constitution stating that though the Right to Information Act, 2005 (for short ‘Act of 2005’) is an important tool in the hands of any citizen to keep checks and

balances on the working of the public servants, yet the criterion for appointment of the persons who are to adjudicate the disputes under this Act are too vague, general, *ultra vires* the Constitution and contrary to the established principles of law laid down by a plethora of judgments of this Court. It is the stand of the petitioner that the persons who are appointed to discharge judicial or quasi-judicial functions or powers under the Act of 2005 ought to have a judicial approach, experience, knowledge and expertise. Limitation has to be read into the competence of the legislature to prescribe the eligibility for appointment of judicial or quasi-judicial bodies like the Chief Information Commissioner, Information Commissioners and the corresponding posts in the States, respectively. The legislative power should be exercised in a manner which is in consonance with the constitutional principles and guarantees. Complete lack of judicial expertise in the Commission may render the decision making process impracticable, inflexible and in given cases, contrary to law. The availability of expertise of judicial members in the Commission would facilitate the decision-making to be more practical, effective and meaningful, besides giving semblance of justice being done. The provision of eligibility criteria which does not even lay down any qualifications for

appointment to the respective posts under the Act of 2005 would be unconstitutional, in terms of the judgments of this Court in the cases of *Union of India v. Madras Bar Association*, [(2010) 11 SCC 1]; *Pareena Swarup v. Union of India* [(2008) 14 SCC 107]; *L. Chandra Kumar v. Union of India* [(1997) 3 SCC 261]; *R.K. Jain v. Union of India* [(1993) 4 SCC 119]; *S.P. Sampath Kumar v. Union of India* [(1987) 1 SCC 124].

5. It is contended that keeping in view the powers, functions and jurisdiction that the Chief/State Information Commissioner and/or the Information Commissioners exercise undisputedly, including the penal jurisdiction, there is a certain requirement of legal acumen and expertise for attaining the ends of justice, particularly, under the provisions of the Act of 2005. On this premise, the petitioner has questioned the constitutional validity of sub-Sections (5) and (6) of Section 12 and sub-Sections (5) and

(6) of Section 15 of the Act of 2005. These provisions primarily deal with the eligibility criteria for appointment to the posts of Chief Information Commissioners and Information Commissioners, both at the Central and the State levels. It will be useful to refer to these provisions at this very stage.

“Section 12 — (5) The Chief Information Commissioner and Information Commissioners

shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

XXX

XXX

XXX

Section 15 (5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

6. The challenge to the constitutionality of the above provisions *inter alia* is on the following grounds :

(i) Enactment of the provisions of eligibility criteria for appointment to such high offices, without providing qualifications, definite criterion or even consultation with

judiciary, are in complete violation of the fundamental rights guaranteed under Article 14, 16 and 19(1)(g) of the Constitution.

- (ii) Absence of any specific qualification and merely providing for experience in the various specified fields, without there being any nexus of either of these fields to the object of the Act of 2005, is violative of the fundamental constitutional values.
- (iii) Usage of extremely vague and general terminology like social service, mass media and alike terms, being indefinite and undefined, would lead to arbitrariness and are open to abuse.
- (iv) This vagueness and uncertainty is bound to prejudicially affect the administration of justice by such Commissions or Tribunals which are vested with wide adjudicatory and penal powers. It may not be feasible for a person of ordinary experience to deal with such subjects with legal accuracy.
- (v) The Chief Information Commissioner and Information Commissioners at the State and Centre level perform judicial and/or quasi-judicial functions under the Act of

2005 and therefore, it is mandatory that persons with judicial experience or majority of them should hold these posts.

- (vi) The fundamental right to equality before law and equal protection of law guaranteed by Article 14 of the Constitution enshrines in itself the person's right to be adjudged by a forum which exercises judicial power in an impartial and independent manner consistent with the recognised principles of adjudication.
- (vii) Apart from specifying a high powered committee for appointment to these posts, the Act of 2005 does not prescribe any mechanism for proper scrutiny and consultation with the judiciary in order to render effective performance of functions by the office holders, which is against the basic scheme of our Constitution.
- (viii) Even if the Court repels the attack to the constitutionality of the provisions, still, keeping in view the basic structure of the Constitution and the independence of judiciary, it is a mandatory requirement that judicial or quasi-judicial powers ought to be exercised by persons having judicial knowledge and expertise. To that extent, in any case, these

provisions would have to limitation has to be read legislature to prescribe appointment of judicial tribunals.

be read down. Resultantly, into the competence of the requisite qualifications for or quasi-judicial bodies or

## **Discussion**

7. The Constitution of India expressly confers upon the courts the power of judicial review. The courts, as regards the fundamental rights, have been assigned the role of *sentinel on the qui vive* under Article 13 of the Constitution. Our courts have exercised the power of judicial review, beyond legislative competence, but within the specified limitations. While the court gives immense weightage to the legislative judgment, still it cannot deviate from its own duties to determine the constitutionality of an impugned statute. Every law has to pass through the test of constitutionality which is stated to be nothing but a formal test of rationality.

8. The foundation of this power of judicial review, as explained by a nine-Judge's Bench in the case of *Supreme Court Advocates on Record Association & Ors. v. Union of India* [(1993) 4 SCC 441], is the theory that the Constitution which is the fundamental law

of the land, is the ‘will’ of the ‘people’, while a statute is only the creation of the elected representatives of the people; when, therefore, the ‘will’ of the legislature as declared in the statute, stands in opposition to that of the people as declared in the Constitution - the ‘will’ of the people must prevail.

9. In determining the constitutionality or validity of a constitutional provision, the court must weigh the real impact and effect thereof, on the fundamental rights. The Court would not allow the legislature to overlook a constitutional provision by employing indirect methods. In *Minerva Mills Ltd. & Ors. v. Union of India & Ors.* [(1980) 3 SCC 625], this Court mandated without ambiguity, that it is the Constitution which is supreme in India and not the Parliament. The Parliament cannot damage the Constitution, to which it owes its existence, with unlimited amending power.

10. An enacted law may be constitutional or unconstitutional. Traditionally, this Court had provided very limited grounds on which an enacted law could be declared unconstitutional. They were legislative competence, violation of Part III of the Constitution and reasonableness of the law. The first two were definite in their scope and application while the cases falling in the third category remained in a state of uncertainty.

With the

passage of time, the law developed and the grounds for unconstitutionality also widened. D.D. Basu in the '*Shorter Constitution of India*' (Fourteenth Edition, 2009) has detailed, with reference to various judgments of this Court, the grounds on which the law could be invalidated or could not be invalidated. Reference to them can be made as follows:-

"Grounds of unconstitutionality . – A law may be unconstitutional on a number of grounds:

- i. Contravention of any fundamental right, specified in Part III of the Constitution. (Ref. Under Art. 143, (Ref. AIR 1965 SC 745 (145): 1965 (1) SCR 413)
- ii. Legislating on a subject which is not assigned to the relevant legislature by the distribution of powers made by the 7<sup>th</sup> Sch., read with the connected Articles. (Ref. Under Art. 143, AIR 1965 SC 745)
- iii. Contravention of any of the mandatory provisions of the Constitution which impose limitations upon the powers of a Legislature, e.g., Art. 301. (Ref. Atiabari Tea Co. v. State of Assam, AIR 1961 SC 232)
- iv. In the case of a State law, it will be invalid in so far as it seeks to operate beyond the boundaries of the State. (State of Bombay v. Chamarbaughwala R.M.D., AIR 1957 SC 699)

v. That the Legislature concerned has abdicated its essential legislative function as assigned to it by the Constitution or has made an excessive delegation of that power to some other body. *Hamdard Dawakhana Wakf v. Union of India*, AIR 1960 SC 554 (568)

11. On the other hand, a law cannot be invalidated on the following grounds:

(a) That in making the law (including an Ordinance), the law-making body did not apply its mind (even though it may be a valid ground for challenging an executive act), (Ref. *Nagaraj K. V. State of A.P.*, AIR 1985 SC 551 (paras 31, 36), or was prompted by some improper motive. (Ref. *Rehman Shagoo v. State of J & K*, AIR 1960 SC 1(6); 1960 (1) SCR 681)

(b) That the law contravenes some constitutional limitation which did not exist at the time of enactment of the law in question. (Ref. *Joshi R.S. v. Ajit Mills Ltd.*, AIR 1977 SC 2279 (para 16))

(c) That the law contravened any of the Directive contained in Part IV of the Constitution. (Ref. *Deep Chand v. State of U.P.*, AIR 1959 SC 648 (664))

12. Since great emphasis has been placed on the violation of fundamental rights, we may notice that no prejudice needs to be proved in cases where breach of fundamental rights is claimed.

Violation of a fundamental right itself renders the impugned action void {Ref. *A.R. Antulay v. R.S. Nayak & Anr.* [(1988) 2 SCC 602]}.

13. A law which violates the fundamental right of a person is void. In such cases of violation, the Court has to examine as to what factors the Court should weigh while determining the constitutionality of a statute. First and the foremost, as already noticed, is the competence of the legislature to make the law. The wisdom or motive of the legislature in making it is not a relative consideration. The Court should examine the provisions of the statute in light of the provisions of the Constitution (e.g. Part III), regardless of how it is actually administered or is capable of being administered. In this regard, the Court may consider the following factors as noticed in *D.D. Basu* (supra).

“(a) The possibility of abuse of a statute does not impart to it any element of invalidity.

(b) Conversely, a statute which violates the Constitution cannot be pronounced valid merely because it is being administered in a manner which might not conflict with the constitutional requirements.

In the case of *Charan Lal Sahu v. UOI* [(1990) 1 SCC 614 (667) (para 13), MUKHERJEE, C.J. made an unguarded statement, viz., that

*“In judging the Constitutional validity of the Act, the subsequent events, namely, how the Act has worked out, have to be looked into.”*

It can be supported only on the test of ‘direct and inevitable effect’ and, therefore, needs to be explained in some subsequent decision.

(c) When the constitutionality of a law is challenged on the ground that it infringes a fundamental right, what the Court has to consider is the ‘direct and inevitable effect’ of such law.

(d) There is presumption in favour of constitutionality of statutes. The law courts can declare the legislative enactment to be an invalid piece of legislation only in the even of gross violation of constitutional sanctions.”

14. It is a settled canon of constitutional jurisprudence that the doctrine of classification is a subsidiary rule evolved by courts to give practical content to the doctrine of equality. Over-emphasis of the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. (*Ref. LIC of India v. Consumer Education & Research Centre* [(1995) 5 SCC 482]. It is not necessary that classification in order to be valid, must be fully carried out by the statute itself. The statute itself may indicate the persons or things to whom its provisions are intended to apply. Instead of making the classification itself, the State may lay down the principle or policy for selecting or classifying the persons or objects to whom its provisions are to

apply and leave it to the discretion of the Government or administrative authority to select such persons or things, having regard to the principle or policy laid down by the Legislature.

15. Article 14 forbids class legislation but does not forbid reasonable classification which means :

- (i) It must be based on reasonable and intelligible differentia; and
- (ii) Such differentia must be on a rational basis.
- (iii) It must have nexus to the object of the Act.

16. The basis of judging whether the institutional reservation, fulfils the above-mentioned criteria, should be a) there is a presumption of constitutionality; b) the burden of proof is upon the writ petitioners, the person questioning the constitutionality of the provisions; c) there is a presumption as regard the States' power on the extent of its legislative competence; d) hardship of few cannot be the basis of determining the validity of any statute.

17. The principles for adjudicating the constitutionality of a provision have been stated by this Court in its various judgments. Referring to these judgments and more particularly to the cases of

*Ram Krishna Dalmia v. Justice S.R. Tendolkar AIR 1958 SC 538*

and *Budhan Chodhry v. State of Bihar* AIR 1955 SC 191, the author Jagdish Swarup in his book ‘Constitution of India (2<sup>nd</sup> Edition, 2006) stated the principles to be borne in mind by the Courts and detailed them as follows:

- “(a) that a law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;
- (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;
- (c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;
- (d) that the legislature is free to recognize decrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;
- (e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and
- (f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding

circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation."

18. These principles have, often been reiterated by this Court while dealing with the constitutionality of a provision or a statute. Even in the case of *Atam Prakash v. State of Haryana & Ors.*

[(1986) 2 SCC 249], the Court stated that whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered, a cardinal rule is to look to the Preamble of the Constitution as the guiding light and to the Directive Principles of State Policy as the Book of Interpretation.

The Constitution being *sui generis*, these are the factors of distant vision that help in the determination of the constitutional issues.

Referring to the object of such adjudicatory process, the Court said :

"....we must strive to give such an interpretation as will promote the march and progress towards a Socialistic Democratic State. For example, when we consider the question whether a statute offends Article 14 of the Constitution we must also consider

whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution.”

19. Dealing with the matter of closure of slaughter houses in the case of *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat & Ors.* [(2008) 5 SCC 33], the Court while noticing its earlier judgment in the case of *Government of Andhra Pradesh & Ors. v. Smt. P. Lakshmi Devi* [(2008) 4 SCC 720], introduced a rule for exercise of such jurisdiction by the courts stating that the Court should exercise judicial restraint while judging the constitutional validity of the statute or even that of a delegated legislation and it is only when there is clear violation of a constitutional provision beyond reasonable doubt that the Court should declare a provision to be unconstitutional. Further, in the case of *P. Lakshmi Devi* (supra), the Court has observed that even if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must prevail and the Court must make efforts to uphold the constitutional validity of a statute, unlike a policy decision, where the executive decision could be rendered invalid on the ground of malafide, unreasonableness and arbitrariness alone.

20. In order to examine the constitutionality or otherwise of a statute or any of its provisions, one of the most relevant considerations is the object and reasons as well as the legislative history of the statute. It would help the court in arriving at a more objective and justful approach. It would be necessary for the Court to examine the reasons of enactment of a particular provision so as to find out its ultimate impact *vis-a-vis* the constitutional provisions. Therefore, we must examine the contemplations leading to the enactment of the Act of 2005.

#### **A)SCHEME, OBJECTS AND REASONS**

21. In light of the law guaranteeing the right to information, the citizens have the fundamental right to know what the Government is doing in its name. The freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political growth. It is a safety valve. People are more ready to accept the decisions that go against them if they can in principle seem to influence them. In a way, it checks abuse of power by the public officials. In the modern times, where there has been globalization of trade and industry, the scientific growth in the communication system and faster commuting has turned

the world into a very well-knit community. The view projected, with some emphasis, is that the imparting of information qua the working of the government on the one hand and its decision affecting the domestic and international trade and other activities on the other, impose an obligation upon the authorities to disclose information.

## **OBJECTS AND REASONS**

22. The Right to Information was harnessed as a tool for promoting development; strengthening the democratic governance and effective delivery of socio-economic services. Acquisition of information and knowledge and its application have intense and pervasive impact on the process of taking informed decision, resulting in overall productivity gains. It is also said that information and knowledge are critical for realising all human aspirations such as improvement in the quality of life. Sharing of information, for instance, about the new techniques of farming, health care facilities, hazards of environmental degradation, opportunities for learning and earning, legal remedies for combating gender bias etc., have overtime, made significant

contributions to the well being of poor people. It is also felt that this right and the laws relating thereto empower every citizen to take charge of his life and make proper choices on the basis of freely available information for effective participation in economic and political activities.

23. Justice V.R. Krishna Iyer in his book “Freedom of Information” expressed the view:

“The right to information is a right incidental to the constitutionally guaranteed right to freedom of speech and expression. The international movement to include it in the legal system gained prominence in 1946 with the General Assembly of the United Nations declaring freedom of information to be a fundamental human right and a touchstone for all other liberties. It culminated in the United Nations Conference on Freedom of Information held in Geneva in 1948.

Article 19 of the Universal Declaration of Human Rights says:

“Everyone has the right to freedom of information and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

It may be a coincidence that Article 19 of the Indian Constitution also provides every citizen the right to freedom of speech and expression. However, the word 'information' is conspicuously absent. But, as the highest Court has explicated, the right of information is integral to freedom of expression.

"India was a member of the Commission on Human Rights appointed by the Economic and Social Council of the United Nations which drafted the 1948 Declaration. As such it would have been eminently fit and proper if the right to information was included in the rights enumerated under Article 19 of our Constitution. Article 55 of the U.N. Charter stipulates that the United Nations 'shall promote respect for, and observance of, human rights and fundamental freedoms' and according to Article 56 'all members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55'."

24. Despite the absence of any express mention of the word 'information' in our Constitution under Article 19(1)(a), this right has stood incorporated therein by the interpretative process by this Court laying the unequivocal statement of law by this Court that there was a definite right to information of the citizens of this country. Before the Supreme Court spelt out with clarity the right to information as a right inbuilt in the constitutional framework, there existed no provision giving this right in absolute

terms or otherwise. Of course, one finds glimpses of the right to information of the citizens and obligations of the State to disclose such information in various other laws, for example, Sections 74 to 78 of the Indian Evidence Act, 1872 give right to a person to know about the contents of the public documents and the public officer is required to provide copies of such public documents to any person, who has the right to inspect them. Under Section 25(6) of the Water (Prevention and Control of Pollution) Act, 1974, every State is required to maintain a register of information on water pollution and it is further provided that so much of the register as relates to any outlet or effluent from any land or premises shall be open to inspection at all reasonable hours by any person interested in or affected by such outlet, land or premises, as the case may be. Dr. J.N. Barowalia in '*Commentary on the Right to Information Act*' (2006) has noted that the Report of the *National Commission for Review of Working of Constitution under the Chairmanship of Justice M.N. Venkatachaliah*, as he then was, recognised the right to information wherein it is provided that major assumption behind a new style of governance is the citizen's access to information. Much of the common man's distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision-making processes.

He remains ignorant and unaware of the process which virtually affects his interest. Government procedures and regulations shrouded in the veil of secrecy do not allow the litigants to know how their cases are being handled. They shy away from questioning the officers handling their cases because of the latter's snobbish attitude. Right to information should be guaranteed and needs to be given real substance. In this regard, the Government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded.

25. The Government of India had appointed a Working Group on Right to Information and Promotion of Open and Transparent Government under the Chairmanship of Shri H.D. Shourie which was asked to examine the feasibility and need for either full-fledged Right to Information Act or its introduction in a phased manner to meet the needs of an open and responsive Government. This group was also required to examine the framework of rules with reference to the Civil Services (Conduct) Rules and Manual of Office Procedure. This Working Group submitted its report in May 1997.

26. In the Chief Ministers Conference on 'Effective and Responsive Government' held on 24<sup>th</sup> May, 1997, the need to

enact a law on the Right to Information was recognized unanimously. This conference was primarily to discuss the measures to be taken to ensure a more effective and responsive government. The recommendations of various Committees constituted for this purpose and awareness in the Government machinery of the significance and benefits of this freedom ultimately led to the enactment of the 'Freedom of Information Act, 2002' (for short, the 'Act of 2002'). The proposed Bill was to enable the citizens to have information on a statutory basis. The proposed Bill was stated to be in accord with both Article 19 of the Constitution of India as well as Article 19 of the Universal Declaration of Human Rights, 1948. This is how the Act of 2002 was enacted.

27. In terms of the Statement of Objects and Reasons of the Act of 2002, it was stated that this law was enacted in order to make the government more transparent and accountable to the public. It was felt that in the present democratic framework, free flow of information for citizens and non-Government institutions suffers from several bottlenecks including the existing legal framework, lack of infrastructure at the grass root level and an attitude of secrecy within the Civil Services as a result of the old framework of rules. The Act was to deal with all such aspects. The purpose

and object was to make the government more transparent and accountable to the public and to provide freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto.

28. After the Act of 2002 came into force, there was a definite attempt to exercise such freedom but it did not operate fully and satisfactorily. The Civil Services (Conduct) Rules and the Manual of the Office Procedure as well as the Official Secrets Act, 1923 and also the mindset of the authorities were implied impediments to the full, complete and purposeful achievement of the object of enacting the Act of 2002. Since, with the passage of time, it was felt that the Act of 2002 was neither sufficient in fulfilling the aspirations of the citizens of India nor in making the right to freedom of information more progressive, participatory and meaningful, significant changes to the existing law were proposed. The National Advisory Council suggested certain important changes to be incorporated in the said Act of 2002 to ensure smoother and greater access to information. After examining the suggestions of the Council and the public, the Government decided that the Act of 2002 should be replaced and, in fact, an

attempt was made to enact another law for providing an effective framework for effectuating the right to information recognized under the Article 19 of the Constitution. The Right to Information Bill was introduced in terms of its statements of objects and reasons to ensure greater and more effective access to information. The Act of 2002 needed to be made even more progressive, participatory and meaningful. The important changes proposed to be incorporated therein included establishment of an appellate machinery with investigative powers to review the decision of the Public Information Officer, providing penal provisions in the event of failure to provide information as per law, etc. This Bill was passed by both the Houses of the Parliament and upon receiving the assent of the President on 15<sup>th</sup> June, 2005, it came on the statute book as the Right to Information Act, 2005.

### **SCHEME OF ACT of 2005 (COMPARATIVE ANALYSIS OF ACT OF 2002 AND ACT OF 2005)**

29. Now, we may deal with the comparative analysis of these two Acts. The first and the foremost significant change was the change in the very nomenclature of the Act of 2005 by replacing the word 'freedom' with the word 'right' in the title of the statute.

The obvious legislative intent was to make seeking of prescribed information by the citizens, a right, rather than a mere freedom. There exists a subtle difference when people perceive it as a right to get information in contra-distinction to it being a freedom. Upon such comparison, the connotations of the two have distinct and different application. The Act of 2005 was enacted to radically alter the administrative ethos and culture of secrecy and control, the legacy of colonial era and bring in a new era of transparency and accountability in governance. In substance, the Act of 2005 does not alter the spirit of the Act of 2002 and on the contrary, the substantive provisions like Sections 3 to 11 of both the Acts are similar except with some variations in some of the provisions. The Act of 2005 makes the definition clause more elaborate and comprehensive. It broadens the definition of public authority under Section 2(h) by including therein even an authority or body or institution of self-government established or constituted by a notification issued or order made by the appropriate Government and includes any body owned, controlled or substantially financed by the Government and also non-governmental organization substantially financed by the appropriate Government, directly or indirectly. Similarly, the expression 'Right to Information' has been defined in Section 2(j)

to include the right to inspection of work, documents, records, taking certified samples of material, taking notes and extracts and even obtaining information in the form of floppies, tapes, video cassettes, etc. This is an addition to the important step of introduction of the Central and State Information Commissions and the respective Public Information Officers. Further, Section 4(2) is a new provision which places a mandatory obligation upon every public authority to take steps in accordance with the requirements of clause (b) of sub-Section (1) of that Section to provide as much information *suo moto* to the public at regular intervals through various means of communication including internet so that the public have minimum resort to use of this Act to obtain information. In other words, the aim and object as highlighted in specific language of the statute is that besides it being a right of the citizenry to seek information, it was obligatory upon the State to provide information relatable to its functions for the information of the public at large and this would avoid unnecessary invocation of such right by the citizenry under the provisions of the Act of 2005. Every authority/department is required to designate the Public Information Officers and to appoint the Central Information Commission and State Information Commissions in accordance with the provisions of

Sections 12 and 15 of the Act of 2005. It may be noticed that under the scheme of this Act, the Public Information Officer at the Centre and the State Levels are expected to receive the requests/applications for providing the information. Appeal against decision of such Public Information Officer would lie to his senior in rank in terms of Section 19(1) within a period of 30 days. Such First Appellate Authority may admit the appeal after the expiry of this statutory period subject to satisfactory reasons for the delay being established. A second appeal lies to the Central or the State Information Commission, as the case may be, in terms of Section 19(3) within a period of 90 days. The decision of the Commission shall be final and binding as per Section 19(7). Section 19 is an exhaustive provision and the Act of 2005 on its cumulative reading is a complete code in itself. However, nothing in the Act of 2005 can take away the powers vested in the High Court under Article 226 of the Constitution and of this Court under Article 32. The finality indicated in Sections 19(6) and 19(7) cannot be construed to oust the jurisdiction of higher courts, despite the bar created under Section 23 of the Act. It always has to be read and construed subject to the powers of the High Court under Article 226 of the Constitution. Reference in this regard can be made to the decision of a Constitution Bench

of this Court in the case of *L. Chandra Kumar vs. Union of India and Ors.* [(1997) 3 SCC 261].

30. Exemption from disclosure of information is a common provision that appears in both the Acts. Section 8 of both the Acts open with a non-obstante language. It states that notwithstanding anything contained in the respective Act, there shall be no obligation to give any citizen the information specified in the exempted clauses. It may, however, be noted that Section 8 of the Act of 2005 has a more elaborate exemption clause than that of the Act of 2002. In addition, the Act of 2005 also provides the Second Schedule which enumerates the intelligence and security organizations established by the Central Government to which the Act of 2005 shall not apply in terms of Section 24.

31. Further, under the Act of 2002, the appointment of the Public Information Officers is provided in terms of Section 5 and there exists no provision for constituting the Central and the State Information Commission. Also, the Act does not provide any qualifications or requirements to be satisfied before a person can be so appointed. On the other hand, in terms of Section 12 and Section 15 of the Act of 2005, specific provisions have been made to provide for the constitution of and eligibility for

appointment to the Central Information Commission or the State Information Commission, as the case may be.

32. Section 12(5) is a very significant provision under the scheme of the Act of 2005 and we shall deal with it in some elaboration at a subsequent stage. Similarly, the powers and functions of the Authorities constituted under the Act of 2005 are conspicuous by their absence under the Act of 2002, which under the Act of 2005 are contemplated under Section 18. This section deals in great detail with the powers and functions of the Information Commissions. An elaborate mechanism has been provided and definite powers have been conferred upon the authorities to ensure that the authorities are able to implement and enforce the provisions of the Act of 2005 adequately. Another very significant provision which was non-existent in the Act of 2002, is in relation to penalties. No provision was made for imposition of any penalty in the earlier Act, while in the Act of 2005 severe punishment like imposition of fine upto Rs.250/- per day during which the provisions of the Act are violated, has been provided in terms of Section 20(1). The Central/State Information Commission can, under Section 20(2), even direct disciplinary action against the erring Public Information Officers. Further, the appropriate Government and the competent authority have been

empowered to frame rules under Sections 27 and 28 of the Act of 2005, respectively, for carrying out the provisions of the Act. Every rule made by the Central Government under the Act has to be laid before each House of the Parliament while it is in session for a total period of 30 days, if no specific modifications are made, the rules shall thereafter have effect either in the modified form or if not annulled, it shall come into force as laid.

33. Greater transparency, promotion of citizen-government partnership, greater accountability and reduction in corruption are stated to be the salient features of the Act of 2005. Development and proper implementation of essential and constitutionally protected laws such as Mahatma Gandhi Rural Guarantee Act, 2005, Right to Education Act, 2009, etc. are some of the basic objectives of this Act. Revelation in actual practice is likely to conflict with other public interests, including efficiency, operation of the government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. It is necessary to harness these conflicting interests while preserving the parameters of the democratic ideal or the aim with which this law was enacted. It is certainly expedient to provide for furnishing certain information to the citizens who desire to have it and there may even be an obligation of the state

authorities to declare such information *suo moto*. However, balancing of interests still remains the most fundamental requirement of the objective enforcement of the provisions of the Act of 2005 and for attainment of the real purpose of the Act.

34. The Right to Information, like any other right, is not an unlimited or unrestricted right. It is subject to statutory and constitutional limitations. Section 3 of the Act of 2005 clearly spells out that the right to information is subject to the provisions of the Act. Other provisions require that information must be held by or under the control of public authority besides providing for specific exemptions and the fields to which the provisions of the Act do not apply. The doctrine of severability finds place in the statute in the shape of Section 10 of the Act of 2005.

35. Neither the Act of 2002 nor the Act of 2005, under its repeal provision, repeals the Official Secrets Act, 1923. The Act of 2005 only repeals the Freedom of Information Act, 2002 in terms of Section 31. It was felt that under the Official Secrets Act, 1923, the entire development process had been shrouded in secrecy and practically the public had no legal right to know as to what process had been followed in designing the policies affecting them and how the programmes and schemes were being implemented. Lack of openness in the functioning of the Government provided a

fertile ground for growth of inefficiency and corruption in the working of the public authorities. The Act of 2005 was intended to remedy this widespread evil and provide appropriate links to the government. It was also expected to bring reforms in the environmental, economic and health sectors, which were primarily being controlled by the Government.

36. The Central and State Information Commissions have played a critical role in enforcing the provisions of the Act of 2005, as well as in educating the information seekers and providers about their statutory rights and obligations. Some section of experts opined that the Act of 2005 has been a useful statutory instrument in achieving the goal of providing free and effective information to the citizens as enshrined under Article 19(1)(a) of the Constitution. It is true that democratisation of information and knowledge resources is critical for people's empowerment especially to realise the entitlements as well as to augment opportunities for enhancing the options for improving the quality of life. Still of greater significance is the inclusion of privacy or certain protection in the process of disclosure, under the right to information under the Act. Sometimes, information ought not to be disclosed in the larger public interest.

37. The courts have observed that when the law making power of a State is restricted by a written fundamental law, then any law enacted, which is opposed to such fundamental law, being in excess of fundamental authority, is a nullity. Inequality is one such example. Still, reasonable classification is permissible under the Indian Constitution. Surrounding circumstances can be taken into consideration in support of the constitutionality of the law which is otherwise hostile or discriminatory in nature, but the circumstances must be such as to justify the discriminatory treatment or the classification, subserving the object sought to be achieved. Mere apprehension of the order being used against some persons is no ground to hold it illegal or unconstitutional particularly when its legality or constitutionality has not been challenged.

{Ref. *K. Karunakaran v. State of Kerala & Anr.* [(2000) 3 SCC 761]}. To raise the plea of Article 14 of the Constitution, the element of discrimination and arbitrariness has to be brought out in clear terms. The Courts have to keep in mind that by the process of classification, the State has the power of determining who should be regarded as a class for the purposes of legislation and in relation to law enacted on a particular subject. The power, no doubt, to some degree is likely to produce some inequality but if a law deals with liberties of a number of individuals or well

defined classes, it is not open of the charge of denial of equal protection on the ground that has no application to other persons. Classification, thus, means segregation in classes which have a systematic relation usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily, as already noticed. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a *nexus* between them. The basis of testing constitutionality, particularly on the ground of discrimination, should not be made by raising a presumption that the authorities are acting in an arbitrary manner. No classification can be arbitrary. One of the known concepts of constitutional interpretation is that the legislature cannot be expected to carve out classification which may be scientifically perfect or logically complete or which may satisfy the expectations of all concerned. The Courts would respect the classification dictated by the wisdom of the Legislature and shall interfere only on being convinced that the classification would result in pronounced inequality or palpable arbitrariness tested on the touchstone of Article 14 of the Constitution. {Ref. *Welfare*

*Association of Allottees of Residential Premises, Maharashtra v. Ranjit P. Gohil [(2003) 9 SCC 358]}.*

38. The rule of equality or equal protection does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all, and particularly with respect to social welfare programme. So long as the line drawn, by the State is rationally supportable, the Courts will not interpose their judgment as to the appropriate stopping point. A statute is not invalid because it might have gone further than it did, since the legislature need not strike at all evils at the same time and may address itself to the phase of the problem which seemed most acute to the legislative mind. A classification based on experience was a reasonable classification, and that it had a rational nexus to the object thereof and to hold otherwise would be detrimental to the interest of the service itself. This opinion was taken by this Court in the case of *State of UP & Ors. v. J.P. Chaurasia & Ors.*

[(1989) 1 SCC 121]. Classification on the basis of educational qualifications made with a view to achieve administrative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. In the case of *State of Jammu & Kashmir v. Sh. Triloki Nath Khosa & Ors.*

[(1974) 1 SCC 19], it was noted that intelligible differentia and rational nexus are the twin tests of reasonable classification.

39. If the law deals equally with members of a well defined class, it is not open to the charge of denial of equal protection. There may be cases where even a single individual may be in a class by himself on account of some special circumstances or reasons applicable to him and not applicable to others. Still such law can be constitutional. [Ref. *Constitutional Law of India* by H.M. Seervai (Fourth Edition) Vol.1]

40. In *Maneka Gandhi v. Union of India & Anr.* [(1978) 1 SCC 248] and *Charanlal Sahu v. Union of India* (supra), the Court has taken the view that when the constitutionality of a law is challenged on the ground that it infringes a fundamental right, what the Court has to consider is the ‘direct and inevitable effect’ of such law. A matter within the legislative competence of the legislature has to be left to the discretion and wisdom of the framers, so long as it does not infringe any constitutional provision or violate any fundamental right. The law has to be just, fair and reasonable. Article 14 of the Constitution does not prohibit the prescription of reasonable rules for selection or of

qualifications for appointment, except, where the classification is on the face of it, unjust.

41. We have noticed the challenge of the petitioner to the constitutionality of Section 12(5) and (6) and Section 15(5) and (6) of the Act of 2005. The challenge is made to these provisions stating that the eligibility criteria given therein is vague, does not specify any qualification, and the stated ‘experience’ has no nexus to the object of the Act. It is also contended that the classification contemplated under the Act is violative of Article 14 of the Constitution. The petitioner contends that the legislative power has been exercised in a manner which is not in consonance with the constitutional principles and guarantees and provides for no proper consultative process for appointment. It may be noted that the only distinction between the provisions of Sections 12(5) and 12(6) on the one hand and Sections 15(5) and 15(6) on the other, is that under Section 12, it is the Central Government who has to make the appointments in consonance with the provisions of the Act, while under Section 15, it is the State Government which has to discharge similar functions as per the specified parameters. Thus, discussion on one provision would sufficiently cover the other as well.

42. Sub-Section (5) of Section 12 concerns itself with the eligibility criteria for appointment to the post of the Chief Information Commissioner and Information Commissioners to the Central Information Commission. It states that these authorities shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

43. Correspondingly, Sub-Section (6) of Section 12 states certain disqualifications for appointment to these posts. If such person is a Member of Parliament or Member of the legislature of any State or Union Territory or holds any other office of profit or connected with any political party or carrying on any business or pursuing any profession, he would not be eligible for appointment to these posts.

44. In order to examine the constitutionality of these provisions, let us state the parameters which would finally help the Court in determining such questions.

(a) Whether the law under challenge lacks legislative competence?

- (b) Whether it violates any Article of Part III of the Constitution, particularly, Article 14?
- (c) Whether the prescribed criteria and classification resulting therefrom is discriminatory, arbitrary and has no nexus to the object of the Act?
- (d) Lastly, whether it a legislative exercise of power which is not in consonance with the constitutional guarantees and does not provide adequate guidance to make the law just, fair and reasonable?

45. As far as the first issue is concerned, it is a commonly conceded case before us that the Act of 2005 does not, in any form, lack the legislative competence. In other words, enacting such a law falls squarely within the domain of the Indian Parliament and has so been enacted under Entry 97 (residuary powers) of the Union List. Thus, this issue does not require any discussion.

46. To examine constitutionality of a statute in its correct perspective, we have to bear in mind certain fundamental principles as afore-recorded. There is presumption of constitutionality in favour of legislation. The Legislature has the power to carve out a classification which is based upon intelligible

differentia and has rational nexus to the object of the Act. The burden to prove that the enacted law offends any of the Articles under Part III of the Constitution is on the one who questions the constitutionality and shows that despite such presumption in favour of the legislation, it is unfair, unjust and unreasonable.

47. Another most significant canon of determination of constitutionality is that the courts would be reluctant to declare a law invalid or *ultra vires* on account of unconstitutionality. The courts would accept an interpretation which would be in favour of the constitutionality, than an approach which would render the law unconstitutional. Declaring the law unconstitutional is one of the last resorts taken by the courts. The courts would preferably put into service the principle of 'reading down' or 'reading into' the provision to make it effective, workable and ensure the attainment of the object of the Act. These are the principles which clearly emerge from the consistent view taken by this court in its various pronouncements.

48. The provisions of Section 12(5) do not discuss the basic qualification needed, but refer to two components: (a) persons of eminence in public life; and (b) with wide knowledge and experience in the fields stated in the provision. The provision, thus, does not suffer from the infirmity of providing no criteria

resulting in the introduction of the element of arbitrariness or discrimination. The provisions require the persons to be of eminence and with knowledge in the stated fields. Knowledge and experience in these fields normally shall be preceded by a minimum requisite qualification prescribed in that field. For example, knowledge and experience in the field of law would pre-suppose a person to be a law graduate. Similarly, a person with wide knowledge and experience in the field of science and technology would invariably be expected to be at least a graduate or possess basic qualification in science & technology. The vagueness in the expression ‘social service’, ‘mass media’ or ‘administration and governance’ does create some doubt. But, certainly, this vagueness or doubt does not introduce the element of discrimination in the provision. The persons from these various walks of life are considered eligible for appointment to the post of Chief Information Commissioner and Information Commissioners in the respective Information Commissions. This gives a wide zone of consideration and this alleged vagueness can always be clarified by the appropriate government in exercise of its powers under Section 27 and 28 of the Act, respectively.

### **Constitutional Validity of Section 12(6)**

49. Similarly, as stated above, sub-Section (6) of Section 12 creates in a way a disqualification in terms thereof. This provision does have an element of uncertainty and indefiniteness. Upon its proper construction, an issue as to what class of persons are eligible to be appointed to these posts, would unexceptionally arise. According to this provision, a person to be appointed to these posts ought not to have been carrying on any business or pursuing any profession. It is difficult to say what the person eligible under the provision should be doing and for what period. The section does not specify any such period. Normally, the persons would fall under one or the other unacceptable categories. To put it differently, by necessary implication, it excludes practically all classes while not specifying as to which class of persons is eligible to be appointed to that post. The exclusion is too vague, while inclusion is uncertain. It creates a situation of confusion which could not have been the intent of law. It is also not clear as to what classification the framers of the Act intended to lay down. The classification does not appear to have any nexus with the object of the Act. There is no intelligible differentia to support such classification. Which class is intended to be protected and is to be made exclusively eligible for appointment in terms of Sections 12(5) and (6) is something that

is not understandable. Wherever, the Legislature wishes to exercise its power of classification, there it has to be a reasonable classification, satisfying the tests discussed above. No Rules have been brought to our notice which even intend to explain the vagueness and inequality explicit in the language of Section 12(6). According to the petitioner, it tantamounts to an absolute bar because the legislature cannot be stated to have intended that only the persons who are ideal within the terms of Sub-section (6) of Section 12, would be eligible to be appointed to the post. If we read the language of Sections 12(5) and 12(6) together, the provisions under sub-Section (6) appear to be in conflict with those under sub-Section (5). Sub-Section (5) requires the person to have eminence in public life and wide knowledge and experience in the specified field. On the contrary, sub-Section (6) requires that the person should not hold any office of profit, be connected with any political party or carry on any business or pursue any profession. The object of sub-section (5) stands partly frustrated by the language of sub-Section (6). In other words, sub-section (6) lacks clarity, reasonable classification and has no nexus to the object of the Act of 2005 and if construed on its plain language, it would result in defeating the provisions of sub-Section (5) of Section 12 to some extent.

50. The legislature is required to exercise its power in conformity with the constitutional mandate, particularly contained in Part III of the Constitution. If the impugned provision denies equality and the right of equal consideration, without reasonable classification, the courts would be bound to declare it invalid. Section 12(6) does not speak of the class of eligible persons, but practically debars all persons from being appointed to the post of Chief Information Commissioner or Information Commissioners at the Centre and State levels, respectively.

51. It will be difficult for the Court to comprehend as to which class of persons is intended to be covered under this clause. The rule of disqualification has to be construed strictly. If anyone, who is an elected representative, in Government service, or one who is holding an office of profit, carrying on any business or profession, is ineligible in terms of Section 12(6), then the question arises as to what class of persons would be eligible? The Section is silent on that behalf.

52. The element of arbitrariness and discrimination is evidenced by the language of Section 12(6) itself, which can be examined from another point of view. No period has been stated for which the person is expected to not have carried on any business or pursued any profession. It could be one day or even years prior to

his nomination. It is not clear as to how the persons falling in either of these classes can be stated to be differently placed. This uncertainty is bound to bring in the element of discrimination and arbitrariness.

53. Having noticed the presence of the element of discrimination and arbitrariness in the provisions of Section 12(6) of the Act, we now have to examine whether this Court should declare this provision *ultra vires* the Constitution or read it down to give it its possible effect, despite the drawbacks noted above. We have already noticed that the Court will normally adopt an approach which is tilted in favour of constitutionality and would prefer reading down the provision, if necessary, by adding some words rather than declaring it unconstitutional. Thus, we would prefer to interpret the provisions of Section 12(6) as applicable post-appointment rather than pre-appointment of the Chief Information Commissioner and Information Commissioners. In other words, these disqualifications will only come into play once a person is appointed as Chief Information Commissioner/ Information Commissioner at any level and he will cease to hold any office of profit or carry any business or pursue any profession that he did prior to such appointment. It is thus implicit in this provision that a person cannot hold any of the posts specified in

sub-section (6) of Section 12 simultaneous to his appointment as Chief Information Commissioner or Information Commissioner. In fact, cessation of his previous appointment, business or profession is a condition precedent to the commencement of his appointment as Chief Information Commissioner or Information Commissioner.

### **Constitutional Validity of Section 12(5)**

54. The Act of 2005 was enacted to harmonise the conflicting interests while preserving the paramountcy of the democratic ideal and provide for furnishing of certain information to the citizens who desire to have it. The basic purpose of the Act is to set up a practical regime of right to information for the citizens to secure and access information under the control of the public authorities. The intention is to provide and promote transparency and accountability in the functioning of the authorities. This right of the public to be informed of the various aspects of governance by the State is a pre-requisite of the democratic value. The right to privacy too, is to be protected as both these rival interests find their origin under Article 19(1)(a) of the Constitution. This brings in the need for an effective adjudicatory process. The authority or tribunals are assigned the responsibility

of determining the rival contentions and drawing a balance between the two conflicting interests. That is where the scheme, purpose and the object of the Act of 2005 attain greater significance.

55. In order to examine whether Section 12(5) of the Act suffers from the vice of discrimination or inequality, we may discuss the adjudicatory functions of the authorities under the Act in the backdrop of the scheme of the Act of 2005, as discussed above. The authorities who have to perform adjudicatory functions of quasi-judicial content are:-

1. The Central/State Public Information Officer;
2. Officers senior in rank to the Central/State Public Information Officer to whom an appeal would lie under Section 19(1) of the Act; and
3. The Information Commission (Central/State) consisting of Chief Information Commissioner and Information Commissioners.

56. In terms of Section 12(5), the Chief Information Commissioner and Information Commissioners should be the persons of eminence in public life with wide knowledge in the

prescribed fields. We have already indicated that the terminology used by the legislature, such as ‘mass-media’ or ‘administration and governance’, are terms of uncertain tenor and amplitude. It is somewhat difficult to state with exactitude as to what class of persons would be eligible under these categories.

57. The legislature in its wisdom has chosen not to provide any specific qualification, but has primarily prescribed ‘wide knowledge and experience’ in the cited subjects as the criteria for selection. It is not for the courts to spell out what ought to be the qualifications or experience for appointment to a particular post. Suffices it to say, that if the legislature itself provides ‘knowledge and experience’ as the basic criteria of eligibility for appointment, this *per se*, would not attract the rigors of Article 14 of the Constitution. On a reasonable and purposive interpretation, it will be appropriate to interpret and read into Section 12(5) that the ‘knowledge and experience’ in a particular subject would be deemed to include the basic qualification in that subject. We would prefer such an approach than to hold it to be violative of Article 14 of the Constitution. Section 12(5) has inbuilt guidelines to the effect that knowledge and experience, being two distinct concepts, should be construed in their correct perspective. This would include the basic qualification as well as

an experience in the respective field, both being the pre-requisites for this section. Ambiguity, if any, resulting from the language of the provision is insignificant, being merely linguistic in nature and, as already noticed, the same is capable of being clarified by framing appropriate rules in exercise of powers of the Central Government under Section 27 of the Act of 2005. We are unable to find that the provisions of Section 12(5) suffer from the vice of arbitrariness or discrimination. However, without hesitation, we would hasten to add that certain requirements of law and procedure would have to be read into this provision to sustain its constitutionality.

58. It is a settled principle of law, as stated earlier, that courts would generally adopt an interpretation which is favourable to and tilts towards the constitutionality of a statute, with the aid of the principles like ‘reading into’ and/or ‘reading down’ the relevant provisions, as opposed to declaring a provision unconstitutional. The courts can also bridge the gaps that have been left by the legislature inadvertently. We are of the considered view that both these principles have to be applied while interpreting Section 12(5). It is the application of these principles that would render the provision constitutional and not

opposed to the doctrine of equality. Rather the application of the provision would become more effective.

59. Certainty to vague expressions, like ‘social service’ and ‘mass media’, can be provided under the provisions which are capable of being explained by framing of proper rules or even by way of judicial pronouncements. In order to examine the scope of this provision and its ramifications on the other parts of the Act of 2005, it is important to refer back to the scheme of the Act. Under the provisions of the Act, particularly, Sections 4, 12, 18, 19, 20, 22, 23 and 25, it is clear that the Central or State Information Commission, as the case may be, not only exercises adjudicatory powers of a nature no different than a judicial tribunal but is vested with the powers of a civil court as well. Therefore, it is required to decide a *lis*, where information is required by a person and its furnishing is contested by the other. The Commission exercises two kinds of penal powers: firstly, in terms of Section 20(1), it can impose penalty upon the defaulters or violators of the provisions of the Act and, secondly, Section 20(2) empowers the Central and the State Information Commission to conduct an enquiry and direct the concerned disciplinary authority to take appropriate action against the erring officer in accordance with law. Hence, the Commission has

powers to pass orders having civil as well as penal consequences. Besides this, the Commission has been given monitoring and recommendatory powers. In terms of Section 23, the jurisdiction of Civil Courts has been expressly barred.

60. Now, let us take an overview of the nature and content of the disputes arising before such Commission. Before the Public Information Officers, the controversy may fall within a narrow compass. But the question before the First Appellate Authority and particularly, the Information Commissioners (Members of the Commission) are of a very vital nature. The impact of such adjudication, instead of being tilted towards administrative adjudication is specifically oriented and akin to the judicial determinative process. Application of mind and passing of reasoned orders are inbuilt into the scheme of the Act of 2005. In fact, the provisions of the Act are specific in that regard. While applying its mind, it has to dwell upon the issues of legal essence and effect. Besides resolving and balancing the conflict between the ‘right to privacy’ and ‘right to information’, the Commission has to specifically determine and return a finding as to whether the case falls under any of the exceptions under Section 8 or relates to any of the organizations specified in the Second Schedule, to which the Act does not apply in terms of Section 24.

Another significant adjudicatory function to be performed by the Commission is where interest of a third party is involved. The legislative intent in this regard is demonstrated by the language of Section 11 of the Act of 2005. A third party is not only entitled to a notice, but is also entitled to hearing with a specific right to raise objections in relation to the disclosure of information. Such functions, by no stretch of imagination, can be termed as ‘administrative decision’ but are clearly in the domain of ‘judicial determination’ in accordance with the rule of law and provisions of the Act. Before we proceed to discuss this aspect in any further elaboration, let us examine the status of such Tribunal/Commissions and their functions.

**B) TRIBUNAL/COMMISSIONS AND THEIR FUNCTIONS :**

61. Before dwelling upon determination of nature of Tribunals in India, it is worthwhile to take a brief account of the scenario prevalent in some other jurisdictions of the world.

62. In United Kingdom, efforts have been made for improvising the system for administration of justice. The United Kingdom has a growing human rights jurisprudence, following the enactment of the Human Rights Act, 1998, and it has a well-established

ombudsman system. The Tribunals have been constituted to provide specialised adjudication, alongside the courts, to the citizens dissatisfied from the directives made by the Information Commissioners under either of these statutes. The Tribunals, important cogs in the machinery of administration of justice, have recently undergone some major reforms. A serious controversy was raised whether the functioning of these Tribunals was more akin to the Government functioning or were they a part of the Court-attached system of administration of justice. The Donoughmore Committee had used the term ‘ministerial tribunals’, and had regarded them as part of the machinery of administration. The Franks Report saw their role quite differently:

“Tribunals are not ordinary courts, but neither are they appendages of Government Departments. Much of the official evidence... appeared to reflect the view that tribunals should properly be regarded as part of the machinery of administration, for which the Government must retain a close and continuing responsibility. Thus, for example, tribunals in the social services field would be regarded as adjuncts to the administration of the services themselves. We do not accept this view. *We consider that tribunals should properly be regarded as machinery provided by Parliament for adjudication rather than as part of the machinery of administration.* The essential point is that in all these cases Parliament has deliberately provided for a decision outside and independent of the

Department concerned, either at first instance.... or on appeal from a decision of a Minister or of an official in a special statutory position....Although the relevant statutes do not in all cases expressly enact that tribunals are to consist entirely of persons outside the Government service, the use of the term 'tribunal' in legislation undoubtedly bears this connotation, and the intention of the Parliament to provide for the independence of tribunals is clear and unmistakable."

63. Franks recommended that tribunal chairmen should be legally qualified. This was implemented in respect of some categories of tribunal, but not others. But one of the most interesting issues arising from the Franks exercise is the extent to which the identification of tribunals as part of the machinery of adjudication led the Committee, in making its specific recommendations, down the road of increased legal formality and judicialisation. (Refer : "*The Judicialisation of 'Administrative' Tribunals in the UK : from Hewart to Leggatt*" by Gavin Drewry).

64. In the United Kingdom, the Tribunals, Courts and Enforcement Act, 2007 (for short, the 'TCEA') explicitly confirmed the status of Tribunal Judges (as the legally qualified members of the Tribunals are now called) as part of the independent judicial system, extending to them the same guarantees of independence as apply to the judges in the ordinary courts.

65. From the analysis of the above system of administrative justice prevalent in United Kingdom, a very subtle and clear distinction from other laws is noticeable in as much as the sensitive personal data and right of privacy of an individual is assured a greater protection and any request for access to such information firstly, is subject to the provisions of the Act and secondly, the members of the Tribunals, who hear the appeals from a rejection of request for information by the Information Commissioners under the provisions of either of these Acts, include persons qualified judicially and having requisite experience as Judges in the regular courts.

66. In United States of America, the statute governing the subject is 'Freedom of Information Act, 1966' (for short, the 'FOIA'). This statute requires each 'agency' to furnish the requisite information to the person demanding such information, subject to the limitations and provisions of the Act. Each agency is required to frame rules. A complainant dissatisfied from non-furnishing of the information can approach the district courts of the United States in the district in which the complainant resides or the place in which the agency records are situated. Such complaints are to be dealt with as per the procedure prescribed and within the time specified under the Act.

67. In New South Wales, under the Privacy and Government Information Legislation Amendment Bill, 2010, amendments were made to both, the Government Information (Public Access) Act, 2009 and the Personal and Privacy Information Act, 1998, to bring the Information Commissioner and the Privacy Commissioner together within a single office. This led to the establishment of the Information and Privacy Commission.

68. On somewhat similar lines is the law prevalent in some other jurisdictions including Australia and Germany, where there exists a unified office of Information and Privacy Commissioner. In Australia, the Privacy Commissioner was integrated into the office of the Australian Information Commissioner in the year 2010.

69. In most of the international jurisdictions, the Commission or the Tribunals have been treated to be part of the court attached system of administration of justice and as said by the Donoughmore Committee, the ‘ministerial tribunals’ were different and they were regarded as part of machinery of the administration. The persons appointed to these Commissions were persons of legal background having legally trained mind and judicial experience.

### **(a) NATURE OF FUNCTION**

70. The Information Commission, as a body, performs functions of wide magnitude, through its members, including adjudicatory, supervisory as well as penal functions. Access to information is a statutory right. This right, as indicated above, is subject to certain constitutional and statutory limitations. The Act of 2005 itself spells out exempted information as well as the areas where the Act would be inoperative. The Central and State Information Commissioners have been vested with the power to decline furnishing of an information under certain circumstances and in the specified situations. For disclosure of Information, which involves the question of prejudice to a third party, the concerned authority is required to issue notice to the third party who can make a representation and such representation is to be dealt with in accordance with the provisions of the Act of 2005. This position of law in India is in clear contrast to the law prevailing in some other countries where information involving a third party cannot be disclosed without consent of that party. However, the authority can direct such disclosure, for reasons to be recorded, stating that the public interest outweighs the private interest. Thus, it involves an adjudicatory process where parties are required to be heard, appropriate directions are to be issued, the

orders are required to be passed upon due application of mind and for valid reasons. The exercise of powers and passing of the orders by the authorities concerned under the provisions of the Act of 2005 cannot be arbitrary. It has to be in consonance with the principles of natural justice and the procedure evolved by such authority. Natural justice has three indispensable facets, i.e., grant of notice, grant of hearing and passing of reasoned orders. It cannot be disputed that the authorities under the Act of 2005 and the Tribunals are discharging quasi-judicial functions.

71. In the case of *Indian National Congress (I) v. Institute of Social Welfare & Ors.* [(2002) 5 SCC 685], the Court explained that where there are two or more parties contesting each other's claim and the statutory authority is required to adjudicate the rival claims between the parties, such a statutory authority can be held to be quasi-judicial and the decision rendered by it as a quasi judicial order. Thus, where there is a *lis* between the two contesting parties and the statutory authority is required to decide such a dispute, in absence of any other attributes of a quasi-judicial authority, such a statutory authority is a quasi-judicial authority. The legal principles which emerge from the various judgments laying down when an act of a statutory

authority would be a quasi-judicial act are that where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no *lis* or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

72. In other words, an authority is described as quasi judicial when it has some attributes or trappings of judicial provisions but not all. In the matter before us, there is a *lis*. The request of a party seeking information is allowed or disallowed by the authorities below and is contested by both parties before the Commission. There may also be cases where a third party is prejudicially affected by disclosure of the information requested for. It is clear that the concerned authorities particularly the Information Commission, possess the essential attributes and trappings of a Court. Its powers and functions, as defined under the Act of 2005 also sufficiently indicate that it has adjudicatory powers quite akin to the Court system. They adjudicate matters of serious consequences. The Commission may be called upon to decide how far the right to information is affected where information sought for is denied or whether the information asked

for is ‘exempted’ or impinges upon the ‘right to privacy’ or where it falls in the ‘no go area’ of applicability of the Act. It is not mandatory for the authorities to allow all requests for information in a routine manner. The Act of 2005 imposes an obligation upon the authorities to examine each matter seriously being fully cautious of its consequences and effects on the rights of others. It may be a simple query for information but can have far reaching consequences upon the right of a third party or an individual with regard to whom such information is sought. Undue inroad into the right to privacy of an individual which is protected under Article 21 of the Constitution of India or any other law in force would not be permissible. In *Gobind v. State of Madhya Pradesh & Anr.* [(1975) 2 SCC 148] this Court held that privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. In *Ram Jethmalani & Ors. v. Union of India* [(2011) 8 SCC 1] this Court has observed that the right to privacy is an integral part of the right to life. Thus, the decision making process by these authorities is not merely of an administrative nature. The functions of these authorities are more aligned towards the judicial functions of the courts rather than mere administrative acts of the State authority.

73. ‘Quasi judicial’ is a term which may not always be used with utmost clarity and precision. An authority which exercises judicial functions or functions analogous to the judicial authorities would normally be termed as ‘quasi-judicial’. In the ‘*Advanced Law Lexicon*’ (3<sup>rd</sup> Edn., 2005) by P. Ramanathan Aiyar, the expression ‘quasi judicial’ is explained as under :

“Of, relating to, or involving an executive or administrative official’s adjudicative acts. Quasi-judicial acts, which are valid if there is no abuse of discretion, often determine the fundamental rights of citizens. They are subject to review by Courts. (Blacm, 7<sup>th</sup> Edn., 1999)

‘Quasi-judicial is a term that is .... Not easily definable. In the United States, the phrase often covers judicial decisions taken by an administrative agency – the test is the nature of the tribunal rather than what it is doing. In England quasi-judicial belongs to the administrative category and is used to cover situations where the administrator is bound by the law to observe certain forms and possibly hold a public hearing but where he is a free agent in reaching the final decision. If the rules are broken, the determination may be set aside, but it is not sufficient to show that the administration is biased in favour of a certain policy, or that the evidence points to a different conclusion..’  
(George Whitecross Paton, A

*Textbook of Jurisprudence* 336 (G.W. Paton & Davit P Derham eds., 4<sup>th</sup> ed. (1972)

Describing a function that resembles the judicial function in that it involves deciding a dispute and ascertaining the facts and any relevant law, but differs in that it depends ultimately on the exercise of an executive discretion rather than the application of law (*Oxford Law Dictionary 5<sup>th</sup> Edn. 2003*)

When the law commits to an officer the duty of looking into certain facts not in a way which it specially directs, but after a discretion in its nature judicial, the function is quasi judicial.

Of or relating to the adjudicative acts of an executive or administrative officials.

Sharing the qualities of and approximating to what is judicial; essentially judicial in character but not within the judicial power or function nor belonging to the judiciary as constitutionally defined. [S.128(2)(i), C.P.C. (5 of 1908)]."

74. This Court in the case of *State of Himachal Pradesh & Ors. v. Raja Mahendra Pal & Anr.* [1995 Supp (2) SCC 731], held that the expression 'quasi judicial' has been termed to be one which stands midway a judicial and an administrative function. If the authority has any express statutory duty to act judicially in arriving at the decision in question, it would be deemed to be

*quasi-judicial*. Where the function to determine a dispute is exercised by virtue of an executive discretion rather than the application of law, it is a quasi-judicial function. A quasi-judicial act requires that a decision is to be given not arbitrarily or in mere discretion of the authority but according to the facts and circumstances of the case as determined upon an enquiry held by the authority after giving an opportunity to the affected parties of being heard or wherever necessary of leading evidence in support of their contention. The authority and the Tribunal constituted under the provisions of the Act of 2005 are certainly quasi-judicial authority/tribunal performing judicial functions.

75. Under the scheme of the Act of 2005, in terms of Section 5, every public authority, both in the State and the Centre, is required to nominate Public Information Officers to effectuate and make the right to information a more effective right by furnishing the information asked for under this Act. The Information Officer can even refuse to provide such information, which order is appealable under Section 19(1) to the nominated senior officer, who is required to hear the parties and decide the matter in accordance with law. This is a first appeal. Against the order of this appellate authority, a second appeal lies with the Central Information Commission or the State Information Commission, as

the case may be, in terms of Section 19(3) of the Act of 2005. The Legislature, in its wisdom, has provided for two appeals. Higher the adjudicatory forum, greater is the requirement of adherence to the rule of judiciousness, fairness and to act in accordance with the procedure prescribed and in absence of any such prescribed procedure, to act in consonance with the principles of natural justice. Higher also is the public expectation from such tribunal. The adjudicatory functions performed by these bodies are of a serious nature. An order passed by the Commission is final and binding and can only be questioned before the High Court or the Supreme Court in exercise of the Court's jurisdiction under Article 226 and/or Article 32 of the Constitution, respectively.

76. If one analyses the scheme of the Act of 2005 and the multi-farious functions that the Information Commission is expected to discharge in its functioning, following features become evident :

1. It has a *litis* pending before it which it decides. '*Litis*', as per Black's Law Dictionary (8<sup>th</sup> Edition) means 'a piece of litigation; a controversy or a dispute'. One party asserting the right to a particular information, the other party denying the same or even contesting that it was invasion into his protected right gives rise to a *litis* which has to be

adjudicated by the Commission in accordance with law and, thus, cannot be termed as ‘administrative function’ *simpliciter*. It, therefore, becomes evident that the appellate authority and the Commission deal with */is* in the sense it is understood in the legal parlance.

2. It performs adjudicatory functions and is required to grant opportunity of hearing to the affected party and to record reasons for its orders. The orders of the Public Information Officer are appealable to first appellate authority and those of the First Appellate Authority are appealable to the Information Commission, which are then open to challenge before the Supreme Court or the High Court in exercise of its extraordinary power of judicial review.
3. It is an adjudicatory process not akin to administrative determination of disputes but similar in nature to the judicial process of determination. The concerned authority is expected to decide not only whether the case was covered under any of the exceptions or related to any of the organizations to which the Act of 2005 does not apply, but even to determine, by applying the legal and constitutional provisions, whether the exercise of the right to information amounted to invasion into the right to privacy.

This being

a very fine distinction of law, application of legal principles in such cases becomes very significant.

4. The concerned authority exercises penal powers and can impose penalty upon the defaulters as contemplated under Section 20 of the Act of 2005. It has to perform investigative and supervisory functions. It is expected to act in consonance with the principles of natural justice as well as those applicable to service law jurisprudence, before it can make a report and recommend disciplinary action against the defaulters, including the persons in service in terms of Section 20(2).
  
5. The functioning of the Commission is quite in line with the functioning of the civil courts and it has even expressly been vested with limited powers of the civil Court. Exercise of these powers and discharge of the functions discussed above not only gives a colour of judicial and/or quasi-judicial functioning to these authorities but also vests the Commission with the essential trappings of a civil Court.

77. Let us now examine some other pre-requisites of vital significance in the functioning of the Commission. In terms of Section 22 of this Act, the provisions of the Act are to be given effect to, notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. This Act is, therefore, to prevail over the specified Acts and even instruments. The same, however, is only to the extent of any inconsistency between the two. Thus, where the provisions of any other law can be applied harmoniously, without any conflict, the question of repugnancy would not arise.

78. Further, Section 23 is a provision relating to exclusion of jurisdiction of the Courts. In terms of this Section, no Court shall entertain any suit, application or other proceedings in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal provided for under this Act. In other words, the jurisdiction of the Court has been ousted by express language. Nevertheless, it is a settled principle of law that despite such excluding provision, the extraordinary jurisdiction of the High Court and the Supreme Court, in terms of Articles 226 and 32 of the Constitution,

respectively, cannot be divested. It is a jurisdiction incapable of being eroded or taken away by exercise of legislative power, being an important facet of the basic structure of the Constitution. In the case of *L. Chandra Kumar* (*supra*), the Court observed that the constitutional safeguards which ensure independence of the Judges of the superior judiciary not being available for the Members of the Tribunal, such tribunals cannot be considered full and effective substitute to the superior judiciary in discharging the function of constitutional interpretation. They can, however, perform a supplemental role. Thus, all decisions of the Tribunals were held to be subject to scrutiny before the High Court under Article 226/227 of the Constitution. Therefore, the orders passed by the authority, i.e., the Central or the State Information Commissions under the Act of 2005 would undoubtedly be subject to judicial review of the High Court under Article 226/227 of the Constitution.

79. Section 24 of the Act of 2005 empowers the Central Government to make amendments to the Second Schedule specifying such organization established by the Government to which the Act of 2005 would not apply. The ‘appropriate Government’ [as defined in Section 2(a)] and the ‘competent authority’ [as defined in Section 2(e)] have the power to frame

rules for the purposes stated under Sections 27 and 28 of the Act of 2005. This exercise is primarily to carry out the provisions of the Act of 2005.

80. Once it is held that the Information Commission is essentially quasi-judicial in nature, the Chief information Commissioner and members of the Commission should be the persons possessing requisite qualification and experience in the field of law and/or other specified fields. We have discussed in some detail the requirement of a judicial mind for effectively performing the functions and exercising the powers of the Information Commission. In the case of *Bharat Bank Ltd., Delhi v. Employees of Bharat Bank & Ors.* [1950 SCR 459 : AIR 1950 SC 188],

this Court took the view that the functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions, although it is not a court in the technical sense of the word. In *S.P. Sampath Kumar v. Union of India* [(1987) 1 SCC 124], again this Court held that in the case of Administrative Tribunals, the presence of a Judicial member was the requirement of fair procedure of law and the Administrative Tribunal must be so manned as to inspire confidence in the public mind that it is a highly competent and expert mechanism with judicial approach and objectivity. It was also observed that

we have, in our country, brilliant civil servants who possess tremendous sincerity, drive and initiative and who have remarkable capacity to resolve and overcome administrative problems of great complexity. But what is needed in a judicial tribunal which is intended to supplant the High Court is legal training and experience. Similar view was also expressed in the case of *Union of India v. Madras Bar Association* [(2010) 11 SCC 1].

81. Further, in the case of *L. Chandra Kumar* (supra) where this Court was concerned with the orders and functioning of the Central Administrative Tribunal and scope of its judicial review, while holding that the jurisdiction of the High Court under Article 226 of the Constitution was open and could not be excluded, the Court specifically emphasised on the need for a legally trained mind and experience in law for the proper functioning of the tribunal. The Court held as under :

#### “88. Functioning of Tribunals

XXX                  XXX                  XXX

8.65 A Tribunal which substitutes the High Court as an alternative institutional mechanism for judicial review must be no less efficacious than the High Court. Such a tribunal must inspire confidence and public esteem that it is a highly competent and expert

*mechanism with judicial approach and objectivity. What is needed in a tribunal, which is intended to supplant the High Court, is legal training and experience, and judicial acumen, equipment and approach.* When such

a tribunal is composed of personnel drawn from the judiciary as well as from services or from amongst experts in the field, any weightage in favour of the service members or expert members and value-discounting the judicial members would render the tribunal less effective and efficacious than the High Court. The Act setting up such a tribunal would itself have to be declared as void under such circumstances. The same would not at all be conducive to judicial independence and may even tend, directly or indirectly, to influence their decision-making process, especially when the Government is a litigant in most of the cases coming before such tribunal. (See *S.P. Sampath Kumar v. Union of India.*) The protagonists of specialist tribunals, who simultaneously with their establishment want exclusion of the writ jurisdiction of the High Courts in regard to matters entrusted for adjudication to such

tribunals, ought not to overlook these vital and important aspects. *It must not be forgotten that what is permissible to be supplanted by another equally effective and efficacious institutional mechanism is the High Courts and not the judicial review itself.*

Tribunals are not an end in themselves but a means to an end; even if the laudable objectives of speedy justice, uniformity of approach, predictability of decisions and specialist justice are to be achieved, the framework of the tribunal intended to be set up to attain them must still retain its basic judicial character and inspire public confidence. Any scheme of decentralisation of administration of justice providing for an alternative institutional mechanism in substitution of the High Courts must pass

the aforesaid test in order to be constitutionally valid."

82. In India, the Central or the State Information Commission, as the case may be, is vested with dual jurisdiction. It is the appellate authority against the orders passed by the first appellate authority, the Information Officer, in terms of Section 19(1) of the Act of 2005, while additionally it is also a supervisory and investigative authority in terms of Section 18 of the Act wherein it is empowered to hear complaints by any person against the inaction, delayed action or other grounds specified under Section 18(1) against any State and Central Public Information Officer. This inquiry is to be conducted in accordance with the prescribed procedure and by exercising the powers conferred on it under Section 18(3). It has to record its satisfaction that there exist reasonable grounds to enquire into the matter.

83. Section 20 is the penal provision. It empowers the Central or the State Information Commission to impose penalty as well as to recommend disciplinary action against such Public Information Officers who, in its opinion, have committed any acts or omissions specified in this section, without any reasonable cause.

The above provisions demonstrate that the functioning of the Commission is not administrative *simpliciter* but is quasi-judicial in nature. It exercises powers and functions which are adjudicatory in character and legal in nature. Thus, the requirement of law, legal procedures, and the protections would apparently be essential. The finest exercise of quasi-judicial discretion by the Commission is to ensure and effectuate the right of information recognized under Article 19 of the Constitution vis-a-vis the protections enshrined under Article 21 of the Constitution.

84. The Information Commission has the power to deal with the appeals from the First Appellate Authority and, thus, it has to examine whether the order of the appellate authority and even the Public Information Officer is in consonance with the provisions of the Act of 2005 and limitations imposed by the Constitution. In this background, no Court can have any hesitation in holding that the Information Commission is akin to a Tribunal having the trappings of a civil Court and is performing quasi-judicial functions.

85. The various provisions of this Act are clear indicators to the unquestionable proposition of law that the Commission is a

judicial tribunal and not a ministerial tribunal. It is an important cog in and is part of court attached system of administration of justice unlike a ministerial tribunal which is more influenced and controlled and performs functions akin to machinery of administration.

### **(b)REQUIREMENT OF LEGAL MIND**

86. Now, it will be necessary for us to dwell upon somewhat controversial but an aspect of greater significance as to who and by whom such adjudicatory machinery, at its various stages under the provisions of the Act of 2005 particularly in the Indian context, should be manned.

87. Section 5 of the Act of 2005 makes it obligatory upon every public authority to designate as many officers, as Central Public Information Officers and State Information Public Officers in all administrative units or offices, as may be necessary to provide information to the persons requesting information under the Act of 2005. Further, the authority is required to designate Central Assistant Public Information Officer and State Assistant Public Information Officer at the sub-divisional or sub-district level. The Assistant Public Information Officers are to perform dual

functions – (1) to receive the applications for information; and (2) to receive appeals under the Act. The applications for information are to be forwarded to the concerned Information Officer and the appeals are to be forwarded to the Central Information Commission or the State Information Commission, as the case may be. It was contemplated that these officers would be designated at all the said levels within hundred days of the enactment of the Act. There is no provision under the Act of 2005 which prescribes the qualification or experience that the Information Officers are required to possess. In fact, the language of the Section itself makes it clear that any officer can be designated as Central Public Information Officer or State Public Information Officer. Thus, no specific requirement is mandated for designating an officer at the sub-divisional or sub-district level. The appeals, under Section 19(1) of the Act, against the order of the Public Information Officer are to be preferred before an Officer senior in the rank to the Public Information Officer. However, under Section 19(3), a further appeal lies to the Central or the State Information Commission, as the case may be, against the orders of the Central or State Appellate Officer. These officers are required to dispose of such application or appeal within the time schedule specified under the provisions of the Act.

There is also no qualification or experience required of these designated officers to whom the first appeal would lie. However, in contradistinction, Section 12(5) and Section 15(5) provide for the experience and knowledge that the Chief Information Commissioner and the Information Commissioners at the Centre and the State levels, respectively, are required to possess. This provision is obviously mandatory in nature.

88. As already noticed, in terms of Section 12(5), the Chief Information Commissioner and Information Commissioners are required to be persons of eminence in public life with wide knowledge and experience in law, science and technology or any of the other specified fields. Further, Sub-Section (6) of Sections

12 and 15 lays down the disqualifications for being nominated as such. It is provided that the Chief Information Commissioner or Information Commissioners shall not be a Member of Parliament or Member of the Legislative Assembly of any State or Union Territory or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

89. The requirement of legal person in a quasi-judicial body has been internationally recognized. We have already referred,

amongst others, to the relevant provisions of the respective Information Acts of the USA, UK and Canada. Even in the Canadian Human Rights Tribunal, under the Canadian Human Rights Act, the Vice-Chairman and Members of the Tribunal are required to have a degree in law from a recognized university and be the member of the bar of a province or a Chamber *des notaires du Quebec* for at least 10 years. Along with this qualification, such person needs to have general knowledge of human rights law as well as public law including Administrative and Constitutional Laws. The Information Commissioner under the Canadian Law has to be appointed by the Governor in Council after consultation with the leader of every recognized party in the Senate and the House of Commons. Approval of such appointment is done by resolution of the Senate and the House of Commons. It is noted that the Vice-Chairperson plays a pre-eminent role within this Administrative Tribunal by ensuring a fair, timely and impartial adjudication process for human rights complaints, for the benefit of all concerned.

90. As already noticed, in the United Kingdom, the Information Rights Tribunal and the Information Commissioners are to deal with the matters arising from both, the FOIA as well as the Data Protection Act, 1998. These tribunals are discharging quasi-

judicial functions. Appointments to them are dealt with and controlled by the TCEA. These appointments are treated as judicial appointments and are covered under Part 2 of the TCEA. Section 50 provides for the eligibility conditions for judicial appointment. Section 50(1)(b) refers to a person who satisfies the judicial-appointment eligibility condition on an N-year basis. A person satisfies that condition on N-year basis if (a) the person has a relevant qualification and (b) the total length of the person's qualifying periods is at least N years. Section 52 provides for the meaning of the expression 'gain experience in law' appearing in Section 50(3)(b). It states that a person gains experience in law during a period if the period is one during which the person is engaged in law-related activities. The essence of these statutory provisions is that the concerned person under that law is required to possess both a degree as well as experience in the legal field. Such experience inevitably relates to working in that field. Only then, the twin criteria of requisite qualification and experience can be satisfied.

91. It may be of some relevance here to note that in UK, the Director in the office of the Government Information Service, an authority created under the Freedom of Information Act, 2000 possesses a degree of law and has been a member of the Bar of

the District of Columbia and North Carolina in UK. The Principal Judge of Information Rights Jurisdiction in the First-tier Tribunal, not only had a law degree but were also retired solicitors or barristers in private practice.

92. Thus, there exists a definite requirement for appointing persons to these posts with legal background and acumen so as to ensure complete faith and confidence of the public in the independent functioning of the Information Commission and for fair and expeditious performance of its functions. The Information Commissions are required to discharge their functions and duties strictly in accordance with law.

93. In India, in terms of sub-Section (5), besides being a person of eminence in public life, the necessary qualification required for appointment as Chief Information Commissioner or Information Commissioner is that the person should have wide knowledge and experience in law and other specified fields. The term 'experience in law' is an expression of wide connotation. It pre-supposes that a person should have the requisite qualification in law as well as experience in the field of law. However, it is worthwhile to note that having a qualification in law is not equivalent to having experience in law and vice-versa. 'Experience in law', thus, is an

expression of composite content and would take within its ambit both the requisite qualification in law as well as experience in the field of law. A person may have some experience in the field of law without possessing the requisite qualification. That certainly would not serve the requirement and purpose of the Act of 2005, keeping in view the nature of the functions and duties required to be performed by the Information Commissioners. Experience in absence of basic qualification would certainly be insufficient in its content and would not satisfy the requirements of the said provision. Wide knowledge in a particular field would, by necessary implication, refer to the knowledge relatable to education in such field whereas experience would necessarily relate to the experience attained by doing work in such field. Both must be read together in order to satisfy the requirements of Sections 12(5) of and 15(5) the Act of 2005. Similarly, wide knowledge and experience in other fields would have to be construed as experience coupled with basic educational qualification in that field.

94. Primarily it may depend upon the language of the rules which govern the service but it can safely be stated as a rule that experience in a given post or field may not necessarily satisfy the condition of prescribed qualification of a diploma or a degree in

such field. Experience by working in a post or by practice in the respective field even for long time cannot be equated with the basic or the prescribed qualification. In absence of a specific language of the provision, it is not feasible for a person to have experience in the field of law without possessing a degree in law. In somewhat different circumstances, this Court in the case of *State of Madhya Pradesh v. Dharam Bir* [(1998) 6 SCC 165], while dealing with Rule 8(2) of the Madhya Pradesh Industrial Training (Gazetted) Service Recruitment Rules, 1985, took the view that the stated qualification for the post of Principal Class I or Principal Class II were also applicable to appointment by promotion and that the applicability of such qualification is not restricted to direct appointments. Before a person becomes eligible for being promoted to the post of Principal, Class II or Principal, Class-I, he must possess a Degree or Diploma in Engineering, as specified in the Schedule. The fact that the person had worked as a Principal for a decade would not lead to a situation of accepting that the person was qualified to hold the post. The Court held as under :

“32. “Experience” gained by the respondent on account of his working on the post in question for over a decade cannot be equated with educational qualifications required to be possessed by a candidate as a condition of

eligibility for promotion to higher posts. If the Government, in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or the qualifications which have to be possessed by the candidates before they are appointed on those posts. The qualifications would naturally vary with the nature of posts or the service created by the Government.

33. The post in question is the post of Principal of the Industrial Training Institute. The Government has prescribed a Degree or Diploma in Engineering as the essential qualification for this post. No one who does not possess this qualification can be appointed on this post. The educational qualification has a direct nexus with the nature of the post. The Principal may also have an occasion to take classes and teach the students. A person who does not hold either a Degree or Diploma in Engineering cannot possibly teach the students of the Industrial Training Institute the technicalities of the subject of Engineering and its various branches."

95. Thus, in our opinion, it is clear that experience in the respective field referred to in Section 12(5) of the Act of 2005 would be an experience gained by the person upon possessing the basic qualification in that field. Of course, the matter may be somewhat different where the field itself does not prescribe any degree or appropriate course. But it would be applicable for the fields like law, engineering, science and technology, management, social service and journalism, etc.

96. This takes us to discuss the kind of duties and responsibilities that such high post is expected to perform. Their functions are adjudicatory in nature. They are required to give notice to the parties, offer them the opportunity of hearing and pass reasoned orders. The orders of the appellate authority and the Commission have to be supported by adequate reasoning as they grant relief to one party, despite opposition by the other or reject the request for information made in exercise of a statutory right.

97. It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to

pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of *Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr.* [(1976) 2 SCC 981]; and *Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers* [(2010) 4 SCC 785].

98. The Chief Information Commissioner and members of the Commission are required to possess wide knowledge and experience in the respective fields. They are expected to be well versed with the procedure that they are to adopt while performing the adjudicatory and quasi judicial functions in accordance with the statutory provisions and the scheme of the Act of 2005. They are to examine whether the information required by an applicant falls under any of the exemptions stated under Section 8 or the Second Schedule of the Act of 2005. Some of the exemptions under Section 8, particularly, sub-sections (e), (g) and (j) have been very widely worded by the Legislature keeping in mind the need to afford due protection to privacy, national security and the larger public interest. In terms of Section 8(1)(e), (f), (g), (h) and (i), the authority is required to record a definite satisfaction whether disclosure of information would be in the larger public interest or whether it would impede the process of investigation

or apprehension or prosecution of the offenders and whether it would cause unwarranted invasion of the privacy of an individual. All these functions may be performed by a legally trained mind more efficaciously. The most significant function which may often be required to be performed by these authorities is to strike a balance between the application of the freedom guaranteed under Article 19(1)(a) and the rights protected under Article 21 of the Constitution. In other words, the deciding authority ought to be conscious of the constitutional concepts which hold significance while determining the rights of the parties in accordance with the provisions of the statute and the Constitution. The legislative scheme of the Act of 2005 clearly postulates passing of a reasoned order in light of the above. A reasoned order would help the parties to question the correctness of the order effectively and within the legal requirements of the writ jurisdiction of the Supreme Court and the High Courts.

99. ‘Persons of eminence in public life’ is also an expression of wide implication and ramifications. It takes in its ambit all requisites of a good citizen with values and having a public image of contribution to the society. Such person should have understanding of concepts of public interest and public good. Most importantly, such person should have contributed to the

society through social or allied works. The authorities cannot lose sight of the fact that ingredients of institutional integrity would be applicable by necessary implication to the Commissions and their members. This discussion safely leads us to conclude that the functions of the Chief Information Commissioner and Information Commissioners may be better performed by a legally qualified and trained mind possessing the requisite experience. The same should also be applied to the designation of the first appellate authority, i.e., the senior officers to be designated at the Centre and State levels. However, in view of language of Section 5, it may not be necessary to apply this principle to the designation of Public Information Officer.

100. Moreover, as already noticed, the Information Commission, is performing quasi-judicial functions and essence of its adjudicatory powers is akin to the Court system. It also possesses the essential trappings of a Court and discharges the functions which have immense impact on the rights/obligations of the parties. Thus, it must be termed as a judicial Tribunal which requires to be manned by a person of judicial mind, expertise and experience in that field. This Court, while dealing with the cases relating to the powers of the Parliament to amend the Constitution has observed that every provision of the

Constitution, can be amended provided in the result, the basic structure of the Constitution remains the same. The dignity of the individual secured by the various freedoms and basic rights contained in Part III of the Constitution and their protection itself has been treated as the basic structure of the Constitution.

101. Besides separation of powers, the independence of judiciary is of fundamental constitutional value in the structure of our Constitution. Impartiality, independence, fairness and reasonableness in judicial decision making are the hallmarks of the Judiciary. If 'Impartiality' is the soul of Judiciary, 'Independence' is the life blood of Judiciary. Without independence, impartiality cannot thrive, as this Court stated in the case of *Union of India v. R. Gandhi, President, Madras Bar Association* [(2010) 11 SCC 17].

102. The independence of judiciary *stricto sensu* applies to the Court system. Thus, by necessary implication, it would also apply to the tribunals whose functioning is quasi-judicial and akin to the court system. The entire administration of justice system has to be so independent and managed by persons of legal acumen, expertise and experience that the persons demanding justice must not only receive justice, but should also have the faith that justice would be done.

103. The above detailed analysis leads to an *ad libitum* conclusion that under the provisions and scheme of the Act of 2005, the persons eligible for appointment should be of public eminence, with knowledge and experience in the specified fields and should preferably have a judicial background. They should possess judicial acumen and experience to fairly and effectively deal with the intricate questions of law that would come up for determination before the Commission, in its day-to-day working. The Commission satisfies abecedarians of a judicial tribunal which has the trappings of a court. It will serve the ends of justice better, if the Information Commission was manned by persons of legal expertise and with adequate experience in the field of adjudication. We may further clarify that such judicial members could work individually or in Benches of two, one being a judicial member while the other being a qualified person from the specified fields to be called an expert member. Thus, in order to satisfy the test of constitutionality, we will have to read into Section 12(5) of the Act that the expression 'knowledge and experience' includes basic degree in that field and experience gained thereafter and secondly that legally qualified, trained and experienced persons would better administer justice to the people, particularly when they are expected to undertake an adjudicatory

process which involves critical legal questions and niceties of law. Such appreciation and application of legal principles is a *sine qua non* to the determinative functioning of the Commission as it can tilt the balance of justice either way. *Malcolm Gladwell* said, “the key to good decision making is not knowledge. It is understanding. We are swimming in the former. We are lacking in the latter”. The requirement of a judicial mind for manning the judicial tribunal is a well accepted discipline in all the major international jurisdictions with hardly with any exceptions. Even if the intention is to not only appoint people with judicial background and expertise, then the most suitable and practical resolution would be that a ‘judicial member’ and an ‘expert member’ from other specified fields should constitute a Bench and perform the functions in accordance with the provisions of the Act of 2005. Such an approach would further the mandate of the statute by resolving the legal issues as well as other serious issues like an inbuilt conflict between the Right to Privacy and Right to Information while applying the balancing principle and other incidental controversies. We would clarify that participation by qualified persons from other specified fields would be a positive contribution in attainment of the proper administration of justice as well as the object of the Act of 2005. Such an approach would

help to withstand the challenge to the constitutionality of Section 12(5).

104. As a natural sequel to the above, the question that comes up for consideration is as to what procedure should be adopted to make appointments to this august body. Section 12(3) states about the High-powered Committee, which has to recommend the names for appointment to the post of Chief Information Commissioner and Information Commissioners to the President. However, this Section, and any other provision for that matter, is entirely silent as to what procedure for appointment should be followed by this High Powered Committee. Once we have held that it is a judicial tribunal having the essential trappings of a court, then it must, as an irresistible corollary, follow that the appointments to this august body are made in consultation with the judiciary. In the event, the Government is of the opinion and desires to appoint not only judicial members but also experts from other fields to the Commission in terms of Section 12(5) of the Act of 2005, then it may do so, however, subject to the riders stated in this judgment. To ensure judicial independence, effective adjudicatory process and public confidence in the administration of justice by the Commission, it would be necessary that the Commission is required to work in Benches.

The Bench should consist of one judicial member and the other member from the specified fields in terms of Section 12(5) of the Act of 2005. It will be incumbent and in conformity with the scheme of the Act that the appointments to the post of judicial member are made ‘in consultation’ with the Chief Justice of India in case of Chief Information Commissioner and members of the Central Information Commission and the Chief Justices of the High Courts of the respective States, in case of the State Chief Information Commissioner and State Information Commissioners of that State Commission. In the case of appointment of members to the respective Commissions from other specified fields, the DoPT in the Centre and the concerned Ministry in the States should prepare a panel, after due publicity, empanelling the names proposed at least three times the number of vacancies existing in the Commission. Such panel should be prepared on a rational basis, and should inevitably form part of the records. The names so empanelled, with the relevant record should be placed before the said High Powered Committee. In furtherance to the recommendations of the High Powered Committee, appointments to the Central and State Information Commissions should be made by the competent authority. Empanelment by the DoPT and other competent authority has to be carried on the

basis of a rational criteria, which should be duly reflected by recording of appropriate reasons. The advertisement issued by such agency should not be restricted to any particular class of persons stated under Section 12(5), but must cover persons from all fields. Complete information, material and comparative data of the empanelled persons should be made available to the High Powered Committee. Needless to mention that the High Powered Committee itself has to adopt a fair and transparent process for consideration of the empanelled persons for its final recommendation. This approach, is in no way innovative but is merely derivative of the mandate and procedure stated by this Court in the case of *L. Chandra Kumar* (supra) wherein the Court dealt with similar issues with regard to constitution of the Central Administrative Tribunal. All concerned are expected to keep in mind that the Institution is more important than an individual. Thus, all must do what is expected to be done in the interest of the institution and enhancing the public confidence. A three Judge Bench of this Court in the case of *Centre for PIL and Anr. v. Union of India & Anr.* [(2011) 4 SCC 1] had also adopted a similar approach and with respect we reiterate the same.

105. Giving effect to the above scheme would not only further the cause of the Act but would attain greater efficiency, and accuracy

in the decision-making process, which in turn would serve the larger public purpose. It shall also ensure greater and more effective access to information, which would result in making the invocation of right to information more objective and meaningful.

106. For the elaborate discussion and reasons afore-recorded, we pass the following order and directions:

1. The writ petition is partly allowed.
2. The provisions of Sections 12(5) and 15(5) of the Act of 2005 are held to be constitutionally valid, but with the rider that, to give it a meaningful and purposive interpretation, it is necessary for the Court to 'read into' these provisions some aspects without which these provisions are bound to offend the doctrine of equality. Thus, we hold and declare that the expression 'knowledge and experience' appearing in these provisions would mean and include a basic degree in the respective field and the experience gained thereafter. Further, without any peradventure and veritably, we state that appointments of legally qualified, judicially trained and experienced persons would certainly manifest in more effective serving of the ends of justice as well as ensuring better administration of justice by the Commission. It would render

the adjudicatory process which involves critical legal questions and nuances of law, more adherent to justice and shall enhance the public confidence in the working of the Commission. This is the obvious interpretation of the language of these provisions and, in fact, is the essence thereof.

3. As opposed to declaring the provisions of Section 12(6) and 15(6) unconstitutional, we would prefer to read these provisions as having effect ‘post-appointment’. In other words, cessation/termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the appointment of a person as Chief Information Commissioner or Information Commissioner at the Centre or State levels.
4. There is an absolute necessity for the legislature to reword or amend the provisions of Section 12(5), 12(6) and 15(5), 15(6) of the Act. We observe and hope that these provisions would be amended at the earliest by the legislature to avoid any ambiguity or impracticability and to make it in consonance with the constitutional mandates.

5. We also direct that the Central Government and/or the competent authority shall frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with the basic rule of law. Such rules should be framed with particular reference to Section 27 and 28 of the Act within a period of six months from today.
6. We are of the considered view that it is an unquestionable proposition of law that the Commission is a ‘judicial tribunal’ performing functions of ‘judicial’ as well as ‘quasi-judicial’ nature and having the trappings of a Court. It is an important cog and is part of the court attached system of administration of justice, unlike a ministerial tribunal which is more influenced and controlled and performs functions akin to the machinery of administration.
7. It will be just, fair and proper that the first appellate authority (i.e. the senior officers to be nominated in terms of Section 5 of the Act of 2005) preferably should be the persons possessing a degree in law or having adequate knowledge and experience in the field of law.
8. The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of

them being a ‘judicial member’, while the other an ‘expert member’. The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practiced law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India.

9. The appointment of the judicial members to any of these posts shall be made ‘in consultation’ with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.
10. The appointment of the Information Commissioners at both levels should be made from amongst the persons empanelled by the DoPT in the case of Centre and the concerned Ministry

in the case of a State. The panel has to be prepared upon due advertisement and on a rational basis as afore-recorded.

11. The panel so prepared by the DoPT or the concerned Ministry ought to be placed before the High-powered Committee in terms of Section 12(3), for final recommendation to the President of India. Needless to repeat that the High Powered Committee at the Centre and the State levels is expected to adopt a fair and transparent method of recommending the names for appointment to the competent authority.

12. The selection process should be commenced at least three months prior to the occurrence of vacancy.

13. This judgment shall have effect only prospectively.

14. Under the scheme of the Act of 2005, it is clear that the orders of the Commissions are subject to judicial review before the High Court and then before the Supreme Court of India. In terms of Article 141 of the Constitution, the judgments of the Supreme Court are law of the land and are binding on all courts and tribunals. Thus, it is abundantly clear that the Information Commission is bound by the law of precedence, i.e., judgments of the High Court and the Supreme Court of

India. In order to maintain judicial discipline and consistency in the functioning of the Commission, we direct that the Commission shall give appropriate attention to the doctrine of precedence and shall not overlook the judgments of the courts dealing with the subject and principles applicable, in a given case.

It is not only the higher court's judgments that are binding precedents for the Information Commission, but even those of the larger Benches of the Commission should be given due acceptance and enforcement by the smaller Benches of the Commission. The rule of precedence is equally applicable to intra appeals or references in the hierarchy of the Commission.

107. The writ petition is partly allowed with the above directions, however, without any order as to costs.

.....,J.  
[A.K. Patnaik]

.....,J.  
[Swatanter Kumar]

New Delhi;  
September 13, 2012

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**Special Leave Petition (Civil) No. 27734                    of 2012**  
(@ CC 14781/2012)

Girish Ramchandra Deshpande .. Petitioner

Versus

Cen. Information Commr. & Ors. .. Respondents

**O R D E R**

1. Delay condoned.
  
2. We are, in this case, concerned with the question whether the Central Information Commissioner (for short 'the CIC') acting under the Right to Information Act, 2005 (for short 'the RTI Act')

was right in denying information regarding the third respondent's personal matters pertaining to his service career and also denying the details of his assets and liabilities, movable and immovable properties on the ground that the information sought for was qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act.

3. The petitioner herein had submitted an application on 27.8.2008 before the Regional Provident Fund Commissioner (Ministry of Labour, Government of India) calling for various details relating to third respondent, who was employed as an Enforcement Officer in Sub-Regional Office, Akola, now working in the State of Madhya Pradesh. As many as 15 queries were made to which the Regional Provident Fund Commissioner, Nagpur gave the following reply on 15.9.2008:

"As to Point No.1: Copy of appointment order of Shri A.B. Lute, is in 3 pages. You have sought the details of salary in respect of Shri A.B. Lute, which

relates to personal information the disclosures of which has no relationship to any public activity or interest, it would cause unwarranted invasion of the privacy of individual hence denied as per the RTI provision under Section 8(1)(j) of the Act.

- As to Point No.2: Copy of order of granting Enforcement Officer Promotion to Shri A.B. Lute, is in 3 Number. Details of salary to the post along with statutory and other deductions of Mr. Lute is denied to provide as per RTI provisions under Section 8(1)(j) for the reasons mentioned above.
- As to Point NO.3: All the transfer orders of Shri A.B. Lute, are in 13 Numbers. Salary details is rejected as per the provision under Section 8(1)(j) for the reason mentioned above.
- As to Point No.4: The copies of memo, show cause notice, censure issued to Mr. Lute, are not being provided on the ground that it would cause unwarranted invasion of the privacy of the individual and has no relationship to any public activity or interest. Please see RTI provision under Section 8(1)(j).

- As to Point No.5: Copy of EPF (Staff & Conditions) Rules 1962 is in 60 pages.
- As to Point No.6: Copy of return of assets and liabilities in respect of Mr. Lute cannot be provided as per the provision of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.
- As to Point No.7: Details of investment and other related details are rejected as per the provision of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.
- As to Point No.8: Copy of report of item wise and value wise details of gifts accepted by Mr. Lute, is rejected as per the provisions of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.
- As to Point No.9: Copy of details of movable, immovable properties of Mr. Lute, the request to provide the same is rejected as per the RTI Provisions under Section 8(1)(j).
- As to Point No.10: Mr. Lute is not claiming for TA/DA for attending the criminal case pending at JMFC, Akola.
- As to Point No.11: Copy of Notification is in 2 numbers.

- As to Point No.12: Copy of certified true copy of charge sheet issued to Mr. Lute – The matter pertains with head Office, Mumbai. Your application is being forwarded to Head Office, Mumbai as per Section 6(3) of the RTI Act, 2005.
- As to Point No.13: Certified True copy of complete enquiry proceedings initiated against Mr. Lute – It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest. Please see RTI provisions under Section 8(1)(j).
- As to Point No.14: It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest, hence denied to provide.
- As to Point No.15: Certified true copy of second show cause notice – It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest, hence denied to provide.”

4. Aggrieved by the said order, the petitioner approached the CIC. The CIC passed the order on 18.6.2009, the operative portion of the order reads as under:

"The question for consideration is whether the aforesaid information sought by the Appellant can be treated as 'personal information' as defined in clause (j) of Section 8(1) of the RTI Act. It may be pertinent to mention that this issue came up before the Full Bench of the Commission in Appeal No.CIC/AT/A/2008/000628 (**Milap Choraria v. Central Board of Direct Taxes**) and the Commission vide its decision dated 15.6.2009 held that "the Income Tax return have been rightly held to be personal information exempted from disclosure under clause (j) of Section 8(1) of the RTI Act by the CPIO and the Appellate Authority, and the appellant herein has not been able to establish that a larger public interest would be served by disclosure of this information. This logic would hold good as far as the ITRs of Shri Lute are concerned. I would like to further observe that the information which has been denied to the appellant essentially falls in two parts – (i) relating to the personal matters pertaining to his services career; and (ii) Shri Lute's assets & liabilities, movable and immovable properties and other financial aspects. I have no hesitation in holding that this information also qualifies to be the 'personal information' as defined in clause (j) of Section 8(1) of the RTI Act and the appellant has not been able to convince the Commission that disclosure thereof is in larger public interest."

5. The CIC, after holding so directed the second respondent to disclose the information at paragraphs 1, 2, 3 (only posting details), 5, 10, 11, 12,13 (only copies of the posting orders) to the appellant within a period of four weeks from the date of the order. Further, it was held that the information sought for with regard to the other queries did not qualify for disclosure.

6. Aggrieved by the said order, the petitioner filed a writ petition No.4221 of 2009 which came up for hearing before a learned Single Judge and the court dismissed the same vide order dated 16.2.2010. The matter was taken up by way of Letters Patent Appeal No.358 of 2011 before the Division Bench and the same was dismissed vide order dated 21.12.2011. Against the said order this special leave petition has been filed.

7. Shri A.P. Wachasunder, learned counsel appearing for the petitioner submitted that the documents sought for vide Sl. Nos.1, 2 and 3 were pertaining to appointment and promotion

and Sl. No.4 and 12 to 15 were related to disciplinary action and documents at Sl. Nos.6 to 9 pertained to assets and liabilities and gifts received by the third respondent and the disclosure of those details, according to the learned counsel, would not cause unwarranted invasion of privacy.

8. Learned counsel also submitted that the privacy appended to Section 8(1)(j) of the RTI Act widens the scope of documents warranting disclosure and if those provisions are properly interpreted, it could not be said that documents pertaining to employment of a person holding the post of enforcement officer could be treated as documents having no relationship to any public activity or interest.

9. Learned counsel also pointed out that in view of Section 6(2) of the RTI Act, the applicant making request for information is not obliged to give any reason for the requisition and the CIC was not justified in dismissing his appeal.

10. This Court in **Central Board of Secondary Education and another v. Aditya Bandopadhyay and others** (2011) 8 SCC 497 while dealing with the right of examinees to inspect evaluated answer books in connection with the examination conducted by the CBSE Board had an occasion to consider in detail the aims and object of the RTI Act as well as the reasons for the introduction of the exemption clause in the RTI Act, hence, it is unnecessary, for the purpose of this case to further examine the meaning and contents of Section 8 as a whole.

11. We are, however, in this case primarily concerned with the scope and interpretation to clauses (e), (g) and (j) of Section 8(1) of the RTI Act which are extracted herein below:

**"8. Exemption from disclosure of information.- (1)**  
Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

**(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;

**(g)** information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

**(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.”

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.

14. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

15. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

16. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for

the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.

.....J.  
(K. S. RADHAKRISHNAN)

.....J.  
(DIPAK MISRA)

New Delhi  
October 3, 2012

# **REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**(Arising out of SLP(C) No.7529 of 2009)**

**Manohar s/o Manikrao Anchule** ... Appellant

## Versus

## **State of Maharashtra & Anr.**

## Respondents

## JUDGMENT

## Swatanter Kumar, J.

1. Leave granted.
  2. The present appeal is directed against the judgment dated 18<sup>th</sup> December, 2008 of the High Court of Bombay at Aurangabad vide which the High Court declined to interfere with the order dated 26<sup>th</sup> February, 2008 passed by the State Information Commissioner under the provisions of the Right to Information Act, 2005 (for short ‘the Act’).

3. We may notice the facts in brief giving rise to the present appeal. One Shri Ram Narayan, respondent No.2, a political person belonging to the Nationalist Congress Party, Nanded filed an application on 3<sup>rd</sup> January, 2007, before the appellant who was a nominated authority under Section 5 of the Act and was responsible for providing the information sought by the applicants. This application was moved under Section 6(1) of the Act.

4. In the application, the said respondent No.2 sought the following information:

- “a. The persons those who are appointed/selected through a reservation category, their names, when they have appointed on the said post.
- b. When they have joined the said post.
- c. The report of the Caste Verification Committee of the persons those who are/were selected from the reserved category.
- d. The persons whose caste certificate is/was forwarded for the verification to the caste verification committee after due date. Whether any action is taken against those persons? If any action is taken, then the detail information should be given within 30 days.”

5. The appellant, at the relevant time, was working as Superintendent in the State Excise Department and was designated as the Public Information Officer. Thus, he was discharging the functions required under the provisions of the Act. After receiving the application from Respondent No.2, the appellant forwarded the application to the concerned Department for collecting the information. Vide letter dated 19<sup>th</sup> January, 2007, the appellant had informed respondent No.2 that action on his application has been taken and the information asked for has been called from the concerned department and as and when the information is received, the application could be answered accordingly. As respondent No.2 did not receive the information in furtherance to his application dated 3<sup>rd</sup> January, 2007, he filed an appeal within the prescribed period before the Collector, Nanded on 1<sup>st</sup> March, 2007, under Section 19(1) of the Act. In the appeal, respondent No.2 sought the information for which he had submitted the application. This appeal was forwarded to the office of the appellant along with the application given by respondent No.2. No hearing was conducted by the office of the Collector at

Nanded. Vide letter dated 11<sup>th</sup> April, 2007, the then 3

Superintendent, State Excise, Nanded, also designated as Public Information Officer, further wrote to respondent No.2 that since he had not mentioned the period for which the information is sought, it was not possible to supply the information and requested him to furnish the period for which such information was required. The letter dated 11<sup>th</sup> April, 2007 reads as under :

“... you have not mentioned the period of the information which is sought by you. Therefore, it is not possible to supply the information. Therefore, you should mention the period of information in your application so that it will be convenient to supply the information.”

6. As already noticed there was no hearing before the Collector and the appeal before the Collector had not been decided. It is the case of the appellant that the communication from the Collector's office dated 4<sup>th</sup> March, 2007 had not been received in the office of the appellant. Despite issuance of the letter dated 11<sup>th</sup> April, 2007, no information was received from respondent No.2 and, thus, the information could not be furnished by the appellant. On 4<sup>th</sup> April, 2007, the appellant was transferred from Nanded to Akola District and thus was not responsible for

performance of the functions of the post that he was earlier 4

holding at Nanded and so also the functions of Designated Public Information Officer.

7. Respondent No.2, without awaiting the decision of the First Appellate Authority (the Collector), filed an appeal before the State Information Commission at Aurangabad regarding non-providing of the information asked for. The said appeal came up for hearing before the Commission at Aurangabad who directed issuance of the notice to the office of the State Excise at Nanded. The Nanded office informed the appellant of the notice and that the hearing was kept for 26<sup>th</sup> February, 2008 before the State Information Commission at Aurangabad. This was informed to the appellant vide letter dated 12<sup>th</sup> February, 2008. On 25th February, 2008, the applicant forwarded an application through fax to the office of the State Information Commissioner bringing to their notice that for official reasons he was unable to appear before the Commissioner on that date and requested for grant of extension of time for that purpose. Relevant part of the letter dated 25<sup>th</sup> February 2008 reads as under:

“...hearing is fixed before the Hon'ble Minister, State  
Excise M.S.Mumbai in respect of licence of

CL-3 of Shivani Tq. and Dist. Akola. For that purpose it is necessary for the Superintendent, State Excise, Akola for the said hearing. Therefore, it is not possible for him to remain present for hearing on 26.2.2008 before the Hon'ble Commissioner, State Information Commission, Aurangabad. Therefore, it is requested that next date be given for the said hearing."

8. The State Information Commission, without considering the application and even the request made by the Officer who was present before the State Information Commission at the time of hearing, allowed the appeal vide its order dated 26<sup>th</sup> February, 2008, directing the Commissioner for State Excise to initiate action against the appellant as per the Service Rules and that the action should be taken within two months and the same would be reported within one month thereafter to the State Information Commission. It will be useful to reproduce the relevant part of the order dated 26<sup>th</sup> February, 2008, passed by the State Information Commissioner:

"The applicant has prefer First appeal before the Collector on 1.3.2007, the said application was received to the State Excise Office on 4.3.2007 and on 11.4.2007 it was informed to the applicant, that he has not mentioned the specific period regarding the information. The

Public Information Officer, ought to have been informed to the applicant after receiving his first application regarding the specific period of information but, here the public information officer has not consider positively, the application of the applicant and not taken any decision. On the application given by the applicant, the public information officer ought to have been informed to the applicant on or before 28.1.2007 and as per the said Act, 2005 there is delay 73 days for informing the applicant and this shows that, the Public Information Officer has not perform his duty which is casted upon him and he is negligent it reveals after going through the documents by the State Commission. Therefore, it is order that, while considering above said matter, the concerned Public Information Officer, has made delay of 73 days for informing to the applicant and therefore he has shown the negligence while performing his duty. Therefore, it is ordered to the Commissioner of State Excise Maharashtra State to take appropriate action as per the Service Rules and Regulation against the concerned Public Information Officer within the two months from this order and thereafter, the compliance report will be submitted within one month in the office of State Commission. As the applicant has not mentioned the specific period for information in his original application and therefore, the Public Information Officer was unable to supply him information. There is no order to the Public Information Officer to give information to the applicant as per his application. It is necessary for all the applicant those who want the information under the said Act, he should fill up the form properly and it is confirmed that, whether he has given detail information while submitting the application as

per the proforma and this would be confirm while making the application, otherwise the Public Information Officer will not in position to give expected information to the applicant. At the time of filing the application, it is necessary for the applicant, to fill-up the form properly and it was the prime duty of the applicant.

As per the above mentioned, the second appeal filed by the applicant is hereby decided as follows:

### O R D E R

1. The appeal is decided.
2. As the concern Public Information Officer has shown his negligence while performing his duty, therefore, the Commissioner of State Excise, State of Maharashtra has to take appropriate action as per the service rules within two months from the date of order and thereafter, within one month they should submit their compliance report to the State Commission.”
  
9. The legality and correctness of the above order was challenged by the appellant before the High Court by filing the writ petition under Article 226 of the Constitution of India. The appellant had taken various grounds challenging the correctness of this order. However, the High Court, vide its order dated 18<sup>th</sup> December, 2008, dismissed the writ petition observing that the appellant ought to have passed the appropriate orders in the

matter rather than keeping respondent No.2 waiting. It also noticed the contention that the application was so general and vague in nature that the information sought for could not be provided. However, it did not accept the same.

10. It is contended on behalf of the appellant that the order of the State Information Commission, as affirmed by the High Court, is in violation of the principles of natural justice and is contrary to the very basic provisions of Section 20 of the Act. The order does not satisfy any of the ingredients spelt out in the provisions of Section 20(2) of the Act. The State Information Commission did not decide the appeal, it only directed action to be taken against the appellant though the appeal as recorded in the order had been decided. It can, therefore, be inferred that there is apparent non-application of mind.

11. The impugned orders do not take the basic facts of the case into consideration that after a short duration the appellant was transferred from the post in question and had acted upon the application seeking information within the prescribed time. Thus,

no default, much less a negligence, was attributable to the appellant.

12. Despite service, nobody appeared on behalf of the State Information Commission. The State filed no counter affidavit.

13. Since the primary controversy in the case revolves around the interpretation of the provisions of Section 20 of the Act, it will be necessary for us to refer to the provisions of Section 20 of the Act at this stage itself.

Section 20 reads as under:

“Section 20: Penalties:-(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in, furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.”

14. State Information Commissions exercise very wide and certainly quasi judicial powers. In fact their functioning is akin to the judicial system rather than the executive decision making process.

15. It is a settled principle of law and does not require us to discuss this principle with any elaboration that adherence to the principles of natural justice is mandatory for such Tribunal or bodies discharging such functions.

16. The State Information Commission has been vested with wide powers including imposition of penalty or taking of disciplinary action against the employees. Exercise of such power is bound to adversely affect or bring civil consequences to the delinquent. Thus, the provisions relating to penalty or to penal consequences have to be construed strictly. It will not be open to the Court to give them such liberal construction that it would be beyond the specific language of the statute or would be in violation to the principles of natural justice.

17. The State Information Commission is performing adjudicatory functions where two parties raise their respective issues to which the State Information Commission is expected to apply its mind and pass an order directing disclosure of the information asked for or declining the same. Either way, it affects the rights of the parties who have raised rival contentions before the Commission.

If there were no rival contentions, the matter would rest at the level of the designated Public Information Officer or immediately thereafter. It comes to the State Information Commission only at the appellate stage when rights and contentions require adjudication. The adjudicatory process essentially has to be in consonance with the principles of natural justice, including the doctrine of *audi alteram partem*. Hearing the parties, application of mind and recording of reasoned decision are the basic elements of natural justice. It is not expected of the Commission to breach any of these principles, particularly when its orders are open to judicial review. Much less to Tribunals or such Commissions, the Courts have even made compliance to the principle of rule of natural justice obligatory in the class of administrative matters as well. In the case of *A.K. Kraipak & Ors. v. Union of India & Ors.* [(1969) 2 SCC 262], the Court held as under :

“17. ... It is not necessary to examine those decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding...

The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate

only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.... The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing ( *audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in

*Suresh Koshy George v. University of Kerala* the rules of natural justice are not embodied rules.

What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

18. In the case of *Kranti Associates (P) Ltd. & Ors. v. Masood Ahmed Khan & Ors.* [(2010) 9 SCC 496], the Court dealt with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice. The Court held as under :

“47. Summarising the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- (j) Insistence on reason is a requirement for both judicial accountability and transparency.

- (k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or “rubber-stamp reasons” is not to be equated with a valid decision-making process.
- (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*.)
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija v. Spain EHRR*, at 562 para 29 and *Anya v. University of Oxford*, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

“adequate and intelligent reasons must be given for judicial decisions”.

- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development

of law, requirement of giving reasons for the decision is of the essence and is virtually a part of ‘due process’.”

19. The Court has also taken the view that even if cancellation of the poll were an administrative act that *per se* does not repel the application of the principles of natural justice. The Court further said that classification of functions as judicial or administrative is a stultifying shibboleth discarded in India as in England. Today, in our jurisprudence, the advances made by the natural justice far exceed old frontiers and if judicial creativity blights penumbral areas, it is also for improving the quality of Government in injecting fair play into its wheels. Reference in this regard can be made to *Mohinder Singh Gill v. Chief Election Commissioner* [(1978) 1 SCC 405].

20. Referring to the requirement of adherence to principles of natural justice in adjudicatory process, this Court in the case of *Namit Sharma v. Union of India* [2012 (8) SCALE 593], held as under:

“97. It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its

decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging

the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of *Siemens*

*Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr.* [(1976) 2 SCC 981]; and *Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers* [(2010) 4 SCC 785].”

21. We may notice that proviso to Section 20(1) specifically contemplates that before imposing the penalty contemplated under Section 20(1), the Commission shall give a reasonable opportunity of being heard to the concerned officer. However, there is no such specific provision in relation to the matters covered under Section 20(2). Section 20(2) empowers the Central

or the State Information Commission, as the case may be, at the 19

time of deciding a complaint or appeal for the reasons stated in that section, to recommend for disciplinary action to be taken against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the relevant service rules. Power to recommend disciplinary action is a power exercise of which may impose penal consequences. When such a recommendation is received, the disciplinary authority would conduct the disciplinary proceedings in accordance with law and subject to satisfaction of the requirements of law. It is a 'recommendation' and not a 'mandate' to conduct an enquiry. 'Recommendation' must be seen in contradistinction to 'direction' or 'mandate'. But recommendation itself vests the delinquent Public Information Officer or State Public Information Officer with consequences which are of serious nature and can ultimately produce prejudicial results including misconduct within the relevant service rules and invite minor and/or major penalty.

22. Thus, the principles of natural justice have to be read into the provisions of Section 20(2). It is a settled canon of civil jurisprudence including service jurisprudence that no person be

condemned unheard. Directing disciplinary action is an order in the form of recommendation which has far reaching civil consequences. It will not be permissible to take the view that compliance with principles of natural justice is not a condition precedent to passing of a recommendation under Section 20(2). In the case of *Udit Narain Singh Malpharia v. Additional Member, Board of Revenue, Bihar* [AIR 1963 SC 786], the Court stressed upon compliance with the principles of natural justice in judicial or quasi-judicial proceedings. Absence of such specific requirement would invalidate the order. The Court, reiterating the principles stated in the English Law in the case of *King v. Electricity Commissioner*, held as under :

“The following classic test laid down by Lord Justice Atkin, as he then was, in *King v. Electricity Commissioners* and followed by this Court in more than one decision clearly brings out the meaning of the concept of judicial act:

“Wherever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.”

Lord Justice Slesser in *King v. London County Council* dissected the concept of judicial act laid down by Atkin, L.J., into the following heads in his judgment: "Wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority — a writ of certiorari may issue." It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, *ex hypothesi* it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it."

23. Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature.

24. In light of the above principles, now we will examine whether there is any violation of principles of natural justice in the present case.

25. Vide letter dated 12<sup>th</sup> February, 2008, the appellant was informed by the Excise Department, Nanded, when he was posted at Akola that hearing was fixed for 25<sup>th</sup> February, 2008. He submitted a request for adjournment which, admittedly, was received and placed before the office of the State Information Commission. In addition thereto, another officer of the Department had appeared, intimated the State Information Commission and requested for adjournment, which was declined. It was not that the appellant had been avoiding appearance before the State Information Commission. It was the first date of hearing and in the letter dated 25<sup>th</sup> February, 2008, he had given a reasonable cause for his absence before the Commission on 25<sup>th</sup> February, 2008. However, on 26<sup>th</sup> February, 2008, the impugned order was passed. The appellant was entitled to a hearing before an order could be passed against him under the provisions of Section 20(2) of the Act. He was granted no such hearing. The

State Information Commission not only recommended but directed initiation of departmental proceedings against the appellant and even asked for the compliance report. If such a harsh order was to be passed against the appellant, the least that was expected of the Commission was to grant him a hearing/reasonable opportunity to put forward his case. We are of the considered view that the State Information Commission should have granted an adjournment and heard the appellant before passing an order Section under 20(2) of the Act. On that ground itself, the impugned order is liable to be set aside. It may be usefully noticed at this stage that the appellant had a genuine case to explain before the State Information Commission and to establish that his case did not call for any action within the provisions of Section 20(2). Now, we would deal with the other contention on behalf of the appellant that the order itself does not satisfy the requirements of Section 20(2) and, thus, is unsustainable in law. For this purpose, it is necessary for the Court to analyse the requirement and scope of Section 20(2) of the Act. Section 20(2) empowers a Central Information Commission or the State Information Commission :

- (a) at the time of deciding any complaint or appeal;
- (b) if it is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 (i.e. 30 days);
- (c) malafidely denied the request for information or intentionally given incorrect, incomplete or misleading information; or
- (d) destroyed information which was the subject of the request or obstructed in any manner in furnishing the information;
- (e) then it shall recommend for disciplinary action against the stated persons under the relevant servicerules.

26. From the above dissected language of the provision, it is clear that first of all an opinion has to be formed by the Commission. This opinion is to be formed at the time of deciding any complaint or appeal after hearing the person concerned. The

opinion formed has to have basis or reasons and must be relatable 25

to any of the defaults of the provision. It is a penal provision as it vests the delinquent with civil consequences of initiation of and/or even punishment in disciplinary proceedings. The grounds stated in the Section are exhaustive and it is not for the Commission to add other grounds which are not specifically stated in the language of Section 20(2). The section deals with two different proceedings. Firstly, the appeal or complaint filed before the Commission is to be decided and, secondly, if the Commission forms such opinion, as contemplated under the provisions, then it can recommend that disciplinary proceedings be taken against the said delinquent Central Public Information Officer or State Public Information Officer. The purpose of the legislation in requiring both these proceedings to be taken together is obvious not only from the language of the section but even by applying the mischief rule wherein the provision is examined from the very purpose for which the provision has been enacted. While deciding the complaint or the appeal, if the Commission finds that the appeal is without merit or the complaint is without substance, the information need not be furnished for reasons to be recorded. If

such be the decision, the question of recommending disciplinary 26

action under Section 20(2) may not arise. Still, there may be another situation that upon perusing the records of the appeal or the complaint, the Commission may be of the opinion that none of the defaults contemplated under Section 20(2) is satisfied and, therefore, no action is called for. To put it simply, the Central or the State Commission have no jurisdiction to add to the exhaustive grounds of default mentioned in the provisions of Section 20(2). The case of default must strictly fall within the specified grounds of the provisions of Section 20(2). This provision has to be construed and applied strictly. Its ambit cannot be permitted to be enlarged at the whims of the Commission.

27. Now, let us examine if any one or more of the stated grounds under Section 20(2) were satisfied in the present case which would justify the recommendation by the Commission of taking disciplinary action against the appellant. The appellant had received the application from respondent No.2 requiring the information sought for on 3<sup>rd</sup> January, 2007. He had, much within the period of 30 days (specified under Section 7), sent the application to the concerned department requiring them to furnish

the requisite information. The information had not been received. May be after the expiry of the prescribed period, another letter was written by the department to respondent No.2 to state the period for which the information was asked for. This letter was written on 11<sup>th</sup> April, 2007. To this letter, respondent No.2 did not respond at all. In fact, he made no further query to the office of the designated Public Information Officer as to the fate of his application and instead preferred an appeal before the Collector and thereafter appeal before the State Information Commission. In the meanwhile, the appellant had been transferred in the Excise Department from Nanded to Akola. At this stage, we may recapitulate the relevant dates. The application was filed on 3<sup>rd</sup> January, 2007, upon which the appellant had acted and vide his letter dated 19<sup>th</sup> January, 2007 had forwarded the application for requisite information to the concerned department. The appeal was filed by respondent no.2 under Section 19(1) of the Act before the Collector, Nanded on 1<sup>st</sup> March, 2007. On 4<sup>th</sup> March, 2007, the appeal was forwarded to the office of the Excise Department. On 4<sup>th</sup> April, 2007, the appellant had been transferred from Nanded to

Akola. On 11<sup>th</sup> April, 2007, other officer from the Department had 28

asked respondent no.2 to specify the period for which the information was required. If the appellant was given an opportunity and had appeared before the Commission, he might have been able to explain that there was reasonable cause and he had taken all reasonable steps within his power to comply with the provisions. The Commission is expected to formulate an opinion that must specifically record the finding as to which part of Section 20(2) the case falls in. For instance, in relation to failure to receive an application for information or failure to furnish the information within the period specified in Section 7(1), it should also record the opinion if such default was persistent and without reasonable cause.

28. It appears that the facts have not been correctly noticed and, in any case, not in their entirety by the State Information Commission. It had formed an opinion that the appellant was negligent and had not performed the duty cast upon him. The Commission noticed that there was 73 days delay in informing the applicant and, thus, there was negligence while performing duties. If one examines the provisions of Section 20(2) in their entirety

then it becomes obvious that every default on the part of the concerned officer may not result in issuance of a recommendation for disciplinary action. The case must fall in any of the specified defaults and reasoned finding has to be recorded by the Commission while making such recommendations. ‘Negligence’ *per se* is not a ground on which proceedings under Section 20(2) of the Act can be invoked. The Commission must return a finding that such negligence, delay or default is persistent and without reasonable cause. In our considered view, the Commission, in the present case, has erred in not recording such definite finding. The appellant herein had not failed to receive any application, had not failed to act within the period of 30 days (as he had written a letter calling for information), had not malafidely denied the request for information, had not furnished any incorrect or misleading information, had not destroyed any information and had not obstructed the furnishing of the information. On the contrary, he had taken steps to facilitate the providing of information by writing the stated letters. May be the letter dated 11<sup>th</sup> April, 2007 was not written within the period of 30 days

requiring respondent No.2 to furnish details of the period for which 30

such information was required but the fact remained that such letter was written and respondent No.2 did not even bother to respond to the said enquiry. He just kept on filing appeal after appeal. After April 4, 2007, the date when the appellant was transferred to Akola, he was not responsible for the acts of omissions and/or commission of the office at Nanded.

29. Another aspect of this case which needs to be examined by the Court is that the appeal itself has not been decided though it has so been recorded in the impugned order. The entire impugned order does not direct furnishing of the information asked for by respondent No.1. It does not say whether such information was required to be furnished or not or whether in the facts of the case, it was required of respondent No.2 to respond to the letter dated 11<sup>th</sup> April, 2007 written by the Department to him. All these matters were requiring decision of the Commission before it could recommend the disciplinary action against the appellant, particularly, in the facts of the present case.

30. All the attributable defaults of a Central or State Public Information Officer have to be without any reasonable cause and

persistently. In other words, besides finding that any of the stated defaults have been committed by such officer, the Commission has to further record its opinion that such default in relation to receiving of an application or not furnishing the information within the specified time was committed persistently and without a reasonable cause. Use of such language by the Legislature clearly shows that the expression ‘shall’ appearing before ‘recommend’ has to be read and construed as ‘may’. There could be cases where there is reasonable cause shown and the officer is able to demonstrate that there was no persistent default on his part either in receiving the application or furnishing the requested information. In such circumstances, the law does not require recommendation for disciplinary proceedings to be made. It is not the legislative mandate that irrespective of the facts and circumstances of a given case, whether reasonable cause is shown or not, the Commission must recommend disciplinary action merely because the application was not responded to within 30 days. Every case has to be examined on its own facts. We would hasten to add here that wherever reasonable cause is

shown to the satisfaction of the Commission and the 32

Commission is of the opinion that there is default in terms of the Section it must send the recommendation for disciplinary action in accordance with law to the concerned authority. In such circumstances, it will have no choice but to send recommendatory report. The burden of forming an opinion in accordance with the provisions of Section 20(2) and principles of natural justice lies upon the Commission.

31. We are of the considered opinion that the appellant had shown that the default, if any on his part, was not without reasonable cause or result of a persistent default on his part. On the contrary, he had taken steps within his power and authority to provide information to respondent No.2. It was for the department concerned to react and provide the information asked for. In the present case, some default itself is attributable to respondent No.2 who did not even care to respond to the letter of the department dated 11<sup>th</sup> April, 2007. The cumulative effect of the above discussion is that we are unable to sustain the order passed by the State Information Commission dated 26<sup>th</sup> February, 2008 and the judgment of the High Court under appeal. Both the

judgments are set aside and the appeal is allowed. We further direct that the disciplinary action, if any, initiated by the department against the appellant shall be withdrawn forthwith.

32. Further, we direct the State Information Commission to decide the appeal filed by respondent No.2 before it on merits and in accordance with law. It will also be open to the Commission to hear the appellant and pass any orders as contemplated under Section 20(2), in furtherance to the notice issued to the appellant. However, in the facts and circumstances of the case, there shall be no orders as to costs.

.....,J.  
[Swatanter Kumar]

.....,J.  
[Madan B. Lokur]

New Delhi;  
December 13, 2012

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 9052** **OF 2012**  
**(Arising out of SLP (C) No.20217 of 2011)**

# **Bihar Public Service Commission**

## **Appellant**

# Versus

# **Saiyed Hussain Abbas Rizwi & Anr.**

## **Respondents**

## JUDGMENT

## Swatanter Kumar, J.

1. Leave granted.
  2. The Bihar Public Service Commission (for short, 'the Commission) published advertisement No.6 of 2000 dated 10<sup>th</sup> May, 2000 in the local papers of the State of Bihar declaring its intention to fill up the posts of 'State Examiner of Questioned Documents', in Police Laboratory in Crime Investigation Department, Government of Bihar, Patna. The advertisement,

*inter alia*, stated that written examination would be held if adequate number of applications were received. As very limited number of applications were received, the Commission, in terms of the advertisement, decided against the holding of written examination. It exercised the option to select the candidates for appointment to the said post on the basis of *viva voce* test alone. The Commission completed the process of selection and recommended the panel of selected candidates to the State of Bihar.

3. One Saiyed Hussain Abbas Rizwi, respondent No.1 herein, claiming to be a public spirited citizen, filed an application before the Commission (appellant herein) under the Right to Information Act, 2005 (for short “the Act”) on 16<sup>th</sup> December, 2008 seeking information in relation to eight queries. These queries concerned the interview which was held on 30<sup>th</sup> September, 2002 and 1<sup>st</sup> October, 2002 by the Commission with regard to the above advertisement. These queries, *inter alia*, related to providing the names, designation and addresses of the subject experts present in the Interview Board, names and addresses of the candidates who appeared, the interview statement with certified photocopies of the marks of all the

candidates, criteria for selection of the candidates, tabulated statement containing average marks allotted to the candidates from matriculation to M.Sc. during the selection process with the signatures of the members/officers and certified copy of the merit list. This application remained pending with the Public Information Officer of the Commission for a considerable time that led to filing of an appeal by respondent No.1 before the State Information Commission. When the appeal came up for hearing, the State Information Commission vide its order dated 30<sup>th</sup> April, 2009 had directed the Public Information Officer-cum-Officer on Special Duty of the Commission that the information sought for be made available and the case was fixed for 27<sup>th</sup> August, 2009 when the following order was passed :

“The applicant is present. A letter dated 12.08.2009 of the Public Information Officer, Bihar Public Service Commission, Patna has been received whereby the required paragraph-wise information which could be supplied, has been given to the applicant. Since the information which could be supplied has been given to the applicant, the proceedings of the case are closed.”

4. At this stage, we may also notice that the Commission, vide its letter dated 12<sup>th</sup> August, 2009, had furnished the

information nearly to all the queries of respondent No.1. It also stated that no written test had been conducted and that the name, designation and addresses of the members of the Interview Board could not be furnished as they were not required to be supplied in accordance with the provisions of Section 8(1)(g) of the Act.

5. Aggrieved from the said order of the Information Commission dated 27<sup>th</sup> August, 2009, respondent No.1 challenged the same by filing a writ before the High Court of Judicature at Patna. The matter came up for hearing before a learned Judge of that Court, who, vide judgment dated 27<sup>th</sup> November, 2009 made the following observations and dismissed the writ petition :

"If information with regard to them is disclosed, the secrecy and the authenticity of the process itself may be jeopardized apart from that information would be an unwarranted invasion into privacy of the individual. Restricting giving this information has a larger public purpose behind it. It is to maintain purity of the process of selection. Thus, in view of specific provision in Section 8(1)(j), in my view, the information could not be demanded as matter of right. The designated authority in that organization also did not consider it right to divulge the

information in larger public interest, as provided in the said provision.”

6. Feeling aggrieved, respondent No.1 challenged the judgment of the learned Single Judge before the Division Bench of that Court by filing a letters patent appeal being LPA No.102 of 2010. The Division Bench, amongst others, noticed the following contentions :

- (i) that third party interest was involved in providing the information asked for and, therefore, could properly be denied in terms of Section 2(n) read with Sections 8(1)(j) and 11 of the Act.
- (ii) that respondent No.1 (the applicant) was a mere busybody and not a candidate himself and was attempting to meddle with the affairs of the Commission needlessly.

7. The Division Bench took the view that the provisions of Section 8(1)(j) were not attracted in the facts of the case in hand inasmuch as this provision had application in respect of law enforcement agency and for security purposes. Since no such consideration arose with respect to the affairs of the Commission and its function was in public domain, reliance on

the said provision for denying the information sought for was not tenable in law. Thus, the Court in its order dated 20<sup>th</sup> January, 2011 accepted the appeal, set aside the order of the learned Single Judge and directed the Commission to communicate the information sought for to respondent No.1. The Court directed the Commission to provide the names of the members of the Interview Board, while denying the disclosure of and providing photocopies of the papers containing the signatures and addresses of the members of the Interview Board.

8. The Commission challenging the legality and correctness of the said judgment has filed the present appeal by way of special leave.

9. The question that arises for consideration in the present case is as to whether the Commission was duty bound to disclose the names of the members of the Interview Board to any person including the examinee. Further, when the Commission could take up the plea of exemption from disclosure of information as contemplated under Section 8 of the Act in this regard.

10. Firstly, we must examine the purpose and scheme of this Act. For this purpose, suffice would it be to refer to the judgment of this Court in the case of *Namit Sharma v. Union of India* [2012 (8) SCALE 593], wherein this Court has held as under :

“27. In terms of the Statement of Objects and Reasons of the Act of 2002, it was stated that this law was enacted in order to make the government more transparent and accountable to the public. It was felt that in the present democratic framework, free flow of information for citizens and non-Government institutions suffers from several bottlenecks including the existing legal framework, lack of infrastructure at the grass root level and an attitude of secrecy within the Civil Services as a result of the old framework of rules. The Act was to deal with all such aspects. The purpose and object was to make the government more transparent and accountable to the public and to provide freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto.”

11. The scheme of the Act contemplates for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in

order to promote transparency and accountability in the working of every public authority. It was aimed at providing free access to information with the object of making governance more transparent and accountable. Another right of a citizen protected under the Constitution is the right to privacy. This right is enshrined within the spirit of Article 21 of the Constitution. Thus, the right to information has to be balanced with the right to privacy within the framework of law.

12. Where Section 3 of the Act grants right to citizens to have access to information, there Section 4 places an obligation upon the public authorities to maintain records and provide the prescribed information. Once an application seeking information is made, the same has to be dealt with as per Sections 6 and 7 of the Act. The request for information is to be disposed of within the time postulated under the provisions of Section 7 of the Act. Section 8 is one of the most important provisions of the Act as it is an exception to the general rule of obligation to furnish information. It gives the category of cases where the public authority is exempted from providing the information. To such exemptions, there are inbuilt exceptions under some of the provisions, where despite exemption, the

Commission may call upon the authority to furnish the information in the larger public interest. This shows the wide scope of these provisions as intended by the framers of law. In such cases, the Information Commission has to apply its mind whether it is a case of exemption within the provisions of the said section.

13. Right to information is a basic and celebrated fundamental/basic right but is not uncontrolled. It has its limitations. The right is subject to a dual check. Firstly, this right is subject to the restrictions inbuilt within the Act and secondly the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemption, non-applicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case.

14. Now, we have to examine whether the Commission is a public authority within the meaning of the Act. The expression ‘public authority’ has been given an exhaustive definition under 9

section 2(h) of the Act as the Legislature has used the word ‘means’ which is an expression of wide connotation. Thus, ‘public authority’ is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories under Section 2(h) of the Act. In terms of Section 2(h)(a), a body or an institution which is established or constituted by or under the Constitution would be a public authority. Public Service Commission is established under Article 315 of the Constitution of India and as such there cannot be any escape from the conclusion that the Commission shall be a public authority within the scope of this section.

15. Section 2(f) again is exhaustive in nature. The Legislature has given meaning to the expression ‘information’ and has stated that it shall mean any material in any form including papers, samples, data material held in electronic form, etc. Right to information under Section 2(j) means the ‘right to information’ accessible under this Act which is held by or under the control of any public authority and includes the right to inspection of work, documents, records, taking notes, extracts, taking certified sample of materials, obtaining information in

the form of diskettes, floppies and video cassettes, etc. The right sought to be exercised and information asked for should fall within the scope of ‘information’ and ‘right to information’ as defined under the Act.

16. Thus, what has to be seen is whether the information sought for in exercise of right to information is one that is permissible within the framework of law as prescribed under the Act. If the information called for falls in any of the categories specified under Section 8 or relates to the organizations to which the Act itself does not apply in terms of section 24 of the Act, the public authority can take such stand before the commission and decline to furnish such information. Another aspect of exercise of this right is that where the information asked for relates to third party information, the Commission is required to follow the procedure prescribed under Section 11 of the Act.

17. Before the High Court, reliance had been placed upon Section 8(1)(j) and Section 11 of the Act. On facts, the controversy in the present case falls within a very narrow compass. Most of the details asked for by the applicant have

already been furnished. The dispute between the parties 11

related only to the first query of the applicant, that is, with regard to disclosure of the names and addresses of the members of the Interview Board.

18. On behalf of the Commission, reliance was placed upon Section 8(1)(j) and Section 11 of the Act to contend that disclosure of the names would endanger the life of the members of the interview board and such disclosure would also cause unwarranted invasion of the privacy of the interviewers. Further, it was contended that this information related to third party interest. The expression ‘third party’ has been defined in Section 2(n) of the Act to mean a person other than the citizen making a request for information and includes a public authority. For these reasons, they were entitled to the exemption contemplated under Section 8(1)(j) and were not liable to disclose the required information. It is also contended on behalf of the Commission that the Commission was entitled to exemption under Sections 8(1)(e) and 8(1)(g) read together.

19. On the contrary, the submission on behalf of the applicant was that it is an information which the applicant is entitled to receive. The Commission was not entitled to any exemption

under any of the provisions of Section 8, and therefore, was obliged to disclose the said information to the applicant.

20. In the present case, we are not concerned with the correctness or otherwise of the method adopted for selection of the candidates. Thus, the fact that no written examination was held and the selections were made purely on the basis of *viva voce*, one of the options given in the advertisement itself, does not arise for our consideration. We have to deal only with the plea as to whether the information asked for by the applicant should be directed to be disclosed by the Commission or whether the Commission is entitled to the exemption under the stated provisions of Section 8 of the Act.

21. Section 8 opens with the *non obstante* language and is an exception to the furnishing of information as is required under the relevant provisions of the Act. During the course of the hearing, it was not pressed before us that the Commission is entitled to the exemption in terms of Section 8(1)(j) of the Act. In view of this, we do not propose to discuss this issue any further nor would we deal with the correctness or otherwise of the impugned judgment of the High Court in that behalf.

22. Section 8(1)(e) provides an exemption from furnishing of information, if the information available to a person is in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. In terms of Section 8(1)(g), the public authority is not obliged to furnish any such information the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement and security purposes. If the concerned public authority holds the information in fiduciary relationship, then the obligation to furnish information is obliterated. But if the competent authority is still satisfied that in the larger public interest, despite such objection, the information should be furnished, it may so direct the public authority. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions.

This aspect has been discussed in some detail in the judgment of this Court in the case of *Central Board of Secondary Education (supra)*. Section 8(1)(e), therefore, carves out a protection in favour of a person who possesses information in his fiduciary relationship. This protection can be negated by the competent authority where larger public interest warrants the disclosure of such information, in which case, the authority is expected to record reasons for its satisfaction. Another very significant provision of the Act is 8(1)(j). In terms of this provision, 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 would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions

are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions. All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. Such exemption would be available to such authority or department.

23. The expression ‘public interest’ has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression ‘public interest’ must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression ‘public interest’, like ‘public purpose’, is not capable of any precise definition . It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. [*State of Bihar v. Kameshwar Singh* (AIR 1952 SC 252)]. It also means the general welfare of the public that warrants recommendation and protection;

something in which the public as a whole has a stake [Black's Law Dictionary (Eighth Edition)].

24. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a

constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India.

25. First of all, the Court has to decide whether in the facts of the present case, the Commission holds any fiduciary relationship with the examinee or the interviewers. Discussion on this question need not detain us any further as it stands fully answered by a judgment of this Court in the case of *Central*

*Board of Secondary Education & Anr. v. Aditya Bandopadhyay*  
& Ors. [(2011) 8 SCC 497] wherein the Court held as under :

**“40.** There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others.

Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

**41.** In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "information available to a person in his fiduciary relationship" are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary—a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/ mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with

reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body.

---

**42.** The duty of examining bodies is to subject the candidates who have completed a course of study or a period of training in accordance with its curricula, to a process of verification/examination/testing of their knowledge, ability or skill, or to ascertain whether they can be said to have successfully completed or passed the course of study or training. Other specialised examining bodies may simply subject the candidates to a process of verification by an examination, to find out whether such person is suitable for a particular post, job or assignment. An examining body, if it is a public authority entrusted with public functions, is required to act fairly, reasonably, uniformly and consistently for public good and in public interest.

**43.** This Court has explained the role of an examining body in regard to the process of holding examination in the context of examining whether it amounts to "service" to a consumer, in *Bihar School Examination Board v. Suresh Prasad Sinha* in the following manner: (SCC p. 487, paras 11-13)

"11. ... The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide

this function as partly statutory and partly administrative.

12. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its 'services' to any candidate. Nor does a student who participates in the examination conducted by the Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis- à-vis other examinees. The process is not, therefore, availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.

13. ... The fact that in the course of conduct of the examination, or evaluation of answer scripts, or furnishing of marksheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a

service provider for a consideration, nor convert the examinee into a consumer....”

It cannot therefore be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer books are evaluated by the examining body.

XXX

XXX

XXX

**49.** The examining body entrusts the answer books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer book is an assignment given by the examining body to the examiner which he discharges for a consideration. Sometimes, an examiner may assess answer books, in the course of his employment, as a part of his duties without any specific or special remuneration. In other words, the examining body is the “principal” and the examiner is the “agent” entrusted with the work, that is, the evaluation of answer books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner.” —

(emphasis supplied)

26. We, with respect, would follow the above reasoning of the Bench and, thus, would have no hesitation in holding that in the present case, the examining body (the Commission), is in no fiduciary relationship with the examinee (interviewers) or the candidate interviewed. Once the fiduciary relationship is not

established, the obvious consequence is that the Commission cannot claim exemption as contemplated under Section 8(1)(e) of the Act. The question of directing disclosure for a larger public interest, therefore, would not arise at all.

27. In *CBSE* case (*supra*), this Court had clearly stated the view that an examiner who examines the answer sheets holds the relationship of principal and agent with the examining body. Applying the same principle, it has to be held that the interviewers hold the position of an ‘agent’ vis-a-vis the examining body which is the ‘principal’. This relationship *per se* is not relatable to any of the exemption clauses but there are some clauses of exemption, the foundation of which is not a particular relationship like fiduciary relationship. Clause 8(1)(g) can come into play with any kind of relationship. It requires that where the disclosure of information would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes, the information need not be provided. The High Court has rejected the application of Section 8(1)(g) on the ground that it applies only with regard to law enforcement or security purposes and does not have

general application. This reasoning of the High Court is contrary to the very language of Section 8(1)(g). Section 8(1) (g) has various clauses in itself.

28. Now, let us examine the provisions of Section 8(1)(g) with greater emphasis on the expressions that are relevant to the present case. This section concerns with the cases where no obligation is cast upon the public authority to furnish information, the disclosure of which would endanger (a) the life  
(b) physical safety of any person. The legislature, in its wisdom, has used two distinct expressions. They cannot be read or construed as being synonymous. Every expression used by the Legislature must be given its intended meaning and, in fact, a purposeful interpretation. The expression 'life' has to be construed liberally. 'Physical safety' is a restricted term while life is a term of wide connotation. 'Life' includes reputation of an individual as well as the right to live with freedom. The expression ' life' also appears in Article 21 of the Constitution and has been provided a wide meaning so as to *inter alia* include within its ambit the right to live with dignity, right to shelter, right to basic needs and even the right to reputation. The expression life under section 8(1)(g) the Act, thus, has to be

understood in somewhat similar dimensions. The term ‘endanger’ or ‘endangerment’ means the act or an instance of putting someone or something in danger; exposure to peril or such situation which would hurt the concept of life as understood in its wider sense [refer Black’s Law Dictionary (Eighth Edition)]. Of course, physical safety would mean the likelihood of assault to physical existence of a person. If in the opinion of the concerned authority there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of Section 8(1)(g) of the Act. The disclosure of information which would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The expression ‘for law enforcement or security purposes’ is to be read *ejusdem generis* only to the expression ‘assistance given in confidence’ and not to any other clause of the section. On the plain reading of Section 8(1)(g), it becomes clear that the said clause is complete in itself. It cannot be said to have any reference to the expression ‘assistance given in confidence for

law enforcement or security purposes'. Neither the language of the Section nor the object of the Section requires such interpretation. It would not further the cause of this section. Section 8 attempts to provide exemptions and once the language of the Section is unambiguous and squarely deals with every situation, there is no occasion for the Court to frustrate the very object of the Section. It will amount to misconstruing the provisions of the Act. The High Court though has referred to Section 8(1)(j) but has, in fact, dealt with the language of Section 8(1)(g). The reasoning of the High Court, therefore, is neither clear in reference to provision of the Section nor in terms of the language thereof.

29. Now, the ancillary question that arises is as to the consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. Firstly, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers.

Declaration of collective marks to the candidate is one thing and that, in fact, has been permitted by the authorities as well as the High Court. We see no error of jurisdiction or reasoning in this regard. But direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(g) of the Act. CBSE case (*supra*) has given sufficient reasoning in this regard and at this stage, we may refer to paragraphs 52 and 53 of the said judgment which read as under :

**“52.** When an examining body engages the services of an examiner to evaluate the answer books, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer books are evaluated by him. In the event of such information being made known, a disgruntled examinee who is not satisfied with the evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies not only to the examiner, but also to the scrutiniser, co-ordinator and

head examiner who deal with the answer book.

**53.** The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/co-ordinator/head examiner. The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(g) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer book which does not contain any information or

signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under Section 8(1)(g) of the RTI Act. Those portions of the answer books which contain information

regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, under Section 10 of the RTI Act.”

30. The above reasoning of the Bench squarely applies to the present case as well. The disclosure of names and addresses of the members of the Interview Board would *ex facie* endanger their lives or physical safety. The possibility of a failed

candidate attempting to take revenge from such persons cannot be ruled out. On the one hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose. Furthermore, the view of the High Court in the judgment under appeal that element of bias can be traced and would be crystallized only if the names and addresses of the examiners/interviewers are furnished is without any substance. The element of bias can hardly be co-related with the disclosure of the names and addresses of the interviewers. Bias is not a ground which can be considered for or against a party making an application to which exemption under Section 8 is pleaded as a defence. We are unable to accept this reasoning of the High Court. Suffice it to note that the reasoning of the High Court is not in conformity with the principles stated by this Court in the *CBSE* case (*supra*). The transparency that is expected to be maintained in such process would not take within its ambit the disclosure of the information called for under query No.1 of the application. Transparency in such cases is relatable to the process where selection is based on collective wisdom and collective marking.

Marks are required

to be disclosed but disclosure of individual names would hardly hold relevancy either to the concept of transparency or for proper exercise of the right to information within the limitation of the Act.

31. For the reasons afore-stated, we accept the present appeal, set aside the judgment of the High Court and hold that the Commission is not bound to disclose the information asked for by the applicant under Query No.1 of the application.

.....J.  
(Swatanter Kumar)

.....J.  
Mukhopadhyaya) (Sudhansu Jyoti

New Delhi,  
December 13, 2012

ITEM NO.30

COURT NO.4

SECTION IVA

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (Civil)...../2013  
 CC 1853/2013

(From the judgement and order dated 15/06/2012 in WA No.3255/2010,  
 of The HIGH COURT OF KARNATAKA AT BANGALORE)

KARNATAKA INFORMATION COMMISSIONER

Petitioner(s)

VERSUS

STATE PUBLIC INFORMATION OFFICER &amp; ANR

Respondent(s)

(With appln(s) for c/delay in filing SLP and office report ))

Date: 18/01/2013 This Petition was called on for hearing  
 today. CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
 HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. V.N. Raghupathy,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
 O R D E R

Delay condoned.

This petition filed by Karnataka Information Commissioner for setting aside order dated 15.6.2012 passed by the Division Bench of the Karnataka High Court in Writ Appeal No.3255/2010 (GM-RES) titled Karnataka Information Commission v. State Public Information Officer and another cannot but be described as a frivolous piece of litigation which deserves to be dismissed at the threshold with exemplary costs.

Respondent No.2 filed an application under Section 6(1) of the Right to Information Act, 2005 (for short, 'the Act') and sought certain documents and information from the Public Information Officer - Deputy Registrar

(Establishment) of the High Court of Karnataka (respondent No.1). His prayer was for supply of certified copies of some information/documents regarding guidelines and rules pertaining to scrutiny and classification of writ petitions and the procedure followed by the Karnataka High Court in respect of Writ Petition Nos.26657 of 2004 and 17935 of 2006.

Respondent No.1 disposed of the application of respondent No.2 vide order dated 3.8.2007 and intimated him that the information sought by him is available in the Karnataka High Court Act and the Rules and he can obtain the certified copies of the order sheets of the two writ petitions by filing appropriate application under the High Court Rules.

Respondent No.2 filed complaint dated 17.1.2008 under Section 18 of the Act before the Karnataka Information Commission (for short, 'the Commission') and made a grievance that the certified copies of the documents had not been made available to him despite payment of the requisite fees. The Commission allowed the complaint of respondent No.2 and directed respondent No.1 to furnish the High Court Act, Rules and certified copies of order sheets free of cost.

Respondent No.1 challenged the aforesaid order in Writ Petition No.9418/2008. The learned Single Judge allowed the same and quashed the order of the Commission by making the following observations:

"The information as sought for by the respondent in respect of Item Nos. 1, 3 and 4 mentioned above are available in Karnataka High Court Act and Rules made thereunder. The said Act and Rules are available in market. If not available, the respondent has to obtain copies of the same from the publishers. It is not open for the



respondent to ask for copies of the same from the petitioner. But strangely, the Karnataka Information Commission has directed the petitioner to furnish the copies of the Karnataka High Court Act & Rules free of cost under Right to Information Act. The impugned order in respect of the same is illegal and arbitrary.

The information in respect of Item Nos.6 to 17 is relating to Writ Petition No.26657/2004 and Writ Petition No. 17935/2006. The respondent is a party to the said proceedings. Thus, according to the Rules of the High Court, it is open for the respondent to file an application for certified copies of the order sheet or the relevant documents for obtaining the same. (See Chapter-17 of Karnataka High Court Rules, 1959). As it is open for the respondent to obtain certified copies of the order sheet pending as well as the disposed of matters, the State Chief Information Commissioner is not justified in directing the petitioner to furnish copies of the same free of costs. If the order of the State Chief Information Commissioner is to be implemented, then, it will lead to illegal demands. Under the Rules, any person who is party or not a party to the proceedings can obtain the orders of the High Court as per the procedure prescribed in the Rules mentioned supra. The State Chief Information Commissioner has passed the order without applying his mind to the relevant Rules of the High Court. The State Chief Information Commissioner should have adverted to the High Court Rules before proceeding further. Since the impugned order is illegal and arbitrary, the same is liable to be quashed. Accordingly, the following order is made."

Respondent No.2 did not challenge the order of the learned Single Judge. Instead, the Commission filed an appeal along with an application for condonation of 335 days' delay. The Division Bench dismissed the application for condonation of delay and also held that the Commission cannot be treated as an aggrieved person.

We

have heard Shri V.  
N. Raghupathy,  
learned

counsel for the petitioner.

What

has surprised us is  
that while the writ



appeal was filed by the Commission, the special leave petition has been preferred by the Karnataka Information Commissioner. Learned counsel could not explain as to how the petitioner herein, who was not an appellant before the Division Bench of the High Court can challenge the impugned order. He also could not explain as to what was the locus of the Commission to file appeal against the order of the learned Single Judge whereby its order had been set aside.

The entire exercise undertaken by the Commission and the Karnataka Information Commissioner to challenge the orders of the learned Single Judge and the Division Bench of the High Court shows that the concerned officers have wasted public money for satisfying their ego. If respondent No.2 felt aggrieved by the order of the learned Single Judge, nothing prevented him from challenging the same by filing writ appeal. However, the fact of the matter is that he did not question the order of the learned Single Judge. The Commission and the Karnataka Information Commissioner had no legitimate cause to challenge the order passed by the learned Single Judge and the Division Bench of the High Court. Therefore, the writ appeal filed by the commission was totally unwarranted and misconceived and the Division Bench of the High Court did not commit any error by dismissing the same.

With the above observations, the special leave petition is dismissed. For filing a frivolous petition, the petitioner is saddled with cost of Rs.1,00,000/-. The amount of cost shall be deposited by the petitioner with the Supreme Court Legal Services Committee within a period of 2 months from today. If the needful is not done, the

Secretary of the Supreme Court Legal Services Committee shall recover the amount of cost from the petitioner as arrears of land revenue.

(Parveen Kr.Chawla)  
Court Master

(Phoolan Wati Arora)  
Court Master

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. \_\_\_\_\_ OF 2013**  
**(arising out of SLP(C) No. 22609 of 2012)**

**R.K. JAIN** .... **APPELLANT**

**VERSUS**

**UNION OF INDIA & ANR.** .... **RESPONDENTS**

**JUDGMENT**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

Leave granted.

2. In this appeal, the appellant challenges the final judgment and order dated 20<sup>th</sup> April, 2012 passed by the Delhi High Court in L.P.A. No. 22/2012. In the said order, the Division Bench dismissed the appeal against the order of the learned Single Judge dated 8<sup>th</sup> December, 2011, wherein the Single Judge held that "the information sought by the appellant herein is the third party information wherein third party may plead a privacy defence and the proper question would be as to whether divulging of such an information is in the public interest or not." Thus, the matter has been remitted back to Chief Information Commissioner to

consider the issue after following the procedure under Section 11 of the Right to Information Act.

3. The factual matrix of the case is as follows:

The appellant filed an application to Central Public Information Officer (hereinafter referred to as the 'CPIO') under Section 6 of the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act') on 7<sup>th</sup> October, 2009 seeking the copies of all note sheets and correspondence pages of file relating to one Ms. Jyoti Balasundram, Member/CESTAT. The Under Secretary, who is the CPIO denied the information by impugned letter dated 15<sup>th</sup> October, 2009 on the ground that the information sought attracts Clause 8(1)(j) of the RTI Act, which reads as follows:-

"R-20011-68/2009 - ADIC - CESTAT  
Government of India  
Ministry of Finance  
Department of Revenue  
New Delhi, the 15.10.09

To

Shri R.K. Jain  
1512-B, Bhishm Pitamah Marg,  
Wazir Nagar,  
New Delhi - 110003

Subject: Application under RTI Act.

Sir,

Your RTI application No.RTI/09/2406 dated 7.10.2009 seeks information from File No.27-

3/2002 Ad-1-C. The file contains analysis of Annual Confidential Report of Smt. Jyoti Balasundaram only which attracts clause 8 (1) (j) of RTI Act. Therefore the information sought is denied.

Yours faithfully,

(Victor James)  
Under Secretary to the Govt. of India"

4. On an appeal under Section 19 of the RTI Act, the Director (Headquarters) and Appellate Authority by its order dated 18<sup>th</sup> December, 2009 disallowed the same citing same ground as cited by the CPIO; the relevant portion of which reads as follows:

"2. I have gone through the RTI application dated 07.10.2009, wherein the Appellant had requested the following information;

- (A) Copies of all note sheets and correspondence pages of File No. 27/3/2002 - Ad. IC relating to Ms. Jyoti Balasundaram.
- (B) Inspection of all records, documents, files and note sheets of File No. 27/3/2002 - Ad. IC.
- (C) Copies of records pointed out during / after inspection.

3. I have gone through the reply dated 15.10.2009 of the Under Secretary, Ad. IC-CESTAT given to the Appellant stating that as the file contained analysis of the Annual Confidential Report of Ms. Jyoti Balasundaram, furnishing of information is exempted under Section 9 (1) (j) of the R.T.I. Act.

5. The provision of Section 8 (1) (j) of the RTI Act, 2005 under which the information has been denied by the CPIO is reproduced hereunder:



"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....."

6. File No.27/3/2002- Ad.1C deals with follow-up action on the ACR for the year 2000-2001 in respect of Ms. Jyoti Balasundaram, Member (Judicial), CEGAT" (now CESTAT). The matter discussed therein is personal and I am not inclined to accept the view of the Appellant the since Ms. Jyoti Balasundaram is holding the post of Member (Judicial), CESTAT, larger public interest is involved, which therefore, ousts the exemption provided under Section 8 (1) (j). Moreover, Ms. Jyoti Balasundaram is still serving in the CESTAT and the ACR for the year 2000-2001 is still live and relevant insofar as her service is concerned. Therefore, it may not be proper to rush up to the conclusion that the matter is over and therefore, the information could have been given by the CPIO under Section 8(1) (i). The file contains only 2 pages of the notes and 5 pages of the correspondence, in which the ACR of the officer and the matter connected thereto have been discussed, which is exempt from disclosure under the aforesaid Section. The file contains no other information, which can be segregated and provided to the Appellant.
7. In view of the above, the appeal is disallowed."

5. Thereafter, the appellant preferred a second appeal before the Central Information Commission under Section 19 (3) of the RTI Act which was also rejected on 22<sup>nd</sup> April, 2010 with the following observations:-

"4. Appellant's plea is that since the matter dealt in the above-mentioned file related to the integrity of a public servant, the disclosure of the requested information should be authorized in public interest.

5. It is not in doubt that the file referred to by the appellant related to the Annual Confidential Record of a third-party, Ms. Jyoti Balasundaram and was specific to substantiation by the Reporting Officer of the comments made in her ACRs about the third - party's integrity. Therefore, appellant's plea that the matter was about a public servant's integrity per-se is not valid. The ACR examines all aspects of the performance and the personality of a public servant - integrity being one of them. An examination of the aspect of integrity as part of the CR cannot, therefore, be equated with the vigilance enquiry against a public servant. Appellant was in error in equating the two.

6. It has been the consistent position of this Commission that ACR grades can and should be disclosed to the person to whom the ACRs related and not to the third - parties except under exceptional circumstances. Commission's decision in P.K. Sarvin Vs. Directorate General of Works (CPWD); Appeal No. CIC/WB/A/2007/00422; Date of Decision; 19.02.2009 followed a Supreme Court order in Dev Dutt Vs. UOI (Civil Appeal No. 7631/2002).

7. An examination on file of the comments made by the reporting and the reviewing officers in the ACRs of a public servant, stands on the same footing as the ACRs itself. It cannot, therefore, be authorized to be disclosed to a third-party. In fact, even disclosure of such files to the

public servant to whom the ACRs may relate is itself open to debate.

8. In view of the above, I am not in a position to authorize disclosure of the information."

6. On being aggrieved by the above order, the appellant filed a writ petition bearing W.P(C) No. 6756 of 2010 before the Delhi High Court which was rejected by the learned Single Judge vide judgment dated 8<sup>th</sup> December, 2011 relying on a judgment of Delhi High Court in ***Arvind Kejriwal vs. Central Public Information Officer*** reported in ***AIR 2010 Delhi 216***. The learned Single Judge while observing that except in cases involving overriding public interest, the ACR record of an officer cannot be disclosed to any person other than the officer himself/herself, remanded the matter to the Central Information Commission (CIC for short) for considering the issue whether, in the larger public interest, the information sought by the appellant could be disclosed. It was observed that if the CIC comes to a conclusion that larger public interest justifies the disclosure of the information sought by the appellant, the CIC would follow the procedure prescribed under Section 11 of Act.

7. On an appeal to the above order, by the impugned judgment dated 20<sup>th</sup> April, 2012 the Division Bench of

Delhi High Court in LPA No.22 of 2012 dismissed the same. The Division Bench held that the judgment of the Delhi High Court Coordinate Bench in ***Arvind Kejriwal case (supra)*** binds the Court on all fours to the said case also.

The Division Bench further held that the procedure under Section 11 (1) is mandatory and has to be followed which includes giving of notice to the concerned officer whose ACR was sought for. If that officer, pleads private defence such defence has to be examined while deciding the issue as to whether the private defence is to prevail or there is an element of overriding public interest which would outweigh the private defence.

8. Mr. Prashant Bhushan, learned counsel for the appellant submitted that the appellant wanted information in a separate file other than the ACR file, namely, the "follow up action" which was taken by the Ministry of Finance about the remarks against 'integrity' in the ACR of the Member. According to him, it was different from asking the copy of the ACR itself. However, we find that the learned Single Judge at the time of hearing ordered for production of the original records and after perusing the same came to

the conclusion that the information sought for was not different or distinguished from ACR. The learned Single Judge held that the said file contains correspondence in relation to the remarks recorded by the President of the CESTAT in relation to Ms. Jyoti Balasundaram, a Member and also contains the reasons why the said remarks have eventually been dropped. Therefore, recordings made in the said file constitute an integral part of the ACR record of the officer in question.

Mr. Bhushan then submitted that ACR of a public servant has a relationship with public activity as he discharges public duties and, therefore, the matter is of a public interest; asking for such information does not amount to any unwarranted invasion in the privacy of public servant. Referring to this Court's decision in the case of ***State of U.P. vs. Raj Narain, AIR 1975 SC 865***, it was submitted that when such information can be supplied to the Parliament, the information relating to the ACR cannot be treated as personal document or private document.

9. It was also contended that with respect to this issue there are conflicting decisions of Division Bench of Kerala High Court in ***Centre for Earth Sciences***

**Studies vs. Anson Sebastian** reported in **2010 ( 2) KLT 233** and the Division Bench of Delhi High Court in **Arvind Kejriwal vs. Central Public Information Officer** reported in **AIR 2010 Delhi 216.**

10. Shri A. S. Chandiok, learned Additional Solicitor General appearing for the respondents, in reply contended that the information relating to ACR relates to the personal information and may cause unwarranted invasion of privacy of the individual, therefore, according to him the information sought for by the appellant relating to analysis of ACR of Ms. Jyoti Balasundaram is exempted under Section 8(1)(j) of the RTI Act and hence the same cannot be furnished to the appellant. He relied upon decision of this Court in

**Girish Ramchandra Deshpande vs. Central Information Commissioner and others**, reported in **(2013) 1 SCC 212.**

11. We have heard the learned counsel for the parties, perused the records, the judgements as referred above and the relevant provisions of the Right to Information Act, 2005.

12. Section 8 deals with exemption from disclosure of information. Under clause (j) of Section 8(1), there shall be no obligation to give any citizen 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 is satisfied that the larger public interest justifies the disclosure of such information. The said clause reads as follows:-

**"Section 8 - Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--**

xxx xxx xxx

xxx xxx xxx

(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:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

13. On the other hand Section 11 deals with third party information and the circumstances when such information can be disclosed and the manner in which it is to be disclosed, if so decided by the Competent Authority. Under Section 11(1), if the information relates to or has been supplied by a third party and

has been treated as confidential by the third party, and if the Central Public Information Officer or a State Public Information Officer intends to disclose any such information or record on a request made under the Act, in such case after written notice to the third party of the request, the Officer may disclose the information, if the third party agrees to such request or if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. Section 11(1) is quoted hereunder:

**"Section 11 - Third party information.-** (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible

*harm or injury to the interests of such third party."*

14. In ***Centre for Earth Sciences Studies vs. Anson Sebastian***

***Sebastian*** reported in ***2010(2) KLT 233*** the Kerala High Court considered the question whether the information sought relates to personal information of other employees, the disclosure of which is prohibited under Section 8(1) (j) of the RTI Act. In that case the Kerala High Court noticed that the information sought for by the first respondent pertains to copies of documents furnished in a domestic enquiry against one of the employees of the appellant-organization. Particulars of confidential reports maintained in respect of co-employees in the above said case (all of whom were Scientists) were sought from the appellant-organisation. The Division Bench of Kerala High Court after noticing the relevant provisions of RTI Act held that documents produced in a domestic enquiry cannot be treated as documents relating to personal information of a person, disclosure of which will cause unwarranted invasion of privacy of such person. The Court further held that the confidential reports of the employees maintained by the employer cannot be treated as records pertaining to personal

information of an employee and publication of the same is not prohibited under Section 8(1) (j) of the RTI Act.

15. The Delhi High Court in **Arvind Kejriwal vs. Central Public Information Officer** reported in **AIR 2010 Delhi 216** considered Section 11 of the RTI Act. The Court held that once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole World. Therefore, for providing the information the procedure outlined under Section 11(1) cannot be dispensed with. The following was the observation made by the Delhi High Court in

**Arvind Kejriwal (supra) :**

"22. Turning to the case on hand, the documents of which copies are sought are in the personal files of officers working at the levels of Deputy Secretary, Joint Secretary, Director, Additional Secretary and Secretary in the Government of India. Appointments to these posts are made on a comparative assessment of the relative merits of various officers by a departmental promotion committee or a selection committee, as the case may be. The evaluation of the past performance of these officers is contained in the ACRs. On the basis of the comparative assessment a grading is given. Such information cannot but be viewed as personal to such officers. Vis-à-vis a person who is not an employee of the Government of India and is seeking such information as a member of the public, such information has to be viewed as

Constituting 'third party information'. This can be contrasted with a situation where a government employee is seeking information concerning his own grading, ACR etc. That obviously does not involve 'third party' information.

23. What is, however, important to note is that it is not as if such information is totally exempt from disclosure. When an application is made seeking such information, notice would be issued by the CIC or the CPIOs or the State Commission, as the case may be, to such 'third party' and after hearing such third party, a decision will be taken by the CIC or the CPIOs or the State Commission whether or not to order disclosure of such information. The third party may plead a 'privacy' defence. But such defence may, for good reasons, be overruled. In other words, after following the procedure outlined in Section 11(1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information.

24. Given the above procedure, it is not possible to agree with the submission of Mr. Bhushan that the word 'or' occurring in Section 11(1) in the phrase information "which relates to or has been supplied by a third party" should be read as 'and'. Clearly, information relating to a third party would also be third party information within the meaning of Section 11(1) of the RTI Act. Information provided by such third party would of course also be third party information. These two distinct categories of third party information have been recognized under Section 11(1) of the Act. It is not possible for this Court in the circumstances to read the word 'or' as 'and'. The mere fact that inspection of such files was permitted, without following the mandatory procedure under Section 11(1) does not mean that, at the stage of furnishing copies of the documents inspected, the said procedure can be waived. In fact, the procedure should have been followed even prior to permitting inspection, but now the clock cannot be put back as far as that is concerned.

25. The logic of the Section 11(1) RTI Act is plain. Once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole world. There may be an officer who may not want the whole world to know why he or she was overlooked for promotion. The defence of privacy in such a case cannot be lightly brushed aside saying that since the officer is a public servant he or she cannot possibly fight shy of such disclosure. There may be yet another situation where the officer may have no qualms about such disclosure. And there may be a third category where the credentials of the officer appointed may be thought of as being in public interest to be disclosed. The importance of the post held may also be a factor that might weigh with the information officer. This exercise of weighing the competing interests can possibly be undertaken only after hearing all interested parties. Therefore the procedure under Section 11(1) RTI Act.

26. This Court, therefore, holds that the CIC was not justified in overruling the objection of the UOI on the basis of Section 11(1) of the RTI Act and directing the UOI and the DoPT to provide copies of the documents as sought by Mr. Kejriwal. Whatever may have been the past practice when disclosure was ordered of information contained in the files relating to appointment of officers and which information included their ACRs, grading, vigilance clearance etc., the mandatory procedure outlined under Section 11(1) cannot be dispensed with. The short question framed by this Court in the first paragraph of this judgment was answered in the affirmative by the CIC. This Court reverses the CIC's impugned order and answers it in the negative.

27. The impugned order dated 12th June 2008 of the CIC and the consequential order dated 19th November 2008 of the CIC are hereby set aside. The appeals by Mr. Kejriwal will be restored to the file of the CIC for compliance with the procedure outlined under Section 11(1) RTI Act limited to the information Mr. Kejriwal now seeks."

16. Recently similar issue fell for consideration before this Court in ***Girish Ramchandra Deshpande v. Central Information Commissioner and others*** reported in **(2013) 1 SCC 212.** That was a case in which Central Information Commissioner denied the information pertaining to the service career of the third party to the said case and also denied the details relating to assets, liabilities, moveable and immovable properties of the third party on the ground that the information sought for was qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. In that case this Court also considered the question whether the orders of censure/punishment, etc. are personal information and the performance of an employee/officer in an organization, commonly known as Annual Confidential Report can be disclosed or not. This Court after hearing the parties and noticing the provisions of RTI Act held:

**"11. 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 been 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 abovementioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

**12.** 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 organisation 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 or 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.

**13.** The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.

**14.** The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

**15.** We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed."

17. In view of the discussion made above and the decision in this Court in ***Girish Ramchandra Deshpande (supra)***, as the appellant sought for inspection of documents relating to the ACR of the Member, CESTAT, inter alia, relating to adverse entries in the ACR and the 'follow up action' taken therein on the question of integrity, we find no reason to interfere with the impugned judgment passed by the Division Bench whereby the order passed by the learned Single Judge was affirmed. In absence of any merit, the appeal is dismissed but there shall be no order as to costs.

..... . J.  
**(G.S. SINGHVI)**

..... . J.  
**(SUDHANSU JYOTI  
MUKHOPADHAYA)**

**NEW DELHI,  
APRIL 16, 2013.**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5892 OF 2006

SUKHDEV SINGH

... APPELLANT(s)

Versus

UNION OF INDIA AND OTHERS

... RESPONDENT(s)

O R D E R

While granting leave on December 12, 2006, a two Judge Bench (S.B. Sinha and Markandey Katju, JJ.) felt that there was inconsistency in the decisions of this Court in *U.P. Jal Nigam and others vs. Prabhat Chandra Jain and others*<sup>1</sup>, and *Union of India and another vs. Major Bahadur Singh*<sup>2</sup> and consequently, opined that the matter should be heard by a larger Bench. This is how the matter has come up for consideration before us.

2. The referral order dated December 12, 2006

reads as follows:

"The appellant herein was appointed as Deputy Director of Training on or about 13.11.1992. He

1 (1996)2 SCC 363

2 (2006)1 SCC 368

attended a training programme on Computer Applied Technology. He was sent on deputation on various occasions in 1997, 1998 and yet again in 2000. Indisputably, remarks in his Annual Confidential Reports throughout had been "Outstanding" or "Very good". He, however, in two years i.e. 2000-2001 and 2001-2002 obtained only "Good" remark in his Annual Confidential Report. The effect of such a downgrading falls for our consideration. The Union of India issued a Office Memorandum on 8.2.2002 wherein the Bench mark for promotion was directed to be "Very Good" in terms of clause 3.2 thereof. It is also not in dispute that Guidelines for the Departmental Promotion Committees had been issued by the Union of India wherein, inter alia, it was directed as follows:

".....6.2.1(b) The DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRs for five preceding years irrespective of the qualifying service prescribed in the Service/Recruitment Rules. The 'preceding five years' for the aforesaid purpose shall be decided as per the guidelines contained in the DoP & T O.M No.22011/9/98-Estt.(D), dated 8.9.1998, which prescribe the Model Calendar for DPC read with OM of even number, dated 16.6.2000. (If more than one CR have been written for a particular year, all the CRs for the relevant years shall be considered together as the CR for one year}."

The question as to whether such a downgradation of Annual Confidential Report would amount to adverse remark and thus it would be required to be communicated or not fell for consideration before this Court in U.P. Jal Nigam and Ors. Vs. Prabhat Chandra Jain and Ors. - (1996) 2 SCC 363 in the following terms:

" We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any aduerseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both have a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the

personal file of the officer concerned and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise, they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

Several High Courts as also the Central Administrative Tribunal in their various judgments followed the decision of this Court in U.P. Jal Nigam(*supra*), *inter alia*, to hold that in the event the said adverse remarks are not communicated causing deprivation to the employee to make an effective representation there against, thus should be ignored. Reference may be made to 2003(1) ATJ 130, Smt. T.K.Aryaveer Vs. Union of India & Ors, 2005(2) ATJ, Page 12, 2005(1) ATJ 509-A.B. Gupta Vs. Union of India & Ors. and 2003(2) SCT 514- Bahadur Singh Vs. Union of India & Ors.

Our attention, however, has been drawn by the learned Additional Solicitor General appearing for the respondents to a recent decision of this Court in Union of India & Anr. Vs. Major Bahadur Singh - (2006) 1 SCC 368 where a Division Bench of this Court sought to distinguish the U.P. Jal Nigam(*supra*) stating as follows:

"8. As has been rightly submitted by learned counsel for the appellants U.P. Jal Nigam case has no universal application. The judgment itself shows that it was intended to be meant only for the employees of U.P.Jal Nigam only."

With utmost respect, we are of the opinion that the judgment of U.P.Jal Nigam(*supra*) cannot held to be applicable only to its own

employees. It has laid down a preposition of law. Its applicability may depend upon the rules entirely in the field but by it cannot be said that no law has been laid down therein. We, therefore, are of the opinion that the matter should be heard by a larger Bench.

3. Subsequent to the above two decisions, in the case of *Dev Dutt vs. Union of India and others*<sup>3</sup>, this Court had an occasion to consider the question about the communication of the entry in the ACR of a public servant (other than military service). A two Judge Bench on elaborate and detailed consideration of the matter and also after taking into consideration the decision of this Court in *U.P. Jal Nigam*<sup>1</sup> and principles of natural justice exposed by this Court from time to time particularly in *A.K. Praipak vs. Union of India*<sup>4</sup>; *Maneka Gandhi vs. Union of India*<sup>5</sup>; *Union of India vs. Tulsi Ram Patel*<sup>6</sup>; *Canara Bank vs. V.K. Awasthy*<sup>7</sup> and *State of Maharashtra vs. Public Concern for Governance Trust*<sup>8</sup> concluded that every entry in the ACR of a public service must be communicated to him within a

---

3 (2008) 8 SCC 725

4 (1969) 2 SCC 262

5 (1978) 1 SCC 248

6 (1985) 3 SCC 398

7 (2005) 6 SCC 321

8 (2007) 3 SCC 587

reasonable period whether it is poor, fair, average, good or very good entry. This is what this Court in

paragraphs 17 & 18 of the report in Dev Dutt<sup>3</sup> at page

733:

"In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.

Thus it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder."

4. Then in paragraph 22 at page 734 of the report, this Court made the following weighty observations:

"It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the

morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted."

5. In paragraphs 37 & 41 of the report, this Court then observed as follows:

"We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."

6. We are in complete agreement with the view in Dev Dutt<sup>3</sup> particularly paragraphs 17, 18, 22, 37 & 41 as quoted above. We approve the same.

7. A three Judge Bench of this Court in *Abhijit Ghosh Dastidar vs. Union of India and others*<sup>9</sup> followed

---

<sup>9</sup> (2009)16 SCC 146

Dev Dutt<sup>3</sup>. In paragraph 8 of the Report, this Court with reference to the case under consideration held as under:

"Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him."

8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his

work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice.

We, accordingly, hold that every entry in ACR - poor, fair, average, good or very good - must be communicated to him/her within a reasonable period.

9. The decisions of this Court in *Satya Narain Shukla vs. Union of India and others*<sup>10</sup> and *K.M. Mishra vs. Central Bank of India and others*<sup>11</sup> and the other decisions of this Court taking a contrary view are declared to be not laying down a good law.

11. Insofar as the present case is concerned, we

---

1 0(2006) 9 SCC 69  
1 1(2008) 9 SCC 120



are informed that the appellant has already been promoted. In view thereof, nothing more is required to be done. Civil Appeal is disposed of with no order as to costs. However, it will be open to the appellant to make a representation to the concerned authorities for retrospective promotion in view of the legal position stated by us. If such a representation is made by the appellant, the same shall be considered by the concerned authorities appropriately in accordance with law.

11 I.A. No. 3 of 2011 for intervention is rejected. It will be open to the applicant to pursue his legal remedy in accordance with law.

.....J.  
(R.M. LODHA)

.....J.  
(MADAN B. LOKUR)

.....J.  
(KURIAN JOSEPH)

NEW DELHI  
APRIL 23, 2013.  
ITEM NO.102

COURT NO.4

SECTION IV

**S U P R E M E   C O U R T   O F   I N D I A**  
**RECORD OF PROCEEDINGS**  
**CIVIL APPEAL NO(s). 5892 OF 2006**

SUKHDEV SINGH

**Appellant (s)**

**VERSUS**

UNION OF INDIA & ORS.

**Respondent(s)**

(With appln(s) for Intervention/Impleadment and office report )

Date: 23/04/2013 This Appeal was called on for hearing today.

**CORAM :**

HON'BLE MR. JUSTICE R.M. LODHA  
 HON'BLE MR. JUSTICE MADAN B. LOKUR  
 HON'BLE MR. JUSTICE KURIAN JOSEPH

**For Appellant(s)**

Mr. Ansar Ahmad Chaudhary, Adv.

**For Respondent(s)**

Mr. Mohan Parasaran, SG  
 Mr. D.L. Chidananda, Adv.  
 Mr. Asgha G. Nair, Adv.  
 Mr. S.N. Terdal, Adv.

Mr. Harinder Mohan Singh ,Adv  
 Ms. Shabana, Adv.

UPON hearing counsel the Court made the following  
 O R D E R

Civil Appeal is dismissed with no order as to costs. I.A. No. 3 of 2011 is rejected.

Pending

application(s), if  
 any, stands  
 disposed

of.

(Pardeep Kumar)  
 Court Master

(Renu Diwan)  
 Court Master

[SIGNED REPORTABLE ORDER IS PLACED ON THE FILE]



IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6362 OF 2013  
(Arising out of SLP(C) No.16870/2012)

Union Public Service Commission ...Appellant

versus

Gourhari Kamila ...Respondent

WITH

CIVIL APPEAL NO. 6363 OF 2013  
(Arising out of SLP(C) No.16871/2012)

CIVIL APPEAL NO. 6364 OF 2013  
(Arising out of SLP(C) No.16872/2012)

CIVIL APPEAL NO. 6365 OF 2013  
(Arising out of SLP(C) No.16873/2012)

O R D E R

Leave granted.

These appeals are directed against judgment dated 12.12.2011 of the Division Bench of the Delhi High Court whereby the letters patent appeals filed by appellant - Union Public Service Commission (for short, 'the Commission') questioning the correctness of the orders passed by the learned Single Judge were dismissed and the directions given by the Chief Information Commissioner (CIC) to the Commission to provide information to the respondents about the candidates who had competed with them in the selection was upheld.

For the sake of convenience we may notice the facts from the appeal arising out of SLP(C) No.16870/2012.

In response to advertisement No.13 issued by the Commission, the respondent applied for recruitment as Deputy Director (Ballistics) in Central Forensic Science Laboratory, Ballistic Division under the Directorate of Forensic Science, Ministry of Home Affairs. After the selection process was completed, the respondent submitted application dated 17.3.2010 under the Right to Information Act, 2005 (for short, 'the Act') for supply of following information/documents:

- "1. What are the criteria for the short listing of the candidates?
2. How many candidates have been called for the interview?
3. Kindly provide the names of all the short listed candidates called for interview held on 16.3.2010.
4. How many years of experience in the relevant field (Analytical methods and research in the field of Ballistics) mentioned in the advertisement have been considered for the short listing of the candidates for the interview held for the date on 16.3.2010?
5. Kindly provide the certified xerox copies of experience certificates of all the candidates called for the interview on 16.3.2010 who have claimed the experience in the relevant field as per records available in the UPSC and as mentioned by the candidates at Sl.No.10(B) of Part-I of their application who are called for the interview held on 16.3.2010.

6. Kindly provide the certified xerox copies of M.Sc. and B.Sc. degree certificates of all the candidates as per records available in the UPSC who are called for the interview held on 16.3.2010.

7. Kindly provide the certified xerox copies of UGC guidelines and the Govt. of India Gazette notification regarding whether the Degree in M.Sc. Applied Mathematics and the Degree in M.Sc. Mathematics are equivalent or not as per available records in the UPSC.

8. Kindly provide the certified xerox copies of UGC guidelines and the Govt. of India Gazette notification regarding whether the Degree in M.Sc. Applied Physics and the Degree in M.Sc. Physics are equivalent or not as per available records in the UPSC."

Deputy Secretary and Central Public Information Officer (CPIO) of the Commission send reply dated 16.4.2010, the relevant portions of which are reproduced below:

"Point 1 to 4: As the case is subjudice in Central Administrative Tribunal (Principal Bench), Hyderabad, hence the information cannot be provided.

Point 5 & 6: Photocopy of experience certificate and M.Sc. and B.Sc. degree certificates of called candidates cannot be given as the candidates have given their personal details to the Commission in a fiduciary relationship with expectation that this information will not be disclosed to others. Hence, disclosures of personal information of candidates held in a fiduciary capacity is exempted from disclosures under Section 8(1)(e) of the RTI Act, 2005. Further disclosures of these details to another candidate is not likely to serve any public interest of activity and hence is exempted under Section 8(1)(j) of the said Act.

Point 7 & 8: For copy of UGC Guidelines and Gazette notification, you may contact University Grant Commission, directly, as UGC is a distinct public authority."

The respondent challenged the aforesaid communication by filing an appeal under Section 19(1) of the Act, which was partly allowed by the Appellate Authority and a direction was given to the Commission to provide information sought by the respondent under point Nos. 1 to 3 of the application.

The order of the Appellate Authority did not satisfy the respondent, who filed further appeal under Section 19(3) of the Act. The CIC allowed the appeal and directed the Commission to supply the remaining information and the documents.

The Commission challenged the order of the CIC in Writ Petition Civil No. 3365/2011, which was summarily dismissed by the learned Single Judge of the High Court by making a cryptic observation that he is not inclined to interfere with the order of the CIC because the information asked for cannot be treated as exempted under Section 8(1)(e), (g) or (j) of the Act. The letters patent appeal filed by the Commission was dismissed by the Division Bench of the High Court.

Ms. Binu Tamta, learned counsel for the Commission, relied upon the

judgment in Central Board of Secondary Education and another v. Aditya Bandopadhyay and others (2011) 8 SCC 497 and argued that the CIC committed serious error by ordering supply of information and the documents relating to other candidates in violation of Section 8 of the Act which postulates exemption from disclosure of information made available to the Commission. She emphasised that relationship between the Commission and the candidates who applied for selection against the advertised post is based on trust and the Commission cannot be compelled to disclose the information and documents produced by the candidates more so because no public interest is involved in such disclosure. Ms. Tamta submitted that if view taken by the High Court is treated as correct, then it will become impossible for the Commission to function because lakhs of candidates submit their applications for different posts advertised by the Commission. She placed before the Court 62nd Annual Report of the Commission for the year 2011-12 to substantiate her statement.

We have considered the argument of the learned counsel and scrutinized the record. In furtherance of the liberty given by the Court on 01.03.2013, Ms. Neera Sharma, Under Secretary of the Commission filed affidavit dated 18.3.2013, paragraphs 2 and 3 of which read as under:

"2. That this Hon'ble Court vide order dated 1.3.2013 was pleased to grant three weeks' time to the petitioner to produce a statement containing the details of various examinations and the number of candidates who applied and/or appeared in the written examination and/or interviewed. In response thereto it is submitted that during the year 2011-12 the Commission conducted following examinations:

For Civil Services/Posts

- a. Civil Services (Preliminary) Examination, 2011 (CSP)
- b. Civil Services (Main) Examination, 2011 (CSM)
- c. Indian Forest Service Examination, 2011 (IFo.S)
- d. Engineering Services Examination, 2011 (ESE)
- e. Indian Economic Service/Indian Statistical Service Examination, 2011 (IES/ISS)
- f. Geologists' Examination, 2011 (GEOL)
- g. Special Class Railways Apprentices' Examination, 2011 (SCRA)
- h. Special Class Railways Apprentices' Examination, 2011 (SCRA)
- i. Central Police Forces (Assistant Commandants) Examination, 2011 (CPF)
- j. Central Industrial Security Force (Assistant Commandants) Limited Departmental Competitive Examination, 2010 & 2011 (CISF).

For Defence Services

- a. Two examinations for National Defence Academy and naval Academy (NDA & NA) - National Defence Academy and Naval Academy Examination (I), 2011 and National Defence Academy and Naval Academy Examination (II), 2011.
  - b. Two examinations for Combined Defence Services (CDS) - Combined Defence Services Examination (II), 2011 and Combined Defence Services Examination (I), 2012.
3. That in case of recruitment by examination during the year 2011-2012 the number of applications received by Union Public Service Commission (UPSC) was 21,02,131 and the number of candidate who appeared in the examination was 9,59,269. The number of candidates interviewed in 2011-2012 was 9938. 6863 candidates were recommended

for appointment during the said period."

Chapter 3 of the Annual Report of the Commission shows that during the years 2009-10, 2010-11 and 2011-12 lakhs of applications were received for various examinations conducted by the Commission. The particulars of these examinations and the figures of the applications are given below:

Exam	2009-10	2010-11	2011-12	
Civil				
1. CS(P)	409110	547698	499120	
2. CS(M)	11894	12271	11837	
3. IFOs	43262	59530	67168	
4. ESE	139751	157649	191869	
5. IES/ISS	6989	7525	9799	
6. SOLCE	-	2321	-	
7. CMS	33420	33875	-	
8. GEOL	4919	5262	6037	
9. CPF	111261	135268	162393	
10. CISF, LDCE	659	-	729	
11. SCRA	135539	165038	197759	
			190165	
Total Civil	896804	1126437	1336876	
Defence				
1. NDA & NA (I)	277290	374497	317489	
2. NDA & NA(II)	150514	193264	211082	
3. CDS(II)	89604	99017	100043	
4. CDS (I)	86575	99815	136641	
Total Defence	603983	766593	765255	
Grand Total	1500787	1893030	2102131	

In Aditya Bandopadhyay's case, this Court considered the question whether examining bodies, like, CBSE are entitled to seek exemption under Section 8(1)(e) of the Act. After analysing the provisions of the Act, the Court observed:

"There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-'-vis another partner and an employer vis-'-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "information available to a person in his fiduciary relationship" are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary-a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company

with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body.

This Court has explained the role of an examining body in regard to the process of holding examination in the context of examining whether it amounts to "service" to a consumer, in Bihar School Examination Board v. Suresh Prasad Sinha (2009) 8 SCC 483 in the following manner:

"11. ... The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative.

12. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its 'services' to any candidate. Nor does a student who participates in the examination conducted by the Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-'-vis other examinees. The process is not, therefore, availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.

13. ... The fact that in the course of conduct of the examination, or evaluation of answer scripts, or furnishing of marksheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service provider for a consideration, nor convert the examinee into a consumer...."

It cannot therefore be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer books are evaluated by the examining body.

We may next consider whether an examining body would be entitled to claim exemption under Section 8(1)(e) of the RTI Act, even assuming that it is in a fiduciary relationship with the examinee. That section provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship. This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself.

One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be

liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it."

(emphasis supplied)

By applying the ratio of the aforesaid judgment, we hold that the CIC committed a serious illegality by directing the Commission to disclose the information sought by the respondent at point Nos. 4 and 5 and the High Court committed an error by approving his order.

We may add that neither the CIC nor the High Court came to the conclusion that disclosure of the information relating to other candidates was necessary in larger public interest. Therefore, the present case is not covered by the exception carved out in Section 8(1)(e) of the Act.

Before concluding, we may observe that in the appeal arising out of SLP (C) No.16871/2012, respondent Naresh Kumar was a candidate for the post of Senior Scientific Officer (Biology) in Forensic Science Laboratory. He asked information about other three candidates who had competed with him and the nature of interviews. The appeal filed by him under Section 19(3) was allowed by the CIC without assigning reasons. The writ petition filed by the Commission was dismissed by the learned Single Judge by recording a cryptic order and the letters patent appeal was dismissed by the Division Bench. In the appeal arising out of SLP (C) No.16872/2012, respondent Udaya Kumara was a candidate for the post of Deputy Government counsel in the Department of Legal Affairs, Ministry of Law and Justice. He sought information regarding all other candidates and orders similar to those passed in the other two cases were passed in his case as well. In the appeal arising out of SLP (C) No.16873/2012, respondent N. Sugathan (retired Biologist) sought information on various issues including the candidates recommended for appointment on the posts of Senior Instructor (Fishery Biology) and Senior Instructor (Craft and Gear) in the Central Institute of Fisheries, Nautical and Engineering Training. In his case also, similar orders were passed by the CIC, the learned Single Judge and the Division Bench of the High Court. Therefore, what we have observed qua the case of Gourhari Kamila would equally apply to the remaining three cases.

In the result, the appeals are allowed, the impugned judgment and the orders passed by the learned Single Judge and the CIC are set aside.

.....J.  
[G.S. SINGHVI]

.....J.  
[V. GOPALA GOWDA]

NEW DELHI;  
AUGUST 06, 2013.

ITEM NO.26

COURT NO.2

SECTION XIV

S U P R E M E   C O U R T   O F   I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16870/2012  
(From the judgement and order dated 12/12/2011 in LPA No.803/2011 of The  
HIGH COURT OF DELHI AT N. DELHI)

U.P.S.C.

Petitioner(s)

## VERSUS

GOURHARI KAMILA Respondent(s)  
(With prayer for interim relief and office report )  
WITH  
SLP(C) NO. 16871 of 2012  
(With prayer for interim relief and office report)  
SLP(C) NO. 16872 of 2012  
(With appln(s) for permission to file reply to the rejoinder and with  
prayer for interim relief and office report) SLP(C) NO. 16873 of 2012  
  
(With prayer for interim relief and office report)  
(for final disposal)

Date: 06/08/2013 These Petitions were called on for hearing today.

**CORAM :**

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Ms. Binu Tamta,Adv.

For Respondent(s) None

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

| (Parveen Kr.Chawla) | (Usha Sharma)  
| Court Master | Court Master  
| |

[signed order is placed on the file]

10

**REPORTABLE**

IN THE SUPREME COURT OF INDIA

CIVIL APPEAL JURISDICTION

**CIVIL APPEAL NO. 9017 OF 2013**

(Arising out of SLP (C) No.24290 of 2012)

Thalappalam Ser. Coop. Bank

Ltd. and others

Appellants

Versus

State of Kerala and others

Respondents

WITH

**CIVIL APPEAL NOs. 9020, 9029 & 9023 OF 2013** (Arising out of

SLP (C) No.24291 of 2012, 13796 and 13797 of 2013)

**JUDGMENT**

**K.S. Radhakrishnan, J.**

1. Leave granted.
  
2. We are, in these appeals, concerned with the question whether a co-operative society registered under the Kerala Co-operative Societies Act, 1969 (for short “the Societies

Act") will fall within the definition of "public authority" under Section 2(h) of the Right to Information Act, 2005 (for short "the RTI Act") and be bound by the obligations to provide information sought for by a citizen under the RTI Act.

3. A Full Bench of the Kerala High Court, in its judgment reported in AIR 2012 Ker 124, answered the question in the affirmative and upheld the Circular No.23 of 2006 dated

1. 06.2006, issued by the Registrar of the Co-operative Societies, Kerala stating that all the co-operative institutions coming under the administrative control of the Registrar, are "public authorities" within the meaning of Section 2(h) of the RTI Act and obliged to provide information as sought for. The question was answered by the Full Bench in view of the conflicting views expressed by a Division Bench of the Kerala High Court in Writ Appeal No.1688 of 2009, with an earlier judgment of the Division Bench reported in ***Thalapalam Service Co-operative Bank Ltd. v. Union of India*** AIR 2010 Ker 6, wherein the Bench took the view that the question as to whether a co-operative society will fall under

Section 2(h) of the RTI Act is a question of fact, which will depend upon the question whether it is substantially financed, directly or indirectly, by the funds provided by the State Government which, the Court held, has to be decided depending upon the facts situation of each case.

4. Mr. K. Padmanabhan Nair, learned senior counsel appearing for some of the societies submitted that the views expressed by the Division Bench in ***Thalapalam Service Co-operative Bank Ltd.*** (supra) is the correct view, which calls for our approval. Learned senior counsel took us through the various provisions of the Societies Act as well as of the RTI Act and submitted that the societies are autonomous bodies and merely because the officers functioning under the Societies Act have got supervisory control over the societies will not make the societies public authorities within the meaning of Section 2(h) of the RTI Act. Learned senior counsel also submitted that these societies are not owned, controlled or substantially financed, directly or indirectly, by the State Government. Learned senior

counsel also submitted that the societies are not statutory bodies and are not performing any public functions and will not come within the expression "state" within the meaning under Article 12 of the Constitution of India.

5. Mr. Ramesh Babu MR, learned counsel appearing for the State, supported the reasoning of the impugned judgment and submitted that such a circular was issued by the Registrar taking into consideration the larger public interest so as to promote transparency and accountability in the working of every co-operative society in the State of Kerala. Reference was also made to various provisions of the Societies Act and submitted that those provisions would indicate that the Registrar has got all pervading control over the societies, including audit, enquiry and inspection and the power to initiate surcharge proceedings. Power is also vested on the Registrar under Section 32 of the Societies Act to supersede the management of the society and to appoint an administrator. This would indicate that though societies are body corporates, they are under the statutory control of

the Registrar of Co-operative Societies. Learned counsel submitted that in such a situation they fall under the definition of "public authority" within the meaning of Section 2(h) of the RTI Act. Shri Ajay, learned counsel appearing for the State Information Commission, stated that the applicability of the RTI Act cannot be excluded in terms of the clear provision of the Act and they are to be interpreted to achieve the object and purpose of the Act. Learned counsel submitted that at any rate having regard to the definition of "information" in Section 2(f) of the Act, the access to information in relation to Societies cannot be denied to a citizen.

### **Facts:**

6. We may, for the disposal of these appeals, refer to the facts pertaining to Mulloor Rural Co-operative Society Ltd. In that case, one Sunil Kumar stated to have filed an application dated 8.5.2007 under the RTI Act seeking particulars relating to the bank accounts of certain members of the society, which the society did not provide.

Sunil

Kumar then filed a complaint dated 6.8.2007 to the State Information Officer, Kerala who, in turn, addressed a letter dated 14.11.2007 to the Society stating that application filed by Sunil Kumar was left unattended. Society, then, vide letter dated 24.11.2007 informed the applicant that the information sought for is “confidential in nature” and one warranting “commercial confidence”. Further, it was also pointed out that the disclosure of the information has no relationship to any “public activity” and held by the society in a “fiduciary capacity”. Society was, however, served with an order dated 16.1.2008 by the State Information Commission, Kerala, stating that the Society has violated the mandatory provisions of Section 7(1) of the RTI Act rendering themselves liable to be punished under Section 20 of the Act. State Information Officer is purported to have relied upon a circular No.23/2006 dated 01.06.2006 issued by the Registrar, Co-operative Societies bringing in all societies under the administrative control of the Registrar of Co-operative Societies, as “public authorities” under Section 2(h) of the RTI Act.

7. Mulloor Co-operative Society then filed Writ Petition No.3351 of 2008 challenging the order dated 16.1.2008, which was heard by a learned Single Judge of the High Court along with other writ petitions. All the petitions were disposed of by a common judgment dated 03.04.2009 holding that all co-operative societies registered under the Societies Act are public authorities for the purpose of the RTI Act and are bound to act in conformity with the obligations in Chapter 11 of the Act and amenable to the jurisdiction of the State Information Commission. The Society then preferred Writ Appeal No.1688 of 2009. While that appeal was pending, few other appeals including WA No.1417 of 2009, filed against the common judgment of the learned Single Judge dated 03.04.2009 came up for consideration before another Division Bench of the High Court which set aside the judgment of the learned Single Judge dated 03.04.2009, the judgment of which is reported in AIR 2010 Ker 6. The Bench held that the obedience to Circular No.23 dated 1.6.2006 is optional in the sense that if the Society feels that it satisfies

the definition of Section 2(h), it can appoint an Information Officer under the RTI Act or else the State Information Commissioner will decide when the matter reaches before him, after examining the question whether the Society is substantially financed, directly or indirectly, by the funds provided by the State Government. The Division Bench, therefore, held that the question whether the Society is a public authority or not under Section 2(h) is a disputed question of fact which has to be resolved by the authorities under the RTI Act.

8. Writ Appeal No.1688 of 2009 later came up before another Division Bench, the Bench expressed some reservations about the views expressed by the earlier Division Bench in Writ Appeal No.1417 of 2009 and vide its order dated 24.3.2011 referred the matter to a Full Bench, to examine the question whether co-operative societies registered under the Societies Act are generally covered under the definition of Section 2(h) of the RTI Act. The Full Bench answered the question in the affirmative giving a

liberal construction of the words “public authority”, bearing in mind the “transformation of law” which, according to the Full Bench, is to achieve transparency and accountability with regard to affairs of a public body.

9. We notice, the issue raised in these appeals is of considerable importance and may have impact on similar other Societies registered under the various State enactments across the country.

10. The State of Kerala has issued a letter dated 5.5.2006 to the Registrar of Co-operative Societies, Kerala with reference to the RTI Act, which led to the issuance of Circular No.23/2006 dated 01.06.2006, which reads as under:

“G1/40332/05

Registrar of Co-operative Societies,  
Thiruvananthapuram, Dated 01.06.2006

**Circular No.23/2006**

Sub: Right to Information Act, 2005- Co-operative Institutions included in the definition of “Public Authority”

Ref: Governments Letter No.3159/P.S.1/06

Dated 05.05.2006

According to Right to Information Act, 2005, sub-section

(1) and (2) of Section 5 of the Act severy public authority within 100 days of the enactment of this Act designate as many officers as public information officers as may be necessary to provide information to persons requesting for information under the Act. In this Act Section 2(h) defines institutions which come under the definition of public authority. As per the reference letter the government informed that, according to Section 2(h) of the Act all institutions formed by laws made by state legislature is a “public authority” and therefore all co-operative institutions coming under the administrative control of The Registrar of co-operative societies are also public authorities.

In the above circumstance the following directions are issued:

1. All co-operative institutions coming under the administrative control of the Registrar of co-operative societies are “public authorities” under the Right to Information Act, 2005 (central law No.22 of 2005). Co-operative institutions are bound to give all information to applications under the RTI Act, if not given they will be subjected to punishment under the Act. For this all co-operative societies should appoint public information/assistant public information officers immediately and this should be published in the government website.
  
2. For giving information for applicants government order No.8026/05/government administration department act

and rule can be applicable and 10 rupees can be charged as fees for each application. Also as per GAD Act and rule and the government Order No.2383/06 dated 01.04.2006.

3. Details of Right to Information Act are available in the government website ([www.kerala.gov.in](http://www.kerala.gov.in)..... ) or right to information gov.in ) other details regarding the Act are also available in the government website.
4. Hereafter application for information from co-operative institutions need not be accepted by the information officers of this department. But if they get such applications it should be given back showing the reasons or should be forwarded to the respective co-operative institutions with necessary directions and the applicant should be informed about this. In this case it is directed to follow the time limit strictly.
5. It is directed that all joint registrars/assistant registrars should take immediate steps to bring this to the urgent notice of all co-operative institutions. They should inform to this office the steps taken within one week. The Government Order No.2389/06 dated 01.04.2006 is also enclosed.

Sd/-  
V. Reghunath  
Registrar of co-operative societies (in  
charge)"

11. The State Government, it is seen, vide its letter dated 5.5.2006 has informed the Registrar of Co-operative

Societies that, as per Section 2(h) of the Act, all institutions formed by laws made by State Legislature is a “public authority” and, therefore, all co-operative institutions coming under the administrative control of the Registrar of Co-operative Societies are also public authorities.

12. We are in these appeals concerned only with the co-operative societies registered or deemed to be registered under the Co-operative Societies Act, which are not owned, controlled or substantially financed by the State or Central Government or formed, established or constituted by law made by Parliament or State Legislature.

---

**Co-operative Societies and Article 12 of the Constitution:**

---

13. We may first examine, whether the Co-operative Societies, with which we are concerned, will fall within the expression “State” within the meaning of Article 12 of the Constitution of India and, hence subject to all constitutional limitations as enshrined in Part III of the Constitution. This

Court in ***U.P. State Co-operative Land Development Bank Limited v. Chandra Bhan Dubey and others*** (1999) 1 SCC 741, while dealing with the question of the maintainability of the writ petition against the U.P. State Co-operative Development Bank Limited held the same as an instrumentality of the State and an authority mentioned in Article 12 of the Constitution. On facts, the Court noticed that the control of the State Government on the Bank is all pervasive and that the affairs of the Bank are controlled by the State Government though it is functioning as a co-operative society, it is an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution. In ***All India Sainik Schools employees' Association v. Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi and others*** (1989) Supplement 1 SCC 205, this Court held that the Sainik School society is "State" within the meaning of Article 12 of the Constitution after having found that the entire funding is by the State Government and by the Central Government

and the overall control vests in the governmental authority and the main object of the society is to run schools and prepare students for the purpose feeding the National Defence Academy.

14. This Court in ***Executive Committee of Vaish Degree College, Shamli and Others v. Lakshmi Narain and Others*** (1976) 2 SCC 58, while dealing with the status of the Executive Committee of a Degree College registered under the Co-operative Societies Act, held as follows:

“10.....It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character.....”

15. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after

having come into existence, is governed in accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suites and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government.

16. This Court in **Federal Bank Ltd. v. Sagar Thomas and Others** (2003) 10 SCC 733, held as follows:

“32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority”.

17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society

which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State. Above principle has been approved by this Court in **S.S. Rana v. Registrar, Co-operative Societies and another** (2006) 11 SCC 634. In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co-operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P. Co-operative Societies Act this Court held as follows:

"9. It is not in dispute that the Society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which

reference has been made by Mr Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

**10.** It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the Society partake to statutory functions or public functions? and (4) Can it be characterised as public authority?

**11.** Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia v. Khalid Mujib Sehravardi*. [See *Zoroastrian Coop. Housing Society Ltd. v. Distt. Registrar, Coop. Societies (Urban)*.]

**12.** It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of

the society and the State or statutory authorities would have nothing to do with its day-to-day functions.”

18. We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression “State” or “instrumentalities of the State” within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment.

#### **Constitutional provisions and Co-operative autonomy:**

19. Rights of the citizens to form co-operative societies voluntarily, is now raised to the level of a fundamental right and State shall endeavour to promote their autonomous functioning. The Parliament, with a view to enhance public faith in the co-operative institutions and to insulate them to

avoidable political or bureaucratic interference brought in Constitutional (97<sup>th</sup> Amendment) Act, 2011, which received the assent of the President on 12.01.2012, notified in the Gazette of India on 13.01.2012 and came into force on 15.02.2012.

20. Constitutional amendment has been effected to encourage economic activities of co-operatives which in turn help progress of rural India. Societies are expected not only to ensure autonomous and democratic functioning of co-operatives, but also accountability of the management to the members and other share stake-holders. Article 19 protects certain rights regarding freedom of speech. By virtue of above amendment under Article 19(1)(c) the words "co-operative societies" are added. Article 19(1)(c) reads as under:

"19(1)(c) – All citizens shall have the right to form associations or unions or co-operative societies".

Article 19(1)(c), therefore, guarantees the freedom to form an association, unions and co-operative societies. Right to

form a co-operative society is, therefore, raised to the level of a fundamental right, guaranteed under the Constitution of India. Constitutional 97<sup>th</sup> Amendment Act also inserted a new Article 43B with reads as follows :-

“the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies”.

21. By virtue of the above-mentioned amendment, Part IX-B was also inserted containing Articles 243ZH to 243ZT. Cooperative Societies are, however, not treated as units of self-government, like Panchayats and Municipalities.

22. Article 243(ZL) dealing with the supersession and suspension of board and interim management states that notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months. It provided further that the Board of any such co-operative society shall not be superseded or kept under suspension where there is no government shareholding or loan or financial assistance

or any guarantee by the Government. Such a constitutional restriction has been placed after recognizing the fact that there are co-operative societies with no government share holding or loan or financial assistance or any guarantee by the government.

23. Co-operative society is a state subject under Entry 32 List I Seventh Schedule to the Constitution of India. Most of the States in India enacted their own Co-operative Societies Act with a view to provide for their orderly development of the cooperative sector in the state to achieve the objects of equity, social justice and economic development, as envisaged in the Directive Principles of State Policy, enunciated in the Constitution of India. For co-operative societies working in more than one State, The Multi State Co-operative Societies Act, 1984 was enacted by the Parliament under Entry 44 List I of the Seventh Schedule of the

Constitution. Co-operative society is essentially an association or an association of persons who have come

together for a common purpose of economic development or for mutual help.

### **Right to Information Act**

24. The RTI Act is an Act enacted to provide for citizens to secure, access to information under the control of public authorities and to promote transparency and accountability in the working of every public authority. The preamble of the Act reads as follows:

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

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

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

25. Every public authority is also obliged to maintain all its record duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such record is facilitated. Public authority has also to carry out certain other functions also, as provided under the Act.

26. The expression "public authority" is defined under Section 2(h) of the RTI Act, which reads as follows:

**“2. Definitions.**— In this Act, unless the context otherwise requires :

(h) "**public authority**" means any authority or body or institution of self-government established or constituted—

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any—

- (i) body owned, controlled or substantially financed;
- (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government”

27. Legislature, in its wisdom, while defining the expression “public authority” under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions ‘means’ and ‘includes’. When a word is defined to ‘mean’ something, the definition is *prima facie* restrictive and where the word is defined to ‘include’ some

other thing, the definition is *prima facie* extensive. But when both the expressions “means” and “includes” are used, the categories mentioned there would exhaust themselves. Meanings of the expressions ‘means’ and ‘includes’ have been explained by this Court in ***Delhi Development Authority v. Bhola Nath Sharma (Dead) by LRs and others***

**others** (2011) 2 SCC 54, (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

28. Section 2(h) exhausts the categories mentioned therein. The former part of 2(h) deals with:

- (1) an authority or body or institution of self-government established by or under the Constitution,
- (2) an authority or body or institution of self-government established or constituted by any other law made by the Parliament,
- (3) an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and

(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.

29. Societies, with which we are concerned, admittedly, do not fall in the above mentioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government. Let us now examine whether they fall in the later part of Section 2(h) of the Act, which embraces within its fold:

(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government,

(6) non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government.

30 The expression 'Appropriate Government' has also been defined under Section 2(a) of the RTI Act, which reads as follows :

**“2(a).** “appropriate Government” means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-

- (i) by the Central Government or the Union territory administration, the Central Government;
- (ii) by the State Government, the State Government.”

31. The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate government and also non-government organizations substantially financed, directly or indirectly, by funds provided by the appropriate government, in the event of which they may fall within the definition of Section 2(h)(d)(i) or (ii) respectively. As already pointed out, a body, institution or an organization, which is neither a State within the meaning of Article 12 of the Constitution or instrumentalities, may still answer the definition of public authority under Section 2(h)d (i) or (ii).

(a) **Body owned by the appropriate government** – A body owned by the appropriate government clearly falls under Section 2(h)(d)(i) of the Act. A body owned, means to

have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate government.

(b) **Body Controlled by the Appropriate Government**

A body which is controlled by the appropriate government can fall under the definition of public authority under Section 2h(d)(i). Let us examine the meaning of the expression “controlled” in the context of RTI Act and not in the context of the expression “controlled” judicially interpreted while examining the scope of the expression “State” under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under

Article 226 of the Constitution of India. The word “control” or “controlled” has not been defined in the RTI Act, and hence, we have to understand the scope of the expression ‘controlled’ in the context of the words which exist prior and subsequent i.e. “body owned” and

“substantially financed” respectively. The meaning of the word “control” has come up for consideration in several cases before this Court in different contexts. In ***State of West Bengal and another v. Nripendra Nath Bagchi***, AIR 1966 SC 447 while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word “control” includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations :

“The word ‘control’, as we have seen, was used for the first time in the Constitution and it is accompanied by the word ‘vest’ which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.... In our judgment, the control

which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, ...”

32. The above position has been reiterated by this Court in ***Chief Justice of Andhra Pradesh and others v. L.V.A. Dixitulu and others*** (1979) 2 SCC 34. In ***Corporation of the City of Nagpur Civil Lines, Nagpur and another v. Ramchandra and others*** (1981) 2 SCC 714, while interpreting the provisions of Section 59(3) of the City of Nagpur Corporation Act, 1948, this Court held as follows :

“4. It is thus now settled by this Court that the term “control” is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers-vested in the authority concerned.....”

33. The word “control” is also sometimes used synonyms with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power. This Court in ***The Shamrao Vithal Co-operative Bank Ltd. v. Kasargode Pandhuranga Mallya*** (1972) 4 SCC 600, held that the word “control” does not comprehend within itself the adjudication of a claim made by a co-operative society against its members. The

meaning of the word “control” has also been considered by this Court in ***State of Mysore v. Allum Karibasappa & Ors.*** (1974) 2 SCC 498, while interpreting Section 54 of the Mysore Cooperative Societies Act, 1959 and Court held that the word “control” suggests check, restraint or influence and intended to regulate and hold in check and restraint from action. The expression “control” again came up for consideration before this Court in ***Madan Mohan Choudhary v. State of Bihar & Ors.*** (1999) 3 SCC 396, in the context of Article 235 of the Constitution and the Court held that the expression “control” includes disciplinary control, transfer, promotion, confirmation, including transfer of a District Judge or recall of a District Judge posted on ex-cadre post or on deputation or on administrative post etc. so also premature and compulsory retirement. Reference may also be made to few other judgments of this Court reported in ***Gauhati High Court and another v. Kuladhar Phukan and another*** (2002) 4 SCC 524, ***State of Haryana v. Inder Prakash Anand HCS and others*** (1976) 2 SCC 977, ***High Court of Judicature for Rajasthan v. Ramesh***

***Chand Paliwal and Another*** (1998) 3 SCC 72, ***Kanhaiya Lal Omar v. R.K. Trivedi and others*** (1985) 4 SCC 628,  
***TMA Pai Foundation and others v. State of Karnataka*** (2002) 8 SCC 481, ***Ram Singh and others v. Union Territory, Chandigarh and others*** (2004) 1 SCC 126, etc.

34. We are of the opinion that when we test the meaning of expression “controlled” which figures in between the words “body owned” and “substantially financed”, the control by the appropriate government must be a control of a substantial nature. The mere ‘supervision’ or ‘regulation’ as such by a statute or otherwise of a body would not make that body a “public authority” within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature,

which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.

35. We are, therefore, of the view that the word “controlled” used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-a-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.

### **SUBSTANTIALLY FINANCED**

36. The words “substantially financed” have been used in Sections 2(h)(d)(i) & (ii), while defining the expression public

authority as well as in Section 2(a) of the Act, while defining the expression “appropriate Government”. A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression “substantially financed”, as such, has not been defined under the Act. “Substantial” means “in a substantial manner so as to be substantial”. In ***Palser v. Grimling*** (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that “substantial” is not the same as “not unsubstantial” i.e. just enough to avoid the *de minimis* principle. The word “substantial” literally means solid, massive etc. Legislature has used the expression “substantially financed” in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.

37. We often use the expressions “questions of law” and “substantial questions of law” and explain that any question

of law affecting the right of parties would not by itself be a substantial question of law. In ***Black's Law Dictionary (6th Edn.)***, the word 'substantial' is defined as 'of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main; in substance; materially.' In the Shorter Oxford English Dictionary (5th Edn.), the word 'substantial' means 'of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.' The word 'substantially' has been defined to mean 'in substance; as a substantial thing or being; essentially, intrinsically.' Therefore the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer

to 'essentially'. Both words can signify varying degrees depending on the context.

38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as "substantially financed" by the State Government to bring the body within the fold of "public authority" under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h)(d)(i).

**NON-GOVERNMENT ORGANISATIONS:**

39. The term “Non-Government Organizations” (NGO), as such, is not defined under the Act. But, over a period of time, the expression has got its own meaning and, it has to be seen in that context, when used in the Act. Government used to finance substantially, several non-government organizations, which carry on various social and welfare activities, since those organizations sometimes carry on functions which are otherwise governmental. Now, the question, whether an NGO has been substantially financed or not by the appropriate Government, may be a question of fact, to be examined by the authorities concerned under the RTI Act. Such organization can be substantially financed either directly or indirectly by funds provided by the appropriate Government. Government may not have any statutory control over the NGOs, as such, still it can be established that a particular NGO has been substantially financed directly or indirectly by the funds provided by the appropriate Government, in such an event, that organization

will fall within the scope of Section 2(h)(d)(ii) of the RTI Act. Consequently, even private organizations which are, though not owned or controlled but substantially financed by the appropriate Government will also fall within the definition of “public authority” under Section 2(h)(d)(ii) of the Act.

**BURDEN TO SHOW:**

40. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Information Commission or the Central Information Commission as the case may be, when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.

41. Powers have been conferred on the Central Information Commissioner or the State Information Commissioner under Section 18 of the Act to inquire into any complaint received from any person and the reason for the refusal to access to any information requested from a body owned, controlled or substantially financed, or a non-government organization substantially financed directly or indirectly by the funds provided by the appropriate Government. Section 19 of the Act provides for an appeal against the decision of the Central Information Officer or the State Information Officer to such officer who is senior in rank to the Central Information Officer or the State Information Officer, as the case may be,

in each public authority. Therefore, there is inbuilt mechanism in the Act itself to examine whether a body is owned, controlled or substantially financed or an NGO is substantially financed, directly or indirectly, by funds provided by the appropriate authority.

42. Legislative intention is clear and is discernible from Section 2(h) that intends to include various categories,

discussed earlier. It is trite law that the primarily language employed is the determinative factor of the legislative intention and the intention of the legislature must be found in the words used by the legislature itself. In ***Magor and St. Mellons Rural District Council v. New Port Corporation*** (1951) 2 All ER 839(HL) stated that the courts are warned that they are not entitled to usurp the legislative function under the guise of interpretation. This Court in ***D.A. Venkatachalam and others v. Dy. Transport Commissioner and others*** (1977) 2 SCC 273, ***Union of India v. Elphinstone Spinning and Weaving Co. Ltd. and others*** (2001) 4 SCC 139, ***District Mining Officer and others v. Tata Iron & Steel Co. and another*** (2001) 7 SCC 358, ***Padma Sundara Rao (Dead) and others v. State of Tamil Nadu and others*** (2002) 3 SCC 533, ***Maulvi Hussain Haji Abraham Umarji v. State of Gujarat and another*** (2004) 6 SCC 672 held that the court must avoid the danger of an *apriori* determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the

provisions to be interpreted is somehow fitted. It is trite law that words of a statute are clear, plain and unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences, meaning thereby when the language is clear and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the statute speaks for itself. This Court in **Kanai Lal Sur v. Paramnidhi Sadhukhan** AIR 1957 SC 907 held that "if the words used are capable of one construction only then it would not be open to courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

43. We are of the view that the High Court has given a complete go-bye to the above-mentioned statutory principles and gone at a tangent by mis-interpreting the meaning and content of Section 2(h) of the RTI Act. Court has given a liberal construction to expression "public authority" under Section 2(h) of the Act, bearing in mind the

“transformation of law” and its “ultimate object” i.e. to achieve “transparency and accountability”, which according to the court could alone advance the objective of the Act. Further, the High Court has also opined that RTI Act will certainly help as a protection against the mismanagement of the society by the managing committee and the society’s liabilities and that vigilant members of the public body by obtaining information through the RTI Act, will be able to detect and prevent mismanagement in time. In our view, the categories mentioned in Section 2(h) of the Act exhaust themselves, hence, there is no question of adopting a liberal construction to the expression “public authority” to bring in other categories into its fold, which do not satisfy the tests we have laid down. Court cannot, when language is clear and unambiguous, adopt such a construction which, according to the Court, would only advance the objective of the Act. We are also aware of the opening part of the definition clause which states “unless the context otherwise requires”. No materials have been made available to show that the cooperative societies, with which we are concerned,

in the context of the Act, would fall within the definition of Section 2(h) of the Act.

### **Right to Information and the Right to Privacy**

44. People's right to have access to an official information finds place in Resolution 59(1) of the UN General Assembly held in 1946. It states that freedom of information is a fundamental human right and the touchstone to all the freedoms to which the United Nations is consecrated. India is a party to the International Covenant on Civil and Political Rights and hence India is under an obligation to effectively guarantee the right to information. Article 19 of the Universal Declaration of Human Rights also recognizes right to information. Right to information also emanates from the fundamental right guaranteed to citizens under Article 19(1)

(a) of the Constitution of India. Constitution of India does not explicitly grant a right to information. In ***Bennet Coleman & Co. and others Vs. Union of India and others*** (1972) 2 SCC 788, this Court observed that it is indisputable that by "Freedom of Press" meant the right of all citizens to speak,

publish and express their views and freedom of speech and expression includes within its compass the right of all citizens to read and be informed. In ***Union of India Vs. Association of Democratic Reforms and another*** (2002) 5 SCC 294, this Court held that the right to know about the antecedents including criminal past of the candidates contesting the election for Parliament and State Assembly is a very important and basic facets for survival of democracy and for this purpose, information about the candidates to be selected must be disclosed. In ***State of U.P. Vs. Raj Narain and others*** (1975) 4 SCC 428, this Court recognized that the right to know is the right that flows from the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. In ***People's Union for Civil Liberties (PUCL) and others Vs. Union of India and another*** (2003) 4 SCC 399, this Court observed that the right to information is a facet of freedom of speech and expression contained in Article 19(1)(a) of the Constitution of India. Right to information thus indisputably is a

fundamental right, so held in several judgments of this Court, which calls for no further elucidation.

45. The Right to Information Act, 2005 is an Act which provides for setting up the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. Preamble of the Act also states that the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. Citizens have, however, the right to secure access to information of only those matters which are “under the control of public authorities”, the purpose is to hold “Government and its instrumentalities” accountable to the governed. Consequently, though right to get information is a fundamental right guaranteed under Article 19(1)(a) of the Constitution, limits are being prescribed under the Act itself,

which are reasonable restrictions within the meaning of Article 19(2) of the Constitution of India.

46. Right to privacy is also not expressly guaranteed under the Constitution of India. However, the Privacy Bill, 2011 to provide for the right to privacy to citizens of India and to regulate the collection, maintenance and dissemination of their personal information and for penalization for violation of such rights and matters connected therewith, is pending. In several judgments including ***Kharak Singh Vs. State of U.P. and others*** AIR 1963 SC 1295, ***R. Rajagopal alias R.R. Gopal and another Vs. State of Tamil Nadu and others***

(1994) 6 SCC 632, ***People's Union for Civil Liberties (PUCL) Vs. Union of India and another*** (1997) 1 SCC 301 and ***State of Maharashtra Vs. Bharat Shanti Lal Shah and others*** (2008) 13 SCC 5, this Court has recognized the right to privacy as a fundamental right emanating from Article 21 of the Constitution of India. Right to privacy is also recognized as a basic human right under

Article 12 of the Universal Declaration of Human Rights Act, 1948, which states as follows:

“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attack upon his honour and reputation. Everyone has the right to the protection of law against such interference or attacks.”

Article 17 of the International Covenant on Civil and Political Rights Act, 1966, to which India is a party also protects that right and states as follows:

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence nor to unlawful attacks on his honour and reputation....”

This Court in ***R. Rajagopal*** (supra) held as follows :-

“The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a “right to be let alone”. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.”

**Restrictions and Limitations:**

47. Right to information and Right to privacy are, therefore, not absolute rights, both the rights, one of which falls under Article 19(1)(a) and the other under Article 21 of the Constitution of India, can obviously be regulated, restricted and curtailed in the larger public interest. Absolute or uncontrolled individual rights do not and cannot exist in any modern State. Citizens' right to get information is statutorily recognized by the RTI Act, but at the same time limitations are also provided in the Act itself, which is discernible from the Preamble and other provisions of the Act. First of all, the scope and ambit of the expression "public authority" has been restricted by a statutory definition under Section 2(h) limiting it to the categories mentioned therein which exhaust itself, unless the context otherwise requires. Citizens, as already indicated by us, have a right to get information, but can have access only to the information "held" and under the "control of public authorities", with limitations. If the

information is not statutorily accessible by a public authority, as defined in Section 2(h) of the Act, evidently, those information will not be under the “control of the public authority”. Resultantly, it will not be possible for the citizens to secure access to those information which are not under the control of the public authority. Citizens, in that event, can always claim a right to privacy, the right of a citizen to access information should be respected, so also a citizen's right to privacy.

48. Public authority also is not legally obliged to give or provide information even if it is held, or under its control, if that information falls under clause (j) of Sub-section (1) of Section 8. Section 8(1)(j) is of considerable importance so far as this case is concerned, hence given below, for ready reference:-

**“8. Exemption from disclosure of information – (1)**  
Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen –

(a) to (i)     xxx xxx xxx

(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: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

49. Section 8 begins with a non obstante clause, which gives that Section an overriding effect, in case of conflict, over the other provisions of the Act. Even if, there is any indication to the contrary, still there is no obligation on the public authority to give information to any citizen of what has been mentioned in clauses (a) to (j). Public authority, as already indicated, cannot access all the information from a private individual, but only those information which he is legally obliged to pass on to a public authority by law, and also only those information to which the public authority can have access in accordance with law. Even those information, if personal in nature, can be made available only subject to the limitations provided in Section 8(j) of the

RTI Act. Right to be left alone, as propounded in *Olmstead v. The United States* reported in 1927 (277) US 438 is the most comprehensive of the rights and most valued by civilized man.

50. Recognizing the fact that the right to privacy is a sacrosanct facet of Article 21 of the Constitution, the legislation has put a lot of safeguards to protect the rights under Section 8(j), as already indicated. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve larger public interest, the public authority or the officer concerned is not legally obliged to provide those information. Reference may be made to a recent judgment of this Court in *Girish*

***Ramchandra Deshpande v. Central Information Commissioner and others*** (2013) 1 SCC 212, wherein this Court held that since there is no *bona fide* public interest in seeking information, the disclosure of said information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the Act. Further, if the authority

finds that information sought for can be made available in the larger public interest, then the officer should record his reasons in writing before providing the information, because the person from whom information is sought for, has also a right to privacy guaranteed under Article 21 of the Constitution.

51. We have found, on facts, that the Societies, in these appeals, are not public authorities and, hence, not legally obliged to furnish any information sought for by a citizen under the RTI Act. All the same, if there is any dispute on facts as to whether a particular Society is a public authority or not, the State Information Commission can examine the same and find out whether the Society in question satisfies the test laid in this judgment. Now, the next question is whether a citizen can have access to any information of these Societies through the Registrar of Cooperative Societies, who is a public authority within the meaning of Section 2(h) of the Act.

### **Registrar of Cooperative Societies**

52. Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a public authority within the meaning of Section 2(h) of the Act. As a public authority, Registrar of Cooperative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. Information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Cooperative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the Society, to the extent permitted by law. Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that,

under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank. Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a Society could be said to be the information which is "held" or "under the control of public authority". Even those information, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Co-operative Bank of a private account maintained by a member of Society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.

53. Consequently, an information which has been sought for 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, the Registrar of Cooperative Societies, even if he has got that information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing.

54. We, therefore, hold that the Cooperative Societies registered under the Kerala Co-operative Societies Act will not fall within the definition of "public authority" as defined under Section 2(h) of the RTI Act and the State Government letter dated 5.5.2006 and the circular dated 01.06.2006 issued by the Registrar of Co-operative Societies, Kerala, to the extent, made applicable to societies registered under the Kerala Co-operative Societies Act would stand quashed in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government. Appeals are, therefore, allowed as above, however, with no order as to costs.

.....J.  
(K.S. Radhakrishnan)

.....J.  
(A.K. Sikri)

New Delhi,  
October 07, 2013

**'REPORTABLE'**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**Civil Appeal No. 4467 of 2015**  
(Arising out of SLP(C)No. 22488 of 2012)

Bilaspur Raipur Kshetriya Gramin Bank  
and another .....Appellant(s)  
versus

Madanlal Tandon .....Respondent(s)

**JUDGMENT**

**M. Y. EQBAL, J.**

Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 17<sup>th</sup> February, 2012, whereby Division Bench of the High Court of Chhattisgarh in the writ appeal preferred by the appellants upheld the order of the learned Single Judge and directed payment towards respondent's claim of salary up to Rs.5,00,000/- with all consequential benefits.

3. The factual matrix of the case is that the respondent was working as a Field Supervisor in the appellant Bank since 1981. In February, 1984, a charge-sheet was issued to him for having committed misconduct and after a departmental inquiry, an order dated 5.7.1984 was passed by the Disciplinary Authority imposing punishment of stoppage of his two annual increments. Thereafter a second charge-sheet was issued to the respondent in November, 1987 alleging that the respondent had committed several financial irregularities in various loan cases. An inquiry was conducted, wherein fourteen charges were found proved against the respondent and three charges were not found proved. Consequently, the punishment of removal from service was inflicted against the respondent on 1.10.1991. Respondent preferred an appeal before the Board of Directors of the appellant Bank, but the same was dismissed.

4. The respondent, therefore, moved the High Court by way of writ petition, inter alia contending that both the charge-sheets being identical, the second inquiry was not competent. It was also contended that along with the second charge-sheet, neither the list of documents nor the documents sought to be relied upon were supplied. It was also contended by the respondent-writ petitioner that appropriate opportunity was not afforded to him to have inspection of the relevant documents and as such the respondent was not in a position to reply the said show cause notice effectively and to defend him in the inquiry. Learned Single Judge of the High Court rejected his first contention and held that the charges were not identical and, therefore, the second inquiry was competent. However, it was held that along with the charge-sheet and imputation of charges, there was no list of documents and list of witnesses were also not supplied as such the respondent was not afforded an opportunity to put forward his case in response to show cause notice along with the charge-sheet.

Observing that the object of rules of natural justice is to

ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service, learned Single Judge of the High Court quashed the orders of removal passed by the appellant and allowed the writ petition of the respondent with all consequential benefits.

5. Aggrieved by aforesaid decision, the appellants preferred writ appeal, wherein Division Bench of the High Court, after perusing the record, found that although the show cause notice was served along with 17 charges, but no documents were supplied along with the show cause to the respondent. Even the list of documents sought to be relied during the inquiry was not supplied along with the show cause. The Division Bench opined that it is trite law that when a delinquent employee is facing disciplinary proceeding, he is entitled to be afforded with a reasonable opportunity to meet the charges against him in an effective manner. If the copies

of the documents are not supplied to the concerned employee, it would be difficult for him to prepare his defence and to cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are false or baseless.

6. The Division Bench of the High Court further observed that in the instant case neither the list of witnesses nor the list of documents was supplied to the respondent along with the charge-sheet. Though during the course of inquiry some documents were supplied to him but those documents, on which the reliance was placed by the Inquiry Officer for holding various charges proved, were not supplied to the respondent. The High Court further observed that the respondent is out of employment since 01.10.1991 and his claim for arrears of salary, as stated by counsel for both the parties, would be more than 45-50 lakhs. The Bank's money is public money and a huge amount cannot be paid to anyone for doing no work. The principle of "no work no pay" has been

evolved in view of the public interest that an employee who does not discharge his duty is not entitled to arrears of salary at the cost of public exchequer. By way of impugned judgment, the High Court, therefore, concluded that in the facts and circumstances of the case a lump-sum payment of Rs. 5,00,000/- towards the claim of salary, would be just and proper in this matter. The respondent was also held to be entitled to all other consequential benefits.

7. Hence, the present appeal by special leave by the appellant Bank and its Board of Directors. It is worth to mention here that the respondent has not come to this Court against the impugned judgment passed by the High Court.

8. We have heard Mr. Akshat Shrivastava, learned counsel for the appellants and Mr. T.V.S. Raghavendra Sreyas, learned counsel for the respondent. We have also perused the

impugned order passed by the Division Bench of the High Court. The only controversy that falls for our consideration is as to whether the documents, which were the basis of the charges leveled against the respondent, were supplied to the respondent or not?

9. Indisputably, no documents were supplied to the respondent along with the charge-sheet on the basis of which charges were framed. Some of the documents were given during departmental inquiry, but relevant documents on the basis of which findings were recorded were not made available to the respondent. It further appears that the list of documents and witnesses were also not supplied and some of the documents were produced during the course of inquiry.

10. Admittedly, show cause notice was served along with 17 charges, but all the documents were not supplied to the

respondent. A perusal of the impugned order will show that when the Division Bench, during the course of arguments, asked the learned counsel appearing for the appellants whether documents viz. P-21, P-25, P-23, P-19, P-30, P-31 & P-32 were supplied to the respondent, on the basis of which various charges have been held to be proved, learned counsel was not able to demonstrate that the above documents were supplied to the respondent even during the course of inquiry. The Division Bench then following a catena of decisions of this Court came to the conclusion that the order of punishment

cannot be sustained in law. However, taking into consideration the fact that the respondent was out of employment since 1991, a lump sum payment of Rs.5,00,000/- towards the salary would meet the ends of justice.

11. After giving our anxious consideration, we do not find any reason to differ with the finding recorded by the learned

Single Judge and also the Division Bench of the High Court in writ appeal. Therefore, this civil appeal is dismissed.

.....J.  
**(M.Y. Eqbal)**

.....J.  
**(S.A. Bobde)**

New Delhi  
May 15, 2015

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION**

**TRANSFERRED CASE (CIVIL) NO. 91 OF 2015** (Arising out of  
Transfer Petition (Civil) No. 707 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
Jayantilal N. Mistry .....Respondent(s)  
*With*

**TRANSFERRED CASE (CIVIL) NO. 92 OF 2015**  
(Arising out of Transfer Petition (Civil) No. 708 of 2012)

I.C.I.C.I Bank Limited ..... Petitioner(s)  
versus  
S.S. Vohra and others ..... Respondent(s)

**TRANSFERRED CASE (CIVIL) NO. 93 OF 2015** (Arising out of  
Transfer Petition (Civil) No. 711 of 2012)

National Bank for Agriculture  
and Rural Development .....Petitioner(s)  
versus  
Kishan Lal Mittal .....Respondent(s)

**TRANSFERRED CASE (CIVIL) NO. 94 OF 2015** (Arising out of  
Transfer Petition (Civil) No. 712 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
P.P. Kapoor .....Respondent(s)

**TRANSFERRED CASE (CIVIL) NO. 95 OF 2015** (Arising out of  
Transfer Petition (Civil) No. 713 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
Subhas Chandra Agrawal .....Respondent(s)

**TRANSFERRED CASE (CIVIL) NO. 96 OF 2015** (Arising out of  
Transfer Petition (Civil) No. 715 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
Raja M. Shanmugam .....Respondent(s)

**TRANSFERRED CASE (CIVIL) NO. 97 OF 2015** (Arising out of  
Transfer Petition (Civil) No. 716 of 2012)

National Bank for Agriculture  
and Rural Development .....Petitioner(s)  
versus  
Sanjay Sitaram Kurhade .....Respondent(s)

**TRANSFERRED CASE (CIVIL) NO. 98 OF 2015** (Arising out of  
Transfer Petition (Civil) No. 717 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
K.P. Muralidharan Nair .....Respondent(s)

**TRANSFERRED CASE (CIVIL) NO. 99 OF 2015** (Arising out of  
Transfer Petition (Civil) No. 718 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
Ashwini Dixit .....Respondent(s)

**TRANSFERRED CASE (CIVIL) NO. 100 OF 2015** (Arising out of  
Transfer Petition (Civil) No. 709 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
A.Venugopal and another .....Respondent(s)

**TRANSFERRED CASE (CIVIL) NO. 101 OF 2015** (Arising out of  
Transfer Petition (Civil) No. 714 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
Dr. Mohan K. Patil and others .....Respondent(s)

**JUDGMENT**

**M.Y. EQBAL, J.**

The main issue that arises for our consideration in these transferred cases is as to whether all the information sought for under the Right to Information Act, 2005 can be denied by the Reserve Bank of India and other Banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other. If the answer to above question is in negative, then upto what extent the information can be provided under the 2005 Act.

2. It has been contended by the RBI that it carries out inspections of banks and financial institutions on regular basis and the inspection reports prepared by it contain a wide range of information that is collected in a fiduciary capacity. The facts in brief of the Transfer Case No.91 of 2015 are that during May-June, 2010 the statutory inspection of Makarpura Industrial Estate Cooperative Bank Ltd. was conducted by RBI under the Banking Regulation Act, 1949. Thereafter, in October 2010, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sr. No.	Information sought	Reply
1.	Procedure Rules and Regulations of Inspection being carried out on Co-operative Banks	RBI is conducting inspections under Section 35 of the B.R. Act 1949 (AACB) at prescribed intervals.
2.	Last RBI investigation and audit report carried out by Shri Santosh Kumar during 23 <sup>rd</sup> April, 2010 to 6 <sup>th</sup> May, 2010 sent to Registrar of the Cooperative of the Gujarat State, Gandhinagar on Makarpura Industrial Estate Co-op Bank Ltd Reg. No.2808	The Information sought is maintained by the bank in a fiduciary capacity and was obtained by Reserve Bank during the course of inspection of the bank and hence cannot be given to the outsiders. Moreover, disclosure of such information may harm the interest of the bank & banking system. Such information is also exempt from disclosure under Section 8(1) (a) & (e) of the RTI Act,

		2005.
3.	Last 20 years inspection (carried out with name of inspector) report on above bank and action taken report.	Same as at (2) above
4.	(i) Reports on all co-operative banks gone on liquidation  (ii) action taken against all Directors and Managers for recovery of public funds and powers utilized by RBI and analysis and procedure adopted.	(i) Same as at (2) above  (ii) This information is not available with the Department
5.	Name of remaining co-operative banks under your observations against irregularities and action taken reports	No specific information has been sought
6.	Period required to take action and implementations	No specific information has been sought

3. On 30.3.2011, the First Appellate Authority disposed of the appeal of the respondent agreeing with the reply given by CPIO in query No.2, 3 & first part of 4, relying on the decision of the Full Bench of CIC passed in the case of *Ravin Ranchochodial Patel and another vs. Reserve Bank of India*. Thereafter, in the second appeal preferred by the aggrieved respondent, the Central Information Commission by the impugned order dated 01.11.2011, directed RBI to provide

information as per records to the Respondent in relation to queries Nos.2 to 6 before 30.11.2011. Aggrieved by the decision of the Central Information Commission (CIC), petitioner RBI moved the Delhi High Court by way of a Writ Petition inter alia praying for quashing of the aforesaid order of the CIC. The High Court, while issuing notice, stayed the operation of the aforesaid order.

4. Similarly, in Transfer Case No. 92 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sr. No.	Information sought	Reply
1.	The Hon'ble FM made a statement that some of the banks like SBI, ICICI Bank Ltd, Bank of Baroda, Dena Bank, HSBC Bank etc. were issued letter of displeasure for violating FEMA guidelines for opening of accounts where as some other banks were even	In the absence of the specific written statement on the Floor details, we are not able to provide of the House which inter alia any information. must have been made after verifying the records from RBI and the Bank must have the copy of the facts as reported by FM. Please supply copy of the note sent to FM
2.	The Hon'ble FM made statement that some of the banks like SBI, ICICI Bank Ltd, Bank of Baroda, Dena Bank, HSBC Bank etc. were issued letter of displeasure for violating FEMA guidelines for opening of accounts where as some other banks were even	We do not have this information.

	fined Rupees one crore for such violations. Please give me the names of the banks with details of violations committed by them.	
3.	'Advisory Note' issued to ICICI An Bank for account opened by some fraudsters at its Patna Branch Information sought about "exact nature of irregularities committed by the bank under "FEMA". Also give list of other illegalities committed by IBL and other details of offences committed by IBL through various branches in India and abroad along with action taken by the Regulator including the names and designations of his officials branch name, type of offence committed etc. The exact nature of offences committed by Patna Branch of the bank and other branches of the bank and names of his officials involved, type of offence committed by them and punishment awarded by concerned authority, names and designation of the designated authority, who investigated the above case and his findings and punishment awarded."	<p>Advisory Letter had been issued to the bank in December, 2007 for the bank's Patna branch having failed to (a) comply with the RBI guidelines on customer identification, opening/operating customer accounts, (b) the bank not having followed the normal banker's prudence while opening an account in question.</p> <p>As regards the list of supervisory action taken by us, it may be stated that the query is too general and not specific. Further, we may state that Supervisory actions taken were based on the scrutiny conducted under Section 35 of the Banking Regulation (BR) Act. The information in the scrutiny report is held in fiduciary capacity and the disclosure of which can affect the economic interest of the country and also affect the commercial confidence of the bank. And such information is also exempt from disclosure under Section 8(1)(a)(d) &amp; (e) of the RTI Act (extracts enclosed). We, therefore, are unable to accede to your request.</p>
4.	Exact nature of irregularities committed by ICICI Bank in Hong Kong	In this regard, self explicit print out taken from the website of Securities and Futures Commission, Hong Kong is enclosed.
5.	ICICI Bank's Moscow Branch involved in money laundering act.	We do not have the information.
6.	Imposition of fine on ICICI	We do not have any information to

	Bank under Section 13 of the PMLA for loss of documents in floods .	furnish in this regard.
7.	<p>Copy of the Warning or 'Advisory Note' issued twice issued to the bank in the last two years and reasons recorded therein.</p> <p>Name and designation of the authority who conducted this check and his decision to issue an advisory note only instead of penalties to be imposed under the Act.</p>	<p>As regards your request for copies/details of advisory letters to ICICI Bank, we may state that such information is exempt from disclosure under Section 8(1)(a)(d) and (e) of the RTI Act. The scrutiny of records of the ICICI Bank is conducted by our Department of Banking Supervision (DBS). The Chief General Manager-in charge of the DBS, Centre Office Reserve Bank of India is Shri S. Karuppasamy.</p>

5. In this matter, it has been alleged by the petitioner RBI that the respondent is aggrieved on account of his application form for three-in-one account with the Bank and ICICI Securities Limited (ISEC) lost in the floods in July, 2005 and because of non-submission of required documents, the Trading account with ISEC was suspended, for which respondent approached the District Consumer Forum, which rejected the respondent's allegations of tempering of records and dismissed the complaint of the respondent. His appeal was also dismissed by the State Commission. Respondent then moved an application under the Act of 2005 pertaining to

the suspension of operation of his said trading account. As the consumer complaint as well as the abovementioned application did not yield any result for the respondent, he made an application under the Act before the CPIO, SEBI, appeal to which went up to the CIC, the Division Bench of which disposed of his appeal upholding the decision of the CPIO and the Appellate Authority of SEBI. Thereafter, in August 2009, respondent once again made the present application under the Act seeking aforesaid information. Being aggrieved by the order of the appellate authority, respondent moved second appeal before the CIC, who by the impugned order directed the CPIO of RBI to furnish information pertaining to Advisory Notes as requested by the respondent within 15 working days. Hence, RBI approached Bombay High Court by way of writ petition.

6. In Transfer Case No. 93 of 2015, the Respondent sought following information from the CPIO of National Bank for Agriculture and Rural Development under the Act of 2005, reply to which is tabulated hereunder:-

<b>Sl. No.</b>	<b>Information Sought</b>	<b>Reply</b>
1.	Copies of inspection reports of Apex Co-operative Banks of various States/Mumbai DCCB from 2005 till date	Furnishing of information is exempt under Section 8(1)(a) of the RTI Act.
2.	Copies of all correspondences with Maharashtra State Govt./RBI/any other agency of State/Central Co-operative Bank from January, 2010 till date.	Different Departments in NABARD deal with various issues related to MSCB. The query is general in nature. Applicant may please be specific in query/information sought.
3.	Provide confirmed/draft minutes of meetings of Governing Board/Board of Directors/Committee of Directors of NABARD from April, 2007 till date	Furnishing of information is exempt under Sec. 8(1)(d) of the RTI Act.
4.	Provide information on compliance of Section 4 of RTI Act, 2005 by NABARD	Compliance available on the website of NABARD i.e. <a href="http://www.nabard.org">www.nabard.org</a>
5.	Information may be provided on a CD	-

7. The First Appellate Authority concurred with the CPIO and held that inspection report cannot be supplied in terms of Section 8(1)(a) of the RTI Act. The Respondent filed Second Appeal before the Central Information Commission, which was allowed. The RBI filed writ petition before the High Court challenging the order of the CIC dated 14.11.2011 on identical

issue and the High Court stayed the operation of the order of the CIC.

8. In Transfer Case No. 94 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sl. No.	Information Sought	Reply
1.	As mentioned at 2(a) what is Pursuant to the then Finance RBI doing about uploading the Minister's Budget Speech made in entire list of Bank defaulters on the bank's website? When will it be done? Why is it not done?	Pursuant to the then Finance RBI doing about Parliament on 28 <sup>th</sup> February, 1994, in order to alert the banks and FIs and put them on guard against the defaulters to other lending institutions. RBI has put in place scheme to collect details about borrowers of banks and FIs with outstanding aggregating Rs. 1 crore and above which are classified as 'Doubtful' or 'Loss or where suits are filed, as on 31 <sup>st</sup> March and 30 <sup>th</sup> September each year. In February 1999, Reserve Bank of India had also introduced a scheme for collection and dissemination of information on cases of willful default of borrowers with outstanding balance of Rs. 25 lakh and above. At present, RBI disseminates list of above said non suit filed 'doubtful' and 'loss' borrowed accounts of Rs.1 crore and above on half-yearly basis (i.e. as on March 31 and September 30) to banks and FIs. for <u>their confidential</u> use. The list of non-suit filed accounts of willful defaulters of Rs. 25 lakh and above is also disseminated on quarterly

	<p>basis to banks and FIs for their <u>confidential use</u>. Section 45 E of the Reserve Bank of India Act 1934 prohibits the Reserve Bank from disclosing ‘credit information’ except in the manner provided therein.</p> <p>(iii) However, Banks and FIs were advised on October 1, 2002 to furnish information in respect of suit-filed accounts between Rs. 1 lakh and Rs. 1 crore from the period ended March, 2002 in a phased manner to CIBIL only. CIBIL is placing the list of defaulters (suit filed accounts) of Rs. 1 crore and above and list of willful defaulters (suit filed accounts) of Rs. 25 lakh and above as on March 31, 2003 and onwards on its website (<a href="http://www.cibil.com">www.cibil.com</a>)</p>
--	--

9. The Central Information Commission heard the parties through video conferencing. The CIC directed the CPIO of the petitioner to provide information as per the records to the Respondent in relation to query Nos. 2(b) and 2(c) before

10.12.2011. The Commission has also directed the Governor RBI to display this information on its website before

31.12.2011, in fulfillment of its obligations under Section 4(1)

(b) (xvii) of the Right to Information Act, 2005 and to update it each year.

10. In Transfer Case No.95 of 2015, following information was sought and reply to it is tabulated hereunder:

<b>Sl. No.</b>	<b>Information Sought</b>	<b>Reply</b>
1.	Complete and detailed information including documents/correspondence/file noting etc of RBI on imposing fines on some banks for violating rules like also referred in enclosed news clipping	As the violations of which related the banks were issued Show Cause Notices and subsequently imposed penalties and based on the findings of the Annual Financial Inspection (AFI) of the banks, and the information is received by us in a fiduciary capacity, the disclosure of such information would prejudicially affect the economic interests of the State and harm the bank's competitive position. The SCNs/findings/reports/associated correspondences/orders are therefore exempt from disclosure in terms of the provisions of Section 8(1)(a) (d) and (e) of the RTI Act, 2005.
2.	Complete list of banks which were issued show cause notices before fine was imposed as also referred in enclosed news clipping mentioning also default for which show cause notice was issued to each of such banks.	
3.	Complete list of banks which were -do-issued show cause notices before fine was imposed as also referred in enclosed news clippings mentioning also default for which show cause notice was issued to each of such banks.	
4.	List of banks out of those in query (2) Do above where fine was not imposed giving details like if their reply was satisfactory etc.	
4.	List of banks which were ultimately found guilty and fines mentioning also amount of fine on each of the bank	The names of the 19 banks and details imposed on them are of penalty

	and criterion to decide fine on each of the bank	furnished in Annex 1. Regarding the criterion for deciding the fine, the penalties have been imposed on these banks for contravention of various directions and instructions such as failure to carry out proper due diligence on user appropriateness and suitability of products, selling derivative products to users not having proper risk Management policies, not verifying the underlying /adequacy of underlying and eligible limits under past performance route, issued by RBI in respect of derivative transactions.
5.	Is fine imposed /action taken on some other banks also other than as mentioned in enclosed news clipping	No other bank was penalized other than those mentioned in the Annex, in the context of press release No.2010-2011/1555 of April 26, 2011
6.	If yes please provide details	Not Applicable, in view of the information provided in query No.5
7.	Any other information	The query is not specific.
8.	File notings on movement of this RTI petition and on every aspect of this RTI Petition	Copy of the note is enclosed.

11. In the Second Appeal, the CIC heard the respondent via telephone and the petitioner through video conferencing. As

directed by CIC, the petitioner filed written submission. The CIC directed the CPIO of the Petitioner to provide complete information in relation to queries 1 2 and 3 of the original application of the Respondent before 15.12.2011.

12. In Transfer Case No. 96 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

<b>SI. No.</b>	<b>Information Sought</b>	<b>Reply</b>
1.	Before the Orissa High Court RBI has filed an affidavit stating that the total mark to market losses on account of currency derivatives is to the tune of more than Rs. 32,000 crores Please give bank wise breakup of the MTM Losses	The Information sought by you is exempted under Section 8(1)(a) & (e) of RTI Act, which state as under; 8(1) notwithstanding anything contained in this Act, there shall be no obligation to give any citizen (a) information disclosure of which would prejudicially affect the sovereignty and integrity of India the security strategic scientific or economic interests of the state, relation with foreign State or lead to incitement of an (e) Information available to a person in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

offence.

	2. What is the latest figure available Please refer to our response to 1 with RBI of the amount of losses above. suffered by Indian Business	
--	---	--

	houses? Please furnish the latest figures bank wise and customer wise.	
3.	Whether the issue of derivative losses to Indian exporters was discussed in any of the meetings of Governor/Deputy Governor or senior official of the Reserve Bank of India? If so please furnish the minutes of the meeting where the said issue was discussed	We have no information in this matter.
4.	Any other Action Taken Reports by RBI in this regard.	We have no information in this matter.

13. The CIC allowed the second appeal and directed the CPIO FED of the Petitioner to provide complete information in queries 1, 2, 9 and 10 of the original application of the Respondent before 05.01.2012. The CPIO, FED complied with the order of the CIC in so far queries 2, 9 and 10 are concerned. The RBI filed writ petition for quashing the order of CIC so far as it directs to provide complete information as per record on query No.1.

14. In Transfer Case No. 97 of 2015, the Respondent sought following information from the CPIO of National Bank for

Agriculture and Rural Development under the Act of 2005, reply to

which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	The report made by NABARD regarding 86 Please refer to your N.P.A. Accounts for Rs. 3806.95 crore of application dated 19 Maharashtra State Co-operative Bank Ltd. (if April, 2011 seeking any information of my application is not information under the available in your Office/Department/ Division/Branch, transfer this application to the concerned Office/Department/ Division/Branch and convey me accordingly as per the provision of Section 6 (3) of Right to Information Act, 2005.	The report made by NABARD regarding 86 Please refer to your N.P.A. Accounts for Rs. 3806.95 crore of application dated 19 Maharashtra State Co-operative Bank Ltd. (if April, 2011 seeking any information of my application is not information under the available in your Office/Department/ Division/Branch, transfer this application to the concerned Office/Department/ Division/Branch and convey me accordingly as per the provision of Section 6 (3) of Right to Information Act, 2005.

15. In Transfer Case No. 98 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	<p>What contraventions and violations were made by SCB in respect of RBI instructions on derivatives for which RBI has imposed penalty of INR 10 lakhs on SCB in exercise of its powers vested under Section 47(1)(b) of Banking Regulation Act, 1949 and as stated in the RBI press release dated April 26, 2011 issued by Department of Communications RBI</p>	<p>The bank was penalized along with 18 other banks for contravention of various instructions issued by the Reserve Bank of India in respect of derivatives, such as, failure to carry out due diligence in regard to suitability of products, selling derivative products to users not having risk management policies and not verifying the underlying/adequacy of underlying and eligible limits under past performance route. The information is also available on our website under press releases.</p>
2.	<p>Please provide us the copies/details of all the complaints filed with RBI against SCB, accusing SCB of mis-selling derivative products, failure to carry out due diligence in regard to suitability of products, not verifying the underlying/adequacy of underlying and eligible limits under past performance and various other non-compliance of RBI instruction on derivatives.</p> <p>Also, please provide the above information in the following format</p> <ul style="list-style-type: none"> <li>. Date of the complaint Name of the complaint Subject matter of the complaint</li> </ul> <p>Brief description of the facts and</p>	<p>Complaints are received by Reserve Bank of India and as they constitute the third party information, the information requested by you cannot be disclosed in terms of Section 8(1)(d) of the RTI Act, 2005.</p>

	<p>accusations made by the complaint.</p> <p>Any other information available with RBI with respect to violation/contraventions by SCB of RBI instructions on derivatives.</p>	
3.	<p>Please provide us the copies of all the replies/correspondences made by taken against the bank SCB with RBI and the recordings of all the based on the findings SCB to defend of the Annual Financial and explain the violations/contraventions made by SCB</p>	<p>Inspection (AFI) of the bank which is conducted under the provisions of Sec.35 of the BR Act, 1949. The findings of the inspection are confidential in nature intended specifically for the supervised entities and for corrective action by them. The information is received by us in fiduciary capacity disclosure of which may prejudicially affect the economic interest of the state.</p> <p>As such the information cannot be disclosed in terms of Section 8(1) (a) and (e) of the RTI Act, 2005</p>
4.	<p>Please provide us the details/copies of the findings recordings, enquiry reports, directive orders file notings and/or any information on the investigations conducted by RBI against SCB in respect of non-compliance by SCB thereby establishing violations by SCBV in respect of non compliances of RBI instructions on derivatives.</p> <p>Please also provide the above information in the following format.</p> <p>. Brief violations/contraventions made by</p>	-do-

	<p>SCB</p> <ul style="list-style-type: none"> <li>. In brief SCB replies/defense/explanation against each violations/contraventions made by it under the show cause notice.</li> <li>. RBI investigations/notes/on the SCB</li> </ul> <p>Replies/defense/explanations for each of the violation/contravention made by SCB.</p> <ul style="list-style-type: none"> <li>. RBI remarks/findings with regard to the violations/contraventions made by SCB.</li> </ul>	
--	---	--

16. In Transfer Case No. 99 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	<p>That, what action has the department taken against scams/financial irregularities of United Mercantile Cooperative Bank Ltd as mentioned in the enclosed published news. Provide day to day progress report of the action taken.</p>	<p>1. Enquiry was carried out against scams/financial irregularities of United Mercantile Cooperative Bank Ltd. as mentioned in the enclosed published news.</p> <p>2. Note/explanation has been called for from the bank vide our letter dated 8<sup>th</sup> July, 2011 regarding errors mentioned in enquiry report.</p> <p>3. The other information asked here is based on the conclusions of Inspection Report. We</p>

		would like to state that conclusions found during inspections are confidential and the reports are finalized on the basis of information received from banks. We received the information from banks in a confident capacity. Moreover, disclosure of such information may cause damage to the banking system and financial interests of the state. Disclosure of such type of information is exempted under Section 8(1)(a) and (e) of RTI Act, 2005.
2.	That permission for opening how many extension counters was obtained by United Mercantile Cooperative Bank Ltd from RBI. Provide details of expenditure incurred for constructing the extension counters. Had the bank followed tender system for these constructions, if yes, provide details of concerned tenders.	United Mercantile Cooperative Bank Ltd. was permitted to open 5, extension counters.  The information regarding expenditure incurred on construction of these extension counters and tenders are not available with Reserve Bank of India.

17. In Transfer Case No. 100 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	Under which Grade The George Town The Co-operative Bank Ltd., Chennai, has been categorised as on 31.12.2006?	classification of banks into various grades are done on the basis of inspection findings which is based on information/documents obtained in a fiduciary capacity and cannot be disclosed to outsiders. It is also exempted under Section 8(1)(e) of right to Information Act, 2005.

18. The Appellate Authority observed that the CPIO, UBD has replied that the classification of banks into various grades is done on the basis of findings recorded in inspection which are based on information/documents obtained in a fiduciary capacity and cannot be disclosed to outsiders. The CPIO, UBD has stated that the same is exempted under Section 8(1)(e) of RTI Act. Apart from the fact that information sought by the appellant is sensitive and cannot be disclosed, it could also harm the competitive position of the co-operative bank. Therefore, exemption from disclosure of the Information is available under Section 8(1)(d) of the RTI Act.

19. In Transfer Case No. 101 of 2015, with regard to Deendayal Nagri Shakari Bank Ltd, District Beed, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	Copies of complaints received by RBI against illegal working of the said bank, including violations of the Standing Orders of RBI as well as the provisions under Section 295 of the Companies Act, 1956.	Disclosure of information regarding complaints received from third parties would harm the competitive position of a third party. Further such information is maintained in a fiduciary capacity and is exempted from disclosure under Sections 8(1)(d) and (e) of the RTI Act.
2.	Action initiated by RBI against the said (a) A penalty of Rs. 1 bank, including all correspondence lakh was imposed on between RBI and the said bank officials.	Deendayal Nagri Sahakari Bank Ltd. for violation of directives on loans to directors/their relatives/concerns in which they are interested. The bank paid the penalty on 08.10.2010.  (b) As regards correspondence between RBI and the co-operative bank, it is advised that such information is maintained by RBI in

		fiduciary capacity and hence cannot be given to outsiders. Moreover disclosure of such information may harm the interest of the bank and banking system. Such information is exempt from disclosure under Section 8(1)(a) and (e) of the RTI Act.
3.	Finding of the enquiry made by RBI, actions proposed and taken against the bank and its officials-official notings, decisions, and final orders passed and issued.	Such information is maintained by the bank in a fiduciary capacity and is obtained by RBI during the course of inspection of the bank and hence cannot be given to outsiders. The disclosure of such information would harm the competitive position of a third party. Such information is, therefore, exempted from disclosure under Section 8(1)(d) and (e) of the RTI Act.  As regards action taken against the bank, are reply at S. No.2 (a) above.
4.	Confidential letters received by RBI from the Executive Director of Vaishnavi Hatcheries Pvt. Ltd. complaining about the illegal working and pressure policies of the bank and its chairman for misusing the authority of digital signature for sanction of the backdated resignations of the chairman of the bank and few other directors of the companies details of action taken by RBI on that.	See reply at S. NO.2 (a) above.

20. The First Appellate Authority observed that the CPIO had furnished the information available on queries 2 and 4. Further information sought in queries 1 and 3 was exempted under Section 8(1)(a)(d) and (e) of the RTI Act.

21. Various transfer petitions were, therefore, filed seeking transfer of the writ petitions pending before different High Courts. On 30.5.2015, while allowing the transfer petitions filed by Reserve Bank of India seeking transfer of various writ petitions filed by it in the High Courts of Delhi and Bombay, this Court passed the following orders:

"Notice is served upon the substantial number of respondents. Learned counsel for the respondents have no objection if Writ Petition Nos. 8400 of 2011, 8605 of 2011, 8693 of 2011, 8583 of 2011, 32 of 2012, 685 of 2012, 263 of 2012 and 1976 of 2012 pending in the High Court of Delhi at New Delhi and Writ Petition

(L) Nos. 2556 of 2011, 2798 of 2011 and 4897 of 2011 pending in the High Court of Bombay are transferred to this Court and be heard together. In the meanwhile, the steps may be taken to serve upon the unserved respondents.

Accordingly, the transfer petitions are allowed and the above mentioned writ petitions are withdrawn to this Court. The High Court of Delhi and the High Court of Bombay are directed to remit the entire record of the said writ petitions to this Court within four weeks."

22. Mr. T.R. Andhyarujina, learned senior counsel appearing for the petitioner-Reserve Bank of India, assailed the impugned orders passed by the Central Information Commissioner as illegal and without jurisdiction. Learned Counsel referred various provisions of The Reserve Bank of India Act, 1934; The Banking Regulation Act, 1949 and The Credit Information Companies (Regulation) Act, 2005 and made the following submissions:-

I) The Reserve Bank of India being the statutory authority has been constituted under the Reserve Bank of India Act, 1934 for the purpose of regulating and controlling the money supply in the country. It also acts as statutory banker with the Government of India and State Governments and manages their public debts. In addition, it regulates and supervises Commercial Banks and Cooperative Banks in the country. The RBI exercises control over the volume of credit, the rate of interest chargeable on loan and advances and deposits in order to ensure the economic stability. The RBI is also vested with the powers to determine "**Banking Policy**" in the interest of banking system, monetary stability and sound economic growth.

The RBI in exercise of powers of powers conferred under Section 35 of the Banking Regulation Act, 1949 conducts inspection of the banks in the country.

II) The RBI in its capacity as the regulator and supervisor of the banking system of the country access to various information collected and kept by the banks. The inspecting team and the officers carry out inspections of different banks and much of the information accessed by the inspecting officers of RBI would be confidential. Referring Section 28 of the Banking Regulation Act, it was submitted that the RBI in the public interest may publish

the information obtained by it, in a consolidated form but not otherwise.

III) The role of RBI is to safeguard the economic and financial stability of the country and it has large contingent of expert advisors relating to matters deciding the economy of the entire country and nobody can doubt the bona fide of the bank. In this connection, learned counsel referred the decision of this Court in the case of **Peerless General**

**Finance and Investment Co. Limited and Another Vs. Reserve Bank of India**, 1992 Vol. 2 SCC 343.

IV) Referring the decision in the case of **B. Suryanarayana Vs. N. 1453 The Kolluru Parvathi Co-Op. Bank Ltd.**, 1986 AIR (AP) 244, learned counsel submitted that the Court will be highly chary to enter into and interfere with the decision of Reserve Bank of India. Learned Counsel also referred to the decision in the case of

**Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India**, 1992 Vol. 2 SCC 343 and contended that Courts are not to interfere with the economic policy which is a function of the experts.

V) That the RBI is vested with the responsibility of regulation and supervision of the banking system. As part of its supervisory role, RBI supervises and monitors the banks under its jurisdiction through on-site inspection conducted on annual basis under the statutory powers derived by it under section 35 of the Banking Regulation Act 1949, off-site returns on key financial parameters and engaging banks in dialogue through periodical meetings. RBI may take supervisory actions where warranted for violations of its guidelines/directives. The supervisory actions would depend on the seriousness of the offence, systemic implications and may range from imposition of penalty, to issue of strictures or letters of warning. While RBI recognizes and promotes enhanced transparency in banks disclosures to the public, as transparency strengthens market discipline, a bank may not be able to disclose all data that may be relevant to assess its risk profile, due to the inherent need to preserve confidentiality in relation to its customers. In this light, while mandatory disclosures include certain prudential parameters such as capital adequacy, level of Non Performing Assets etc., the supervisors themselves may not disclose all or some information obtained on-site or off-site. In some countries, wherever there are supervisory concerns, "prompt corrective action" programmes are normally put in place, which may or may not be publicly disclosed. Circumspection in disclosures by the supervisors arises from the potential market reaction that such disclosure might trigger, which

may not be desirable. Thus, in any policy of transparency, there is a need to build processes which ensure that the benefits of supervisory disclosure are appropriately weighed against the risk to stakeholders, such as depositors.

VI) As per the RBI policy, the reports of the annual financial inspection, scrutiny of all banks/ financial institutions are confidential document cannot be disclosed. As a matter of fact, the annual financial inspection/ scrutiny report reflect the supervisor's critical assessment of banks and financial institutions and their functions. Disclosure of these scrutiny and information would create misunderstanding/ misinterpretation in the minds of the public. That apart, this may prove significantly counter productive. Learned counsel submitted that the disclosure of information sought for by the applicant would not serve the public interest as it will give adverse impact in public confidence on the bank. This has serious implication for financial stability which rests on public confidence. This will also adversely affect the economic interest of the State and would not serve the larger public interest.

23. The specific stand of petitioner Reserve Bank of India is that the information sought for is exempted under Section 8(1) (a), (d) and (e) of the Right to Information Act, 2005. As the regulator and supervisor of the banking system, the RBI has discretion in the disclosure of such information in public interest.

24. Mr. Andhyarujina, learned senior counsel, referred various decisions to the High Court and submitted that the disclosure of information would prejudicially affect the economic interest of the State. Further, if the information

sought for is sensitive from the point of adverse market reaction leading to systematic crisis for financial stability.

25. Learned senior counsel put heavy reliance on the Full Bench decision of the Central Information Commissioner and submitted that while passing the impugned order, the Central Information Commissioner completely overlooked the Full Bench decision and ignored the same. According to the learned counsel, the Bench, which passed the impugned order, is bound to follow the Full Bench decision. The Commission also erred in holding that the Full Bench decision is *per incuriam* as the Full Bench has not considered the statutory provisions of Section 8 (2) of the Right to Information Act, 2005.

26. Learned senior counsel also submitted that the Commission erred in holding that even if the information sought for is exempted under Section 8(1) (a), (d) or (e) of the Right to Information Act, Section 8(2) of the RTI Act would mandate the disclosure of the information.

27. Learned senior counsel further submitted that the [REDACTED]  
[REDACTED]  
[REDACTED].; If the Respondents are right in their contention, these statutory provisions of confidentiality in the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934 and the Credit Information Companies (Regulation) Act, 2005 would be repealed or overruled by the Right to Information Act, 2005.

28. Under the Banking Regulation Act, 1949, the Reserve Bank of India has a right to obtain information from the banks under Section 27. These information can only be in its discretion published in such consolidated form as RBI deems fit. Likewise under Section 34A production of documents of confidential nature cannot be compelled.

Under sub-section

(5) of Section 35, the Reserve Bank of India may carry out inspection of any bank but its report can only be disclosed if the Central Government orders the publishing of the report of the Reserve Bank of India when it appears necessary.

29. Under Section 45E of the Reserve Bank of India Act, 1934, disclosure of any information relating to credit information submitted by banking company is confidential and under Section 45E(3) notwithstanding anything contained in any law no court, tribunal or authority can compel the Reserve Bank of India to give information relating to credit information etc.

30. Under Section 17(4) of the Credit Information Companies (Regulation) Act, 2005, credit information received by the credit information company cannot be disclosed to any person. Under Section 20, the credit information company has to adopt privacy principles and under Section 22 there cannot be unauthorized access to credit information.

31. It was further contended that the Credit Information Companies Act, 2005 was brought into force after the Right to Information act, 2005 w.e.f. 14.12.2006. It is significant to note that Section 28 of Banking Regulation Act, 1949 was amended by the Credit Information Companies (Regulation) Act, 2005. This is a clear indication that the Right to

Information Act, 2005 cannot override credit information sought by any person in contradiction to the statutory provisions for confidentiality.

32. This is in addition to other statutory provisions of privacy in Section 44 of State Bank of India Act, 1955, Section 52, State Bank of India (Subsidiary Banks) Act, 1959, Section 13 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970.

33. The Right to Information Act, 2005 is a general provision which cannot override specific provisions relating to confidentiality in earlier legislation in accordance with the principle that where there are general words in a later statute it cannot be held that the earlier statutes are repealed altered or discarded.

34. Learned counsel submitted that Section 22 of the Right to Information Act, 2005 cannot have the effect of nullifying and repealing earlier statutes in relation to confidentiality. This has been well settled by this Court in

- a) ***Raghunath vs. state of Karnataka*** 1992(1) SCC 335 at p.348 pages 112 and 114
- b) ***ICICI Bank vs. SIDCO Leather etc.***, 2006(10) SCC 452 at p. 466, paras 36 & 37
- c) ***Central Bank vs. Kerala***, 2009 (4) SCC 94 at p. 132-133 para 104
- d) ***AG Varadharajalu vs. Tamil Nadu***, 1998 (4) SCC 231 at p. 236 para 16.

Hence, the Right to Information Act, 2005 cannot override the provisions for confidentiality conferred on the RBI by the earlier statutes referred to above.

35. The Preamble of the RTI Act, 2005 itself recognizes the fact that since the revealing of certain information is likely to conflict with other public interests like “the preservation of confidentiality of sensitive information”, there is a need to harmonise these conflicting interests. It is submitted that certain exemptions were carved out in the RTI Act to harmonise these conflicting interests. This Court in

### ***Central***

***Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors,*** (2011)8 SCC 497, has observed as under:-

"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 visualise 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."

36. Apart from the legal position that the Right to Information Act, 2005 does not override statutory provisions of confidentiality in other Act, it is submitted that in any case Section 8(1)(a) of the Right to Information Act, 2005 states that there is no obligation to give any information which pre-judiciously affects the economic interests of the States. Disclosure of such vital information relating to banking would pre-judiciously affect the economic interests of the State. This was clearly stated by the Full Bench of the Central Information Commission by its Order in the case of Ravin Ranchchodlal Patel (supra). Despite this emphatic ruling individual

Commissioners of the Information have disregarded it by

holding that the decision of the Full Bench was *per incurium* and directed disclosure of information.

37. Other exceptions in Section 8, viz 8(1)(a)(d), 8(1)(e) would also apply to disclosure by the RBI and banks. In sum, learned senior counsel submitted that the RBI cannot be directed to disclose information relating to banking under the Right to Information Act, 2005.

38. Mr. Prashant Bhushan, learned counsel appearing for the respondents in Transfer Case Nos.94 & 95 of 2015, began his arguments by referring the Preamble of the Constitution and submitted that through the Constitution it is the people who have created legislatures, executives and the judiciary to exercise such duties and functions as laid down in the constitution itself.

39. The right to information regarding the functioning of public institutions is a fundamental right as enshrined in Article 19 of the Constitution of India. This Hon'ble Court has declared in a plethora of cases that the most important value

for the functioning of a healthy and well informed democracy is transparency. Mr. Bhushan referred Constitution Bench judgment of this Court in the case of ***State of U.P. vs. Raj Narain***, AIR 1975 SC 865, and submitted that it is a Government's responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of public.

40. In the case of ***S.P. Gupta v. President of India and Ors.***, AIR 1982 SC 149, a seven Judge Bench of this Court made the following observations regarding the right to information:-

"There is also in every democracy a certain amount of public suspicion and distrust of Government, varying of course from time to time according to its performance,

which prompts people to insist upon maximum exposure of its functioning. It is axiomatic that every action of the Government must be actuated by public interest but even so we find cases, though not many, where Governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes Governmental action is influenced by political and other motivations and pressures and at times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of Government and the processes of Government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open Government with means of information available to the public, there would be greater exposure of the functioning of Government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open Government is clean Government and a powerful safeguard against political and administrative aberration and inefficiency.”

41. In the case of the ***Union of India vs. Association for Democratic Reforms***, AIR 2002 SC 2112, while declaring that it is part of the fundamental right of citizens under Article 19(1)(a) to know the assets and liabilities of candidates contesting election to the Parliament or the State Legislatures, a three Judge Bench of this Court held unequivocally that:-“The right to get information in a democracy is recognized all throughout and is a natural right flowing from the concept of

democracy (Para 56).” Thereafter, legislation was passed

amending the Representation of People Act, 1951 that candidates need not provide such information. This Court in the case of ***PUCL vs. Union of India***, (2003) 4 SCC 399, struck down that legislation by stating: “It should be properly understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedoms have no fixed contents. From time to time, this Court has filled in the skeleton with soul and blood and made it vibrant. Since the last more than 50 years, this Court has interpreted Articles 14, 19 and 21 and given meaning and colour so that the nation can have a truly republic democratic society.”

42. The RTI Act, 2005, as noted in its very preamble, does not create any new right but only provides machinery to effectuate the fundamental right to information. The institution of the CIC and the SICs are part of that machinery. The preamble also inter-alia states “... democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to

hold Governments and their instrumentalities accountable to the governed.”

43. The submission of the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of RBI Act and Banking Regulation Act is clearly misconceived. RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail insofar as transparency and access to information is concerned. Moreover, the RTI Act 2005, being a later law, specifically brought in to usher transparency and to transform the way official business is conducted, would have to override all earlier practices and laws in order to achieve its objective. The only exceptions to access to information are contained in RTI Act itself in Section 8.

44. In T.C.No.94 of 2015, the RTI applicant Mr. P.P. Kapoor had asked about the details of the loans taken by the industrialists that have not been repaid, and he had asked about the names of the top defaulters who have not repaid their loans to public sector banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1) (a) and 8(1)(e) of the RTI Act on the ground that disclosure would affect the economic interest of the country, and that the information has been received by the RBI from the banks in fiduciary capacity. The CIC found these arguments made by RBI to be totally misconceived in facts and in law, and held that the disclosure would be in public interest.

45. In T.C.No.95 of 2015, the RTI applicant therein Mr. Subhash Chandra Agrawal had asked about the details of the show cause notices and fines imposed by the RBI on various banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1)(a),(d) and 8(1) (e) of the RTI Act on the ground that disclosure would affect the

economic interest of the country, the competitive position of the banks and that the information has been received by RBI in fiduciary capacity. The CIC, herein also, found these arguments made by RBI to be totally misconceived in facts and in law and held that the disclosure would be in public interest.

46. In reply to the submission of the petitioner about fiduciary relationship, learned counsel submitted that the scope of Section 8(1)(e) of the RTI Act has been decided by this Court in ***Central Board of Secondary Education vs. Aditya Bandopadhyay***, (2011) 8 SCC 497, wherein, while rejecting the argument that CBSE acts in a fiduciary capacity to the students, it was held that:

“...In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the word ‘information available to a person in his fiduciary relationship’ are used in Section 8(1) (e) of the RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the action of the fiduciary.”

47. We have extensively heard all the counsels appearing for the petitioner Banks and respondents and examined the law and the facts.

48. While introducing the Right to Information Bill, 2004 a serious debate and discussion took place. The then Prime Minister while addressing the House informed that the RTI Bill is to provide for setting out practical regime of right to information for people, to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. The new legislation would radically alter the ethos and culture of secrecy through ready sharing of information by the State and its agencies with the people. An era of transparency and accountability in governance is on the anvil. Information, and more appropriately access to information would empower and enable people not only to make informed choices but also participate effectively in decision making processes. Tracing the origin of the idea of the then Prime Minister who had stated, "Modern societies are information

societies. Citizens tend to get interested in all fields of life and demand information that is as comprehensive, accurate and fair as possible." In the Bill, reference has also been made to the decision of the Supreme Court to the effect that Right to Information has been held as inherent in Article 19 of our Constitution, thereby, elevating it to a fundamental right of the citizen. The Bill, which sought to create an effective mechanism for easy exercise of this Right, was held to have been properly titled as "Right to Information Act". The Bill further states that a citizen has to merely make a request to the concerned Public Information Officer specifying the particulars of the information sought by him. He is not required to give any reason for seeking information, or any other personal details except those necessary for contacting him. Further, the Bill states:-

"The categories of information exempted from disclosure are a bare minimum and are contained in clause 8 of the Bill. Even these exemptions are not absolute and access can be allowed to them in public interest if disclosure of the information outweighs the harm to the public authorities. Such disclosure has been permitted even if it is in conflict with the provisions of the Official Secrets Act, 1923. Moreover, barring two categories that relate to information disclosure – which may affect

sovereignty and integrity of India etc., or information relating to Cabinet papers etc.-all other categories of exempted information would be disclosed after twenty years.

There is another aspect about which information is to be made public. We had a lengthy discussion and it is correctly provided in the amendment under clause 8 of the Bill. The following information shall be exempted from disclosure which would prejudicially affect the sovereignty and integrity of India; which has been expressly forbidden; which may result in a breach of privileges of Parliament or the Legislature; and also information pertaining to defence matters. They are listed in clause 8 (a) to (g). There are exceptions to this clause. Where it is considered necessary that the information will be divulged in the interest of the State, that will be done. There must be transparency in public life. There must be transparency in administration and people must have a right to know what has actually transpired in the secretariat of the State as well as the Union Ministry. A citizen will have a right because it will be safe to prevent corruption. Many things are done behind the curtain. Many shoddy deals take place in the secretariats of the Central and State Governments and the information will always be kept hidden. Such practice should not be allowed in a democratic country like ours. Ours is a republic. The citizenry should have a right to know what transpired in the secretariat. Even Cabinet papers, after a decision has been taken, must be divulged as per the provisions of this amendment. It cannot be hidden from the knowledge of others.”

49. Addressing the House, it was pointed out by the then Prime Minister that in our country, Government expenditure both at the Central and at the level of the States and local bodies, account for nearly 33% of our Gross National Product. At the same time, the socio-economic imperatives require our

Government to intervene extensively in economic and social affairs. Therefore, the efficiency and effectiveness of the government processes are critical variables, which will determine how our Government functions and to what extent it is able to discharge the responsibilities entrusted. It was pointed out that there are widespread complaints in our country about wastefulness of expenditure, about corruption, and matter which have relations with the functioning of the Government. Therefore, it was very important to explore new effective mechanism to ensure that the Government will purposefully and effectively discharge the responsibilities entrusted to it.

50. Finally the Right to Information Act was passed by the Parliament called “The Right to Information Act, 2005”. The Preamble states:-

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

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

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interest while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.”

## 51. Section 2 of the Act defines various authorities and the words.

Section 2(j) defines right to information as under :-

“2(j) “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;”

52. Section 3 provides that all citizens shall have the right to information subject to the provisions of this Act. Section 4 makes it obligatory on all public authorities to maintain records in the manner provided therein. According to Section 6, a person who desires to obtain any information under the Act shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made to the competent authority specifying the particulars of information sought by him or her. Sub-section (ii) of Section 6 provides that the applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Section 7 lays down the procedure for disposal of the request so made by the person under Section 6 of the Act. Section 8, however, provides certain exemption from disclosure of information. For better appreciation Section 8 is quoted hereinbelow:-

**“8. Exemption from disclosure of information.—**

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(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;

(f) information received in confidence from foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has not 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: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

53. The information sought for by the respondents from the petitioner-Bank have been denied mainly on the ground that such information is exempted from disclosure under Section 8(1)(a)(d) and (e) of the RTI Act.

54. Learned counsel appearing for the petitioner-Bank mainly relied upon Section 8(1)(e) of the RTI Act taking the

stand that the Reserve Bank of India having fiduciary relationship with the other banks and that there is no reason to disclose such information as no larger public interest warrants such disclosure.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

55. The Advanced Law Lexicon, 3rd Edition, 2005, defines fiduciary relationship as "a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the fiduciary relationship. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

56. The scope of the fiduciary relationship consists of the following rules:

- "(i) No Conflict rule- A fiduciary must not place himself in a position where his own interests conflicts with that of his customer or the beneficiary. There must be "real sensible possibility of conflict.
- (ii) No profit rule- a fiduciary must not profit from his position at the expense of his customer, the beneficiary;
- (iii) Undivided loyalty rule- a fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs
- (iv) Duty of confidentiality- a fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person."

57. The term fiduciary relationship has been well discussed by this Court in the case of **Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors.** (supra). In the said decision, their Lordships referred various authorities to ascertain the meaning of the term fiduciary relationship and observed thus:-

"20.1) Black's Law Dictionary (7th Edition, Page 640) defines 'fiduciary relationship' thus:

"A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships – such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client – require the highest duty of care. Fiduciary relationships usually arise in one of four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer."

20.2) The American Restatements (Trusts and Agency) define 'fiduciary' as one whose intention is to act for the benefit of another as to matters relevant to the relation between them. The Corpus Juris Secundum (Vol. 36A page 381) attempts to define fiduciary thus :

"A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil, or Roman, law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.

The word 'fiduciary,' as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for

another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust, or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note."

20.3) Words and Phrases, Permanent Edition (Vol. 16A, Page 41) defines 'fiduciary relation' thus :

"There is a technical distinction between a 'fiduciary relation' which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and 'confidential relation' which includes the legal relationships, and also every other relationship wherein confidence is rightly reposed and is exercised.

Generally, the term 'fiduciary' applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations."

20.4) In Bristol and West Building Society vs. Mothew [1998 Ch. 1] the term fiduciary was defined thus :

"A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty..... A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal."

20.5) In Wolf vs. Superior Court [2003 (107) California Appeals, 4th 25] the California Court of Appeals defined fiduciary relationship as under :

"any relationship existing between the parties to the transaction where one of the parties is duty bound to act with utmost good faith for the benefit of the other party. Such a relationship ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interests of the other party without the latter's knowledge and consent."

21. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are : a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee

furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer."

58. In the instant case, the RBI does not place itself in a fiduciary relationship with the Financial institutions (though, in word it puts itself to be in that position) because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other. By attaching an additional "fiduciary" label to the statutory duty, the Regulatory authorities have intentionally or unintentionally created an *in terrorem* effect.

59. RBI is a statutory body set up by the RBI Act as India's Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country's banking sector. Under Section 35A of the Banking Regulation Act, RBI has been given powers to issue any direction to the banks in

public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far-reaching statutory powers.

60. RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of ‘trust’ between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country’s economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein.

61. The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived. In the impugned order, the CIC has given several reasons to state why the disclosure of

the information sought by the respondents would hugely serve public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

62. The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



One of the

main characteristic of a Fiduciary relationship is “Trust and Confidence”. Something that RBI and the Banks lack between them.

63. In the present case, we have to weigh between the public interest and fiduciary relationship (which is being shared between the RBI and the Banks). Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economic interests of the country? To what extent the public should be allowed to get information?

64. In the context of above questions, it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to.

65. And in this case the RBI and the Banks have sidestepped the General public's demand to give the requisite information on the pretext of "Fiduciary relationship" and "Economic Interest". This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their actions.

66. Furthermore, the RTI Act under Section 2(f) clearly provides that the inspection reports, documents etc. fall under the purview of "Information" which is obtained by the public authority (RBI) from a private body. Section 2(f), reads thus:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

67. From reading of the above section it can be inferred that the Legislature's intent was to make available to the general public such information which had been obtained by the public authorities from the private body. Had it been the case

where only information related to public authorities was to be provided, the Legislature would not have included the word “private body”. As in this case, the RBI is liable to provide information regarding inspection report and other documents to the general public.

68. Even if we were to consider that RBI and the Financial Institutions shared a “Fiduciary Relationship”, Section 2(f) would still make the information shared between them to be accessible by the public.

69. We have surmised that many Financial Institutions have resorted to such acts which are neither clean nor transparent. The RBI in association with them has been trying to cover up their acts from public scrutiny. It is the responsibility of the RBI to take rigid action against those Banks which have been practicing disreputable business practices.

70. From the past we have also come across financial institutions which have tried to defraud the public. These acts are neither in the best interests of the Country nor in the interests of citizens. To our surprise, the RBI as a Watch Dog should have been more dedicated towards disclosing information to the general public under the Right to Information Act.

71. We also understand that the RBI cannot be put in a fix, by making it accountable to every action taken by it. However, in the instant case the RBI is accountable and as such it has to provide information to the information seekers under Section 10(1) of the RTI Act, which reads as under:

“Section 10(1) Severability —Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.”

72. It was also contended by learned senior counsel for the RBI that disclosure of information sought for will also go

against the economic interest of the nation. The submission is wholly misconceived.

73. Economic interest of a nation in most common parlance are the goals which a nation wants to attain to fulfil its national objectives. It is the part of our national interest, meaning thereby national interest can't be seen with the spectacles(glasses) devoid of economic interest.

74. It includes in its ambit a wide range of economic transactions or economic activities necessary and beneficial to attain the goals of a nation, which definitely includes as an objective economic empowerment of its citizens. It has been recognized and understood without any doubt now that one of the tool to attain this goal is to make information available to people. Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better which as stated above also includes its

economic interests. Recognizing the significance of this tool it has not only been made one of the fundamental rights under Article 19 of the Constitution but also a Central Act has been brought into effect on 12<sup>th</sup> October 2005 as the Right to Information Act, 2005.

75. The ideal of ‘Government by the people’ makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for ‘open governance’ which is a foundation of democracy.

76. But neither the Fundamental Rights nor the Right to Information have been provided in absolute terms. The fundamental rights guaranteed under Article 19 Clause 1(a) are restricted under Article 19 clause 2 on the grounds of national and societal interest. Similarly Section 8, clause 1 of Right to Information Act, 2005, contains the exemption provisions where right to information can be denied to public in the name of national security and sovereignty, national

economic interests, relations with foreign states etc. Thus, not all the information that the Government generates will or shall be given out to the public. It is true that gone are the days of closed doors policy making and they are not acceptable also but it is equally true that there are some information which if published or released publicly, they might actually cause more harm than good to our national interest... if not domestically it can make the national interests vulnerable internationally and it is more so possible with the dividing line between national and international boundaries getting blurred in this age of rapid advancement of science and technology and global economy.

Any excessive use of these rights which may lead to tampering these boundaries will not further the national interest. And when it comes to national economic interest, disclosure of information about currency or exchange rates, interest rates, taxes, the regulation or supervision of banking, insurance and other financial institutions, proposals

for expenditure or borrowing and foreign investment could in some cases harm the national economy, particularly if released prematurely. However, [REDACTED]

[REDACTED]

[REDACTED] This makes it necessary to think when or at what stage an information is to be provided i.e., [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77. In one of the case, the respondent S.S. Vohra sought certain information in relation to the Patna Branch of ICICI Bank and advisory issued to the Hong Kong Branch of ICICI Bank. The contention of the respondent was that the Finance Minister had made a written statement on the floor of the House on 24.07.2009 that some banks like SBI, ICICI, Bank of Baroda, Dena Bank etc., were violating FEMA Guidelines for opening of accounts and categorically mentioned that the Patna Branch of ICICI Bank Ltd. had opened some fictitious

accounts which were opened by fraudsters and hence an advisory note was issued to the concerned branch on December 2007 for its irregularities. The Finance Minister even mentioned that in the year 2008 the ICICI Bank Ltd. was also warned for alleged irregular dealings in securities in Hong Kong. Hence, the respondent sought such advisory note as issued by the RBI to ICICI Bank. The Central Information Commissioner in the impugned order considered the RBI Master Circular dated 01.07.2009 to all the commercial banks giving various directions and finally held as under :-

“It has been contended by the Counsel on behalf of the ICICI Bank Limited that an advisory note is prepared after reliance on documents such as Inspection Reports, Scrutiny reports etc. and hence, will contain the contents of those documents too which are otherwise exempt from disclosure. We have already expressed our view in express terms that whether or not an Advisory Note shall be disclosed under the RTI Act will have to be determined on case by case basis. In some other case, for example, there may be a situation where some contents of the Advisory Note may have to be severed to such an extent that details of Inspection Reports etc. can be separated from the Note and then be provided to the RTI Applicant. Section 10 of the RTI Act leaves it open to decide each case on its merits after having satisfied ourselves whether an Advisory Note needs to be provided as it is or whether some of its contents may be severed since they may be exempted per se under the RTI Act. However, we find no reason, whatsoever, to apply Section 10 of the RTI Act in order to sever the contents of the Advisory Note issued by the RBI to the ICICI Bank Limited as the matter has already been placed on the floor of the Lok Sabha by the Hon’ble Finance Minister.

This is a matter of concern since it involves the violation of policy Guidelines initiated by the RBI and affects the public at large. Transparency cannot be brought overnight in any system and one can hope to witness accountability in a system only when its end users are well-educated, well-informed and well-aware. If the customers of commercial banks will remain oblivious to the violations of RBI Guidelines and standards which such banks regularly commit, then eventually the whole financial system of the country would be at a monumental loss. This can only be prevented by suo motu disclosure of such information as the penalty orders are already in public domain."

78. Similarly, in another case the respondent Jayantilal N. Mistry sought information from the CPIO, RBI in respect of a Cooperative Bank viz. Saraspur Nagrik Sahkari Bank Limited related to inspection report, which was denied by the CPIO on the ground that the information contained therein were received by RBI in a fiduciary capacity and are exempt under Section 8(1)(e) of RTI Act. The CIC directed the petitioner to furnish that information since the RBI expressed their willingness to disclose a summary of substantive part of the inspection report to the respondent. While disposing of the appeal the CIC observed:-

"Before parting with this appeal, we would like to record our observations that in a rapidly unfolding economics scenario, there are public institutions, both in the banking and non-banking sector, whose activities have not served public interest. On the

contrary, some such institutions may have attempted to defraud the public of their moneys kept with such institutions in trust. RBI being the Central Bank is one of the instrumentalities available to the public which as a regulator can inspect such institutions and initiate remedial measures where necessary. It is important that the general public, particularly, the share holders and the depositors of such institutions are kept aware of RBI's appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases. This will serve the public interest. The RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the RTI Act, in particular. The provisions of Section 10(1) of the RTI Act can therefore be judiciously used when necessary to adhere to this objective."

79. In another case, where the respondent P.P. Kapoor sought information *inter alia* about the details of default in loans taken from public sector banks by industrialists, out of the list of defaulters, top 100 defaulters, names of the businessmen, firm name, principal amount, interest amount, date of default and date of availing the loan etc. The said information was denied by the CPIO mainly on the basis that it was held in fiduciary capacity and was exempt from disclosure of such information. Allowing the appeal, the CIC directed for the disclosure of such information. The CIC in the impugned order has rightly observed as under:-

“I wish government and its instrumentalities would remember that all information held by them is owned by citizens, who are sovereign. Further, it is often seen that banks and financial institutions continue to provide loans to industrialists despite their default in repayment of an earlier loan.” This Court in ***UP Financial Corporation vs. Gem Cap India Pvt. Ltd.***, AIR 1993 SC 1435 has noted that :

“Promoting industrialization at the cost of public funds does not serve the public interest, it merely amounts to transferring public money to private account’. Such practices have led citizens to believe that defaulters can get away and play fraud on public funds. There is no doubt that information regarding top industrialists who have defaulted in repayment of loans must be brought to citizens’ knowledge; there is certainly a larger public interest that could be served on ....disclosure of the same. In fact, information about industrialists who are loan defaulters of the country may put pressure on such persons to pay their dues. This would have the impact of alerting Citizens about those who are defaulting in payments and could also have some impact in shaming them.

RBI had by its Circular DBOD No. BC/CIS/47/20.16.002/94 dated April 23, 1994 directed all banks to send a report on their defaulters, which it would share with all banks and financial institutions, with the following objectives:

- 1) To alert banks and financial institutions (FIs) and to put them on guard against borrowers who have defaulted in their dues to lending institutions;
- 2) To make public the names of the borrowers who have defaulted and against whom suits have been filed by banks/ FIs.”

80. At this juncture, we may refer the decision of this Court in ***Mardia Chemicals Limited vs. Union of India***, (2004) 4 SCC 311, wherein this court while considering the validity of SARFAESI Act and recovery of non-performing assets by banks and financial institutions in India, held :-

“.....it may be observed that though the transaction may have a character of a private contract yet the question of great importance behind such transactions as a whole having far reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions more particularly when financing is through banks and financial institutions utilizing the money of the people in general namely, the depositors in the banks and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio- economic drive of the country.....”

81. In rest of the cases the CIC has considered elaborately the information sought for and passed orders which in our opinion do not suffer from any error of law, irrationality or arbitrariness.

82. We have, therefore, given our anxious consideration to the matter and came to the conclusion that the Central Information Commissioner has passed the impugned orders giving valid reasons and the said orders, therefore, need no interference by this Court.

83. There is no merit in all these cases and hence they are dismissed.

.....J.  
(M.Y. Eqbal)

.....J.  
(C. Nagappan )

New Delhi  
December 16, 2015

## CIVIL ORIGINAL JURISDICTION

TRANSFERRED CASE (CIVIL) NO. 91 OF 2015  
 (Arising out of Transfer Petition (Civil) No. 707 of 2012)

Reserve Bank of India	.....Petitioner(s)
	versus
Jayantilal N. Mistry	.....Respondent(s)
	With

TRANSFERRED CASE (CIVIL) NO. 92 OF 2015  
 (Arising out of Transfer Petition (Civil) No. 708 of 2012)

I.C.I.C.I Bank Limited	..... Petitioner(s)
	versus
S.S. Vohra and others	..... Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 93 OF 2015  
 (Arising out of Transfer Petition (Civil) No. 711 of 2012)

National Bank for Agriculture and Rural Development	.....Petitioner(s)
	versus
Kishan Lal Mittal	.....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 94 OF 2015  
 (Arising out of Transfer Petition (Civil) No. 712 of 2012)

Reserve Bank of India	.....Petitioner(s)
	versus
P.P. Kapoor	..... Respondent(s)

Signature Not Verified

Digitally signed by  
 Sanjay Kumar  
 Date: 2015.12.16  
 13:23:34 IST  
 Reason:

1

TRANSFERRED CASE (CIVIL) NO. 95 OF 2015  
 (Arising out of Transfer Petition (Civil) No. 713 of 2012)

Reserve Bank of India	.....Petitioner(s)
	versus
Subhas Chandra Agrawal	..... Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 96 OF 2015  
 (Arising out of Transfer Petition (Civil) No. 715 of 2012)

Reserve Bank of India	.....Petitioner(s)
	versus
Raja M. Shanmugam	..... Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 97 OF 2015  
 (Arising out of Transfer Petition (Civil) No. 716 of 2012)

National Bank for Agriculture and Rural Development	.....Petitioner(s)
	versus
Sanjay Sitaram Kurhade	..... Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 98 OF 2015

(Arising out of Transfer Petition (Civil) No. 717 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
K.P. Muralidharan Nair .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 99 OF 2015  
(Arising out of Transfer Petition (Civil) No. 718 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
Ashwini Dixit .....Respondent(s)

2

TRANSFERRED CASE (CIVIL) NO. 100 OF 2015  
(Arising out of Transfer Petition (Civil) No. 709 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
A.Venugopal and another .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 101 OF 2015  
(Arising out of Transfer Petition (Civil) No. 714 of 2012)

Reserve Bank of India .....Petitioner(s)  
versus  
Dr. Mohan K. Patil and others .....Respondent(s)

#### JUDGMENT

M.Y. EQBAL, J.

The main issue that arises for our consideration in these transferred cases is as to whether all the information sought for under the Right to Information Act, 2005 can be denied by the Reserve Bank of India and other Banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other. If the answer to above question is in negative, then upto what extent the information can be provided under the 2005 Act.

3

2. It has been contended by the RBI that it carries out inspections of banks and financial institutions on regular basis and the inspection reports prepared by it contain a wide range of information that is collected in a fiduciary capacity. The facts in brief of the Transfer Case No.91 of 2015 are that during May-June, 2010 the statutory inspection of Makarpura

Industrial Estate Cooperative Bank Ltd. was conducted by RBI under the Banking Regulation Act, 1949. Thereafter, in October 2010, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sr. No.	Information sought	Reply
1.	Procedure Rules and Regulations of Inspection being carried out on Co-operative Banks	RBI is conducting inspections under Section 35 of the B.R. Act 1949 (AACB) at prescribed intervals.
2.	Last RBI investigation and audit report carried out by Shri Santosh Kumar during 23rd April, 2010 to 6th May, 2010 sent to Registrar of the Cooperative of the Gujarat State, Gandhinagar on Makarpura Industrial Estate Co-op Bank Ltd Reg. No.2808	The Information sought is maintained by the bank in a fiduciary capacity and was obtained by Reserve Bank during the course of inspection of the bank and hence cannot be given to the outsiders. Moreover, disclosure of such information may harm the interest of the bank & banking system. Such information is also exempt from disclosure under Section 8(1) (a) & (e) of the RTI Act,

4  
2005.

3. Last 20 years inspection Same as at (2) above (carried out with name of inspector) report on above bank and action taken report.
4. (i) Reports on all co-operative banks gone on liquidation (ii) action taken against all Directors and Managers for recovery of public funds and powers utilized by RBI and analysis and procedure adopted.
5. Name of remaining No specific information has co-operative banks under been sought your observations against irregularities and action taken reports
6. Period required to take No specific information has action and implementations been sought

3. On 30.3.2011, the First Appellate Authority disposed of the appeal of the respondent agreeing with the reply given by CPIO in query No.2, 3 & first part of 4, relying on the decision

of the Full Bench of CIC passed in the case of Ravin Ranchochodial Patel and another vs. Reserve Bank of India.

Thereafter, in the second appeal preferred by the aggrieved respondent, the Central Information Commission by the impugned order dated 01.11.2011, directed RBI to provide

5

information as per records to the Respondent in relation to queries Nos.2 to 6 before 30.11.2011. Aggrieved by the decision of the Central Information Commission (CIC), petitioner RBI moved the Delhi High Court by way of a Writ Petition inter alia praying for quashing of the aforesaid order of the CIC. The High Court, while issuing notice, stayed the operation of the aforesaid order.

4. Similarly, in Transfer Case No. 92 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sr. No.	Information sought	Reply
1.	The Hon'ble FM made a In the absence of the specific written statement on the Floor details, we are not able to provide of the House which inter alia any information. must have been made after verifying the records from RBI and the Bank must have the copy of the facts as reported by FM. Please supply copy of the note sent to FM	
2.	The Hon'ble FM made a We do not have this information. statement that some of the banks like SBI, ICICI Bank Ltd, Bank of Baroda, Dena Bank, HSBC Bank etc. were issued letter of displeasure for violating FEMA guidelines for opening of accounts where as some other banks were even	

6

fined Rupees one crore for such violations. Please give me the names of the banks with details of violations committed by them.

3. 'Advisory Note' issued to ICICI Bank for account opened by some fraudsters at its Patna Branch Information sought about "exact nature of irregularities committed by the bank under "FEMA". Also give An Advisory Letter had been issued to the bank in December, 2007 for the bank's Patna branch having failed to (a) comply with the RBI guidelines on customer identification, opening/operating customer accounts, (b) the bank

list of other illegalities committed by IBL and other details of offences committed by IBL through various branches in India and abroad along with action taken by the Regulator including the names and designations of his officials branch name, type of offence committed etc. The exact nature of offences committed by Patna Branch of the bank and other branches of the bank and names of his officials involved, type of offence committed by them and punishment awarded by concerned authority, names and designation of designated authority, investigated the above case and his findings punishment awarded."

not having followed the normal banker's prudence while opening an account in question.

As regards the list of supervisory action taken by us, it may be stated that the query is too general and not specific. Further, we may state that Supervisory actions taken were based on the scrutiny conducted under Section 35 of the Banking Regulation (BR) Act. The information in the scrutiny report is held in fiduciary capacity and the disclosure of which can affect the economic interest of the country and also affect the

commercial confidence of the bank. And such information is also exempt from disclosure under Section 8(1)(a)(d) & (e) of the RTI Act (extracts enclosed). We, therefore, are unable to accede to your request.

4. Exact nature of irregularities committed by ICICI Bank in Hong Kong  
In this regard, self explicit print out taken from the website of Securities and Futures Commission, Hong Kong is enclosed.
5. ICICI Bank's Moscow Branch We do not have the information. involved in money laundering act.
6. Imposition of fine on ICICI We do not have any information to

7

Bank under Section 13 of the furnish in this regard.  
PMLA for loss of documents in floods .

7. Copy of the Warning or 'Advisory Note' issued twice copies/details of advisory letters to issued to the bank in the last two years and reasonssuch information is exempt from recorded therein. As regards your request for ICICI Bank, we may state that disclosure under Section 8(1)(a)(d) and (e) of the RTI Act. The Name and designation of the scrutiny of records of the ICICI authority who conducted this Bank is conducted by our check and his decision to Department of Banking issue an advisory note only Supervision (DBS). The Chief instead of penalties to be General Manager-in charge of the imposed under the Act. DBS, Centre Office Reserve Bank of India is Shri S. Karuppasamy.

5. In this matter, it has been alleged by the petitioner RBI that the respondent is aggrieved on account of his application form for three-in-one account with the Bank and ICICI Securities Limited (ISEC) lost in the floods in July, 2005 and

because of non-submission of required documents, the Trading account with ISEC was suspended, for which respondent approached the District Consumer Forum, which rejected the respondent's allegations of tempering of records and dismissed the complaint of the respondent. His appeal was also dismissed by the State Commission. Respondent then moved an application under the Act of 2005 pertaining to

8

the suspension of operation of his said trading account. As the consumer complaint as well as the abovementioned application did not yield any result for the respondent, he made an application under the Act before the CPIO, SEBI, appeal to which went up to the CIC, the Division Bench of which disposed of his appeal upholding the decision of the CPIO and the Appellate Authority of SEBI.

Thereafter, in

August 2009, respondent once again made the present application under the Act seeking aforesaid information.

Being aggrieved by the order of the appellate authority, respondent moved second appeal before the CIC, who by the impugned order directed the CPIO of RBI to furnish information pertaining to Advisory Notes as requested by the respondent within 15 working days. Hence, RBI approached Bombay High Court by way of writ petition.

6. In Transfer Case No. 93 of 2015, the Respondent sought following information from the CPIO of National Bank for Agriculture and Rural Development under the Act of 2005, reply to which is tabulated hereunder:-

9

S1. No.	Information Sought	Reply
1.	Copies of inspection reports of Furnishing of information is Apex Co-operative Banks of exempt under Section 8(1) (a) of the various States/Mumbai DCCB RTI Act. from 2005 till date	
2.	Copies of all correspondences with Maharashtra State Govt./RBI/any other agency of State/Central Co-operative Bank from January, 2010 till date.	Different Departments in NABARD deal with various issues related to MSCB. The query is general in nature. Applicant may please be specific in query/information

sought.

3. Provide confirmed/draft minutes Furnishing of information is of meetings of Governing exempt under Sec. 8(1)(d) of the Board/Board of RTI Act.  
Directors/Committee of Directors  
of NABARD from April, 2007 till date
4. Provide information on Compliance available on the compliance of Section 4 of RTI website of NABARD i.e. Act, 2005 by NABARD [www.nabard.org](http://www.nabard.org)
5. Information may be provided on a -  
CD

7. The First Appellate Authority concurred with the CPIO and held that inspection report cannot be supplied in terms of Section 8(1)(a) of the RTI Act. The Respondent filed Second Appeal before the Central Information Commission, which was allowed. The RBI filed writ petition before the High Court challenging the order of the CIC dated 14.11.2011 on identical

10

issue and the High Court stayed the operation of the order of the CIC.

8. In Transfer Case No. 94 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sl. No.	Information Sought	Reply
1.	As mentioned at 2(a) what is RBI doing about uploading the entire list of Bank defaulters on the bank's website? When will it be done? Why is it not done?	Pursuant to the then Finance Minister's Budget Speech made in Parliament on 28th February, 1994, in order to alert the banks and FIs and put them on guard against the defaulters to other lending institutions. RBI has put in place scheme to collect details about borrowers of banks and FIs with outstanding aggregating Rs. 1 crore and above which are classified as 'Doubtful' or 'Loss' or where suits are filed, as on 31st March and 30th September each year. In February 1999, Reserve Bank of India had also introduced a scheme for collection and dissemination of information on cases of willful default of borrowers with outstanding balance of Rs. 25 lakh

and above. At present, RBI disseminates list of above said non suit filed 'doubtful' and 'loss' borrowed accounts of Rs.1 crore and above on half-yearly basis (i.e. as on March 31 and September 30) to banks and FIs. for their confidential use. The list of non-suit filed accounts of willful defaulters of Rs. 25 lakh and above is also disseminated on quarterly

11

basis to banks and FIs for their confidential use. Section 45 E of the Reserve Bank of India Act 1934 prohibits the Reserve Bank from disclosing 'credit information' except in the manner provided therein.

(iii) However, Banks and FIs were advised on October 1, 2002 to furnish information in respect of suit-filed accounts between Rs. 1 lakh and Rs. 1 crore from the period ended March, 2002 in a phased manner to CIBIL only. CIBIL is placing the list of defaulters (suit filed accounts) of Rs. 1 crore and above and list of willful defaulters (suit filed accounts) of Rs. 25 lakh and above as on March 31, 2003 and onwards on its website ([www.cibil.com](http://www.cibil.com))

9. The Central Information Commission heard the parties through video conferencing. The CIC directed the CPIO of the petitioner to provide information as per the records to the Respondent in relation to query Nos. 2(b) and 2(c) before 10.12.2011. The Commission has also directed the Governor RBI to display this information on its website before 31.12.2011, in fulfillment of its obligations under Section 4(1) (b) (xvii) of the Right to Information Act, 2005 and to update it each year.

10. In Transfer Case No.95 of 2015, following information was sought and reply to it is tabulated hereunder:

S1. No.	Information Sought	Reply
1.	Complete and detailed information including related	As the violations of which the banks were issued

documents/correspondence/file noting etc of RBI on imposing fines on some banks for violating rules like also referred in enclosed news clipping

2. Complete list of banks which were issued show cause notices before fine was imposed as also referred in enclosed news clipping mentioning also default for which show cause notice was issued to each of such banks
2. Complete list of banks which were issued show cause notices before fine was imposed as also referred in enclosed news clippings mentioning also default for which show cause notice was issued to each of such banks.
3. List of banks out of those in query (2) Do above where fine was not imposed giving details like if their reply was satisfactory etc.
4. List of banks which were ultimately found guilty and fines mentioning also amount of fine on each of the bank imposed
- The names of the 19 banks on them are

13

and criterion to decide fine on each of the bank furnished in Annex 1.

Regarding the criterion for deciding the fine, the penalties have been imposed on these banks for contravention of various directions and instructions such as failure to carry out proper due diligence on user appropriateness and suitability of products, selling derivative products to users not having proper risk Management policies, not verifying the underlying /adequacy of underlying and eligible limits under past performance route, issued by RBI in respect of derivative transactions.

5. Is fine imposed /action taken on some other bank was other banks also other than as penalized other than those mentioned in enclosed news clipping mentioned in the Annex, in the context of press release

of

- |    |  |   |
|----|--|---|
| 6. | If yes please provide details  | Not Applicable, in view of the information provided in query No.5 |
| 7. | Any other information  | The query is not specific.  |
| 8. | File notings on movement of this RTI petition and on every aspect of this RTI Petition | Copy of the note is enclosed.                                     |

11. In the Second Appeal, the CIC heard the respondent via telephone and the petitioner through video conferencing.

As

14

directed by CIC, the petitioner filed written submission. The CIC directed the CPIO of the Petitioner to provide complete information in relation to queries 1 2 and 3 of the original application of the Respondent before 15.12.2011.

12. In Transfer Case No. 96 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	<p>Before the Orissa High Court RBI has filed an affidavit stating that the total mark to market losses on account of currency derivatives is to the tune of more than Rs. 32,000 crores Please give bank wise breakup of the MTM Losses</p>	<p>The Information sought by you is exempted under Section 8(1) (a) &amp; (e) of RTI Act, which state as under;</p> <p>8(1) notwithstanding anything contained in this Act, there shall be no obligation to give any citizen</p> <p>(a) information disclosure of which would prejudicially affect the sovereignty and integrity of India the security strategic scientific or economic interests of the state, relation with foreign State or lead to incitement of an offence.</p> <p>(e) Information available to a person in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.</p>
2.	<p>What is the latest figure available Please refer to our response to 1 with RBI of the amount of losses above. suffered by Indian Business</p>	

houses? Please furnish the latest figures bank wise and customer wise.

3. Whether the issue of derivative losses to Indian exporters was discussed in any of the meetings of Governor/Deputy Governor or senior official of the Reserve Bank of India? If so please furnish the minutes of the meeting where the said issue was discussed
4. Any other Action Taken Reports by RBI in this regard. We have no information in this matter.

13. The CIC allowed the second appeal and directed the CPIO FED of the Petitioner to provide complete information in queries 1, 2, 9 and 10 of the original application of the Respondent before 05.01.2012. The CPIO, FED complied with the order of the CIC in so far queries 2, 9 and 10 are concerned. The RBI filed writ petition for quashing the order of CIC so far as it directs to provide complete information as per record on query No.1.

14. In Transfer Case No. 97 of 2015, the Respondent sought following information from the CPIO of National Bank for

Agriculture and Rural Development under the Act of 2005, reply to which is tabulated hereunder:-

S.l. No.	Information Sought	Reply
1.	The report made by NABARD regarding 86 N.P.A. Accounts for Rs. 3806.95 crore of Maharashtra State Co-operative Bank Ltd. (if any information of my application is not available in your Office/Department/ Division/Branch, transfer this application to the concerned Office/Department/ Division/Branch and convey me accordingly as per the provision of Section 6 (3) of Right to Information Act, 2005.	Please refer to your application dated 19 April, 2011 seeking information under the RTI Act, 2005 which was received by us on 06th May, 2011. In this connection, we advise that the questions put forth by you relate to the observations made in the Inspection Report of NABARD pertaining to MSCB which are confidential in nature. Since furnishing the

information would impede the process of investigation or apprehension or prosecution of offenders, disclosure of the same is exempted under Section 8(1) (h) of the Act.

15. In Transfer Case No. 98 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	What contraventions and violations were made by SCB in respect of RBI instructions on derivatives for which RBI has imposed penalty of INR 10 lakhs on SCB in exercise of its powers vested under Section 47(1)(b) of Banking Regulation Act, 1949 and as stated in the RBI press release dated April 26, 2011 issued by Department of Communications RBI	The bank was penalized along with 18 other banks for contravention of various instructions issued by the Reserve Bank of India in respect of derivatives, such as, failure to carry out due diligence in regard to suitability of products, selling derivative products to users not having risk management policies and not verifying the underlying/adequacy of underlying and eligible limits under past performance route. The information is also available on our website under press releases.
2.	Please provide us the copies/details of all the complaints filed with RBI against SCB, accusing SCB of mis-selling derivative products, failure to carry out due diligence in regard to suitability of products, not verifying the underlying/adequacy of underlying and eligible limits under past performance and various other non-compliance of RBI instruction on derivatives.	Complaints are received by Reserve Bank of India and as they constitute the third party information, the information requested by you cannot be disclosed in terms of Section 8(1)(d) of the RTI Act, 2005.

Also, please provide the above information in the following format

- . Date of the complaint

Name of the complaint

Subject matter of the complaint

Brief description of the facts and accusations made by the complaint.

18

Any other information available with RBI with respect to violation/contraventions by SCB of RBI instructions on derivatives.

3. Please provide us the copies of all the written replies/correspondences made by SCB with RBI and the recordings of all the oral submissions made by SCB to defend and explain the violations/contraventions made by SCB

The action has been taken against the bank based on the findings of the Annual Financial Inspection (AFI) of the bank which is conducted under the provisions of Sec.35 of the BR Act, 1949. The findings of the inspection are confidential in nature intended specifically for the supervised entities and for corrective action by them. The information is received by us in fiduciary capacity disclosure of which may prejudicially affect the economic interest of the state.

As such the information cannot be disclosed in terms of Section 8(1) (a) and (e) of the RTI Act, 2005

4. Please provide us the details/copies of the findings recordings, enquiry reports, directive orders file notings and/or any information on the investigations conducted by RBI against SCB in respect of non-compliance by SCB thereby establishing violations by SCBV in respect of non compliances of RBI instructions on derivatives.

-do-

Please also provide the above information in the following format.

. Brief violations/contraventions made by SCB

. In brief SCB replies/defense/explanation

19

against each violations/contraventions made by it under the show cause notice.

. RBI investigations/notes/on the SCB

Replies/defense/explanations for each of the violation/contravention made by SCB.

. RBI remarks/findings with regard to the violations/contraventions made by SCB.

16. In Transfer Case No. 99 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	That, what action has the department taken against scams/financial irregularities of United Mercantile Cooperative Bank Ltd as mentioned in the enclosed published news. Provide day to day progress report of the action taken.	1. Enquiry was carried out against scams/financial irregularities of United Mercantile Cooperative Bank Ltd. as mentioned in the enclosed published news.
		2. Note/explanation has been called for from the bank vide our letter dated 8th July, 2011 regarding errors mentioned in enquiry report.
		3. The other information asked here is based on the conclusions of Inspection Report. We would like to state that conclusions found

20

during inspections are confidential and the reports are finalized on the basis of information received from banks. We received the information from banks in a confident capacity. Moreover, disclosure of such information may cause damage to the banking system and financial interests of the state. Disclosure of such type of information is exempted under Section 8(1)(a) and (e) of RTI Act, 2005.

2. That permission for opening how many extension counters was obtained by United Mercantile Cooperative Bank Ltd from RBI. Provide details of expenditure incurred for constructing the extension counters. Had the bank followed tender system for these constructions, if yes, provide details of concerned tenders.

United Mercantile Cooperative Bank Ltd. was permitted to open 5, extension counters.

The information regarding expenditure incurred on construction of these extension counters and tenders are not available

17. In Transfer Case No. 100 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	21	Information Sought	Reply
------------	----	--------------------	-------

1. Under which Grade The George Town The classification of Co-operative Bank Ltd., Chennai, has been banks into various categorised as on 31.12.2006? banks into various grades are done on the basis of inspection findings which is based on information/documents obtained in a fiduciary capacity and cannot be disclosed to outsiders. It is also exempted under Section 8(1)(e) of right to Information Act, 2005.

18. The Appellate Authority observed that the CPIO, UBD has replied that the classification of banks into various grades is done on the basis of findings recorded in inspection which are based on information/documents obtained in a fiduciary capacity and cannot be disclosed to outsiders. The CPIO, UBD has stated that the same is exempted under Section 8(1)(e) of RTI Act. Apart from the fact that information sought by the appellant is sensitive and cannot be disclosed, it could also harm the competitive position of the co-operative bank. Therefore, exemption from disclosure of the Information is available under Section 8(1)(d) of the RTI Act.

22

19. In Transfer Case No. 101 of 2015, with regard to Deendayal Nagri Shakari Bank Ltd, District Beed, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl.	Information Sought	Reply
-----	--------------------	-------

1. Copies of complaints received by RBI against illegal working of the said bank, including violations of the Standing Orders of RBI as well as the provisions under Section 295 of the Companies Act, 1956.

Disclosure of information regarding complaints received from third parties would harm the competitive position of a third party. Further such information is maintained in a fiduciary capacity and is exempted from disclosure under Sections 8(1) (d) and (e) of the RTI Act.

2. Action initiated by RBI against the said bank, including all correspondence between RBI and the said bank officials.

(a) A penalty of Rs. 1 lakh was imposed on Deendayal Nagri Sahakari Bank Ltd. for violation of directives on loans to directors/their relatives/concerns in which they are interested. The bank paid the penalty on 08.10.2010.

(b) As regards correspondence between RBI and the co-operative bank, it is advised that such information is maintained by RBI in fiduciary capacity and

23

hence cannot be given to outsiders. Moreover disclosure of such information may harm the interest of the bank and banking system. Such information is exempt from disclosure under Section 8(1) (a) and (e) of the RTI Act.

3. Finding of the enquiry made by RBI, actions proposed and taken against the bank and its officials-official notings, decisions, and final orders passed and issued.

Such information is maintained by the bank in a fiduciary capacity and is obtained by RBI during the course of inspection of the bank and hence cannot be given to outsiders. The disclosure of such information would harm the competitive position of a third party. Such information is, therefore, exempted from disclosure under Section 8(1) (d) and (e) of the RTI Act.

As regards action taken  
against the bank, are  
reply at S. No.2 (a)  
above.

4. Confidential letters received by RBI from See reply at S. NO.2  
(a) the Executive Director of Vaishnavi above.  
Hatcheries Pvt. Ltd. complaining about  
the illegal working and pressure policies  
of the bank and its chairman for misusing  
the authority of digital signature for  
sanction of the backdated resignations  
of the chairman of the bank and few  
other directors of the companies details  
of action taken by RBI on that.

24

20. The First Appellate Authority observed that the CPIO  
had furnished the information available on queries 2 and 4.  
Further information sought in queries 1 and 3 was exempted  
under Section 8(1)(a)(d) and (e) of the RTI Act.

21. Various transfer petitions were, therefore, filed seeking  
transfer of the writ petitions pending before different High  
Courts. On 30.5.2015, while allowing the transfer petitions filed  
by Reserve Bank of India seeking transfer of various writ  
petitions filed by it in the High Courts of Delhi and Bombay, this  
Court passed the following orders:

"Notice is served upon the substantial number of  
respondents. Learned counsel for the respondents have  
no objection if Writ Petition Nos. 8400 of 2011, 8605  
of 2011, 8693 of 2011, 8583 of 2011, 32 of 2012, 685  
of 2012, 263 of 2012 and 1976 of 2012 pending in the  
High Court of Delhi at New Delhi and Writ Petition  
(L) Nos. 2556 of 2011, 2798 of 2011 and 4897 of 2011  
pending in the High Court of Bombay are transferred  
to this Court and be heard together. In the  
meanwhile, the steps may be taken to serve upon the  
unserved respondents.

Accordingly, the transfer petitions are allowed and the  
above mentioned writ petitions are withdrawn to this  
Court. The High Court of Delhi and the High Court of  
Bombay are directed to remit the entire record of the  
said writ petitions to this Court within four weeks."

25

22. Mr. T.R. Andhyarujina, learned senior counsel appearing  
for the petitioner-Reserve Bank of India, assailed the  
impugned orders passed by the Central Information

Commissioner as illegal and without jurisdiction.

Learned

Counsel referred various provisions of The Reserve Bank of India Act, 1934; The Banking Regulation Act, 1949 and The Credit Information Companies (Regulation) Act, 2005 and made the following submissions:-

I) The Reserve Bank of India being the statutory authority has been constituted under the Reserve Bank of India Act, 1934 for the purpose of regulating and controlling the money supply in the country. It also acts as statutory banker with the Government of India and State Governments and manages their public debts. In addition, it regulates and supervises Commercial Banks and Cooperative Banks in the country. The RBI exercises control over the volume of credit, the rate of interest chargeable on loan and advances and deposits in order to ensure the economic stability. The RBI is also vested with the powers to determine "Banking Policy" in the interest of banking system, monetary stability and sound economic growth.

The RBI in exercise of powers of powers conferred under Section 35 of the Banking Regulation Act, 1949 conducts inspection of the banks in the country.

II) The RBI in its capacity as the regulator and supervisor of the banking system of the country access to various information collected and kept by the banks. The inspecting team and the officers carry out inspections of different banks and much of the information accessed by the inspecting officers of RBI would be confidential. Referring Section 28 of the Banking Regulation Act, it was submitted that the RBI in the public interest may publish

26

the information obtained by it, in a consolidated form but not otherwise.

III) The role of RBI is to safeguard the economic and financial stability of the country and it has large contingent of expert advisors relating to matters deciding the economy of the entire country and nobody can doubt the bona fide of the bank. In this connection, learned counsel referred the decision of this Court in the case of Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, 1992 Vol. 2 SCC 343.

IV) Referring the decision in the case of B. Suryanarayana Vs. N. 1453 The Kolluru Parvathi Co-Op. Bank Ltd., 1986 AIR (AP) 244, learned counsel submitted that the Court will be highly chary to enter into and interfere with the decision of Reserve Bank of India. Learned Counsel also referred to the decision in the case of Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, 1992 Vol. 2 SCC 343 and contended that Courts are not to interfere with the economic policy which is a function of the experts.

V) That the RBI is vested with the responsibility of regulation and supervision of the banking system. As part of its supervisory role, RBI supervises and monitors the banks under its jurisdiction through on-site inspection conducted on annual basis under the statutory powers derived by it under section 35 of the Banking Regulation Act 1949, off-site returns on key financial parameters and engaging banks in dialogue through periodical meetings. RBI may take supervisory actions where warranted for

violations of its guidelines/directives. The supervisory actions would depend on the seriousness of the offence, systemic implications and may range from imposition of penalty, to issue of strictures or letters of warning. While RBI recognizes and promotes enhanced transparency in banks disclosures to the public, as transparency strengthens market discipline, a bank may not be able to disclose all data that may be relevant to assess its risk profile, due to the inherent need to preserve confidentiality in relation to its customers. In this light, while mandatory disclosures include certain prudential parameters such as capital adequacy, level of Non Performing Assets etc., the supervisors themselves may not disclose all or some information obtained on-site or off-site. In some countries, wherever there are supervisory concerns, "prompt corrective action" programmes are normally put in place, which may or may not be publicly disclosed. Circumspection in disclosures by the supervisors arises from the potential market reaction that such disclosure might trigger, which

27

may not be desirable. Thus, in any policy of transparency, there is a need to build processes which ensure that the benefits of supervisory disclosure are appropriately weighed against the risk to stakeholders, such as depositors.

VI) As per the RBI policy, the reports of the annual financial inspection, scrutiny of all banks/ financial institutions are confidential document cannot be disclosed. As a matter of fact, the annual financial inspection/ scrutiny report reflect the supervisor's critical assessment of banks and financial institutions and their functions. Disclosure of these scrutiny and information would create misunderstanding/ misinterpretation in the minds of the public. That apart, this may prove significantly counter productive. Learned counsel submitted that the disclosure of information sought for by the applicant would not serve the public interest as it will give adverse impact in public confidence on the bank. This has serious implication for financial stability which rests on public confidence. This will also adversely affect the economic interest of the State and would not serve the larger public interest.

23. The specific stand of petitioner Reserve Bank of India is that the information sought for is exempted under Section 8(1) (a), (d) and (e) of the Right to Information Act, 2005. As the regulator and supervisor of the banking system, the RBI has discretion in the disclosure of such information in public interest.

24. Mr. Andhyarujina, learned senior counsel, referred various decisions to the High Court and submitted that the disclosure of information would prejudicially affect the economic interest of the State. Further, if the information

28

sought for is sensitive from the point of adverse market

reaction leading to systematic crisis for financial stability.

25. Learned senior counsel put heavy reliance on the Full Bench decision of the Central Information Commissioner and submitted that while passing the impugned order, the Central Information Commissioner completely overlooked the Full Bench decision and ignored the same.

According to the learned counsel, the Bench, which passed the impugned order, is bound to follow the Full Bench decision.

The

Commission also erred in holding that the Full Bench decision is per incuriam as the Full Bench has not considered the statutory provisions of Section 8 (2) of the Right to Information Act, 2005.

26. Learned senior counsel also submitted that the Commission erred in holding that even if the information sought for is exempted under Section 8(1) (a), (d) or (e) of the Right to Information Act, Section 8(2) of the RTI Act would mandate the disclosure of the information.

29

27. Learned senior counsel further submitted that the basic question of law is whether the Right to Information Act, 2005 overrides various provisions of special statutes which confer confidentiality in the information obtained by the RBI.; If the Respondents are right in their contention, these statutory provisions of confidentiality in the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934 and the Credit Information Companies (Regulation) Act, 2005 would be repealed or overruled by the Right to Information Act, 2005.

28. Under the Banking Regulation Act, 1949, the Reserve Bank of India has a right to obtain information from the banks under Section 27. These information can only be in its discretion published in such consolidated form as RBI deems fit. Likewise under Section 34A production of documents of confidential nature cannot be compelled. Under sub-section

(5) of Section 35, the Reserve Bank of India may carry out inspection of any bank but its report can only be disclosed if the Central Government orders the publishing of the report of the Reserve Bank of India when it appears necessary.

30

29. Under Section 45E of the Reserve Bank of India Act, 1934, disclosure of any information relating to credit information submitted by banking company is confidential and under Section 45E(3) notwithstanding anything contained in any law no court, tribunal or authority can compel the Reserve Bank of India to give information relating to credit information etc.

30. Under Section 17(4) of the Credit Information Companies (Regulation) Act, 2005, credit information received by the credit information company cannot be disclosed to any person. Under Section 20, the credit information company has to adopt privacy principles and under Section 22 there cannot be unauthorized access to credit information.

31. It was further contended that the Credit Information Companies Act, 2005 was brought into force after the Right to Information act, 2005 w.e.f. 14.12.2006. It is significant to note that Section 28 of Banking Regulation Act, 1949 was amended by the Credit Information Companies (Regulation) Act, 2005. This is a clear indication that the Right to

31

Information Act, 2005 cannot override credit information sought by any person in contradiction to the statutory provisions for confidentiality.

32. This is in addition to other statutory provisions of privacy in Section 44 of State Bank of India Act, 1955, Section 52, State Bank of India (Subsidiary Banks) Act, 1959, Section 13 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970.

33. The Right to Information Act, 2005 is a general provision which cannot override specific provisions relating to confidentiality in earlier legislation in accordance with the principle that where there are general words in a later statute it cannot be held that the earlier statutes are repealed altered or discarded.

34. Learned counsel submitted that Section 22 of the Right to Information Act, 2005 cannot have the effect of nullifying and repealing earlier statutes in relation to confidentiality. This has been well settled by this Court in

32

- a) Raghunath vs. state of Karnataka 1992(1)  
SCC 335 at p.348 pages 112 and 114
- b) ICICI Bank vs. SIDCO Leather etc.,  
2006(10) SCC 452 at p. 466, paras 36 & 37
- c) Central Bank vs. Kerala, 2009 (4) SCC 94 at  
p. 132-133 para 104
- d) AG Varadharajalu vs. Tamil Nadu, 1998  
(4) SCC 231 at p. 236 para 16.

Hence, the Right to Information Act, 2005 cannot override the provisions for confidentiality conferred on the RBI by the earlier statutes referred to above.

35. The Preamble of the RTI Act, 2005 itself recognizes the fact that since the revealing of certain information is likely to conflict with other public interests like "the preservation of confidentiality of sensitive information", there is a need to harmonise these conflicting interests. It is submitted that certain exemptions were carved out in the RTI Act to harmonise these conflicting interests. This Court in Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors, (2011)8 SCC 497, has observed as under:-

33

"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 visualise 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."

36. Apart from the legal position that the Right to Information Act, 2005 does not override statutory provisions of confidentiality in other Act, it is submitted that in any case Section 8(1)(a) of the Right to Information Act, 2005 states that there is no obligation to give any information which pre-judiciously affects the economic interests of the States. Disclosure of such vital information relating to banking would pre-judiciously affect the economic interests of the State. This was clearly stated by the Full Bench of the Central Information Commission by its Order in the case of Ravin Ranchchodlal Patel (supra). Despite this emphatic ruling individual Commissioners of the Information have disregarded it by

34

holding that the decision of the Full Bench was per incurium and directed disclosure of information.

37. Other exceptions in Section 8, viz 8(1)(a)(d), 8(1)(e) would also apply to disclosure by the RBI and banks. In sum, learned senior counsel submitted that the RBI cannot be directed to disclose information relating to banking under the Right to Information Act, 2005.

38. Mr. Prashant Bhushan, learned counsel appearing for the respondents in Transfer Case Nos. 94 & 95 of 2015, began his arguments by referring the Preamble of the Constitution and submitted that through the Constitution it is the people who have created legislatures, executives and the judiciary to

exercise such duties and functions as laid down in the constitution itself.

39. The right to information regarding the functioning of public institutions is a fundamental right as enshrined in Article 19 of the Constitution of India. This Hon'ble Court has declared in a plethora of cases that the most important value

35

for the functioning of a healthy and well informed democracy is transparency. Mr. Bhushan referred Constitution Bench judgment of this Court in the case of State of U.P. vs. Raj Narain, AIR 1975 SC 865, and submitted that it is a Government's responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of public.

40. In the case of S.P. Gupta v. President of India and Ors., AIR 1982 SC 149, a seven Judge Bench of this Court made the following observations regarding the right to information:-

"There is also in every democracy a certain amount of public suspicion and distrust of Government, varying of course from time to time according to its performance,

36

which prompts people to insist upon maximum exposure of its functioning. It is axiomatic that every action of the Government must be actuated by public interest but even so we find cases, though not many, where Governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes Governmental action is influenced by political and other motivations and pressures and at times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of Government and the processes of Government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of

secrecy without any public accountability. But if there is an open Government with means of information available to the public, there would be greater exposure of the functioning of Government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open Government is clean Government and a powerful safeguard against political and administrative aberration and inefficiency."

41. In the case of the Union of India vs. Association for Democratic Reforms, AIR 2002 SC 2112, while declaring that it is part of the fundamental right of citizens under Article 19(1)(a) to know the assets and liabilities of candidates contesting election to the Parliament or the State Legislatures, a three Judge Bench of this Court held unequivocally that:-"The right to get information in a democracy is recognized all throughout and is a natural right flowing from the concept of

democracy (Para 56)." Thereafter, legislation was passed  
37 amending the Representation of People Act, 1951 that candidates need not provide such information. This Court in the case of PUCL vs. Union of India, (2003) 4 SCC 399, struck down that legislation by stating: "It should be properly understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedoms have no fixed contents. From time to time, this Court has filled in the skeleton with soul and blood and made it vibrant. Since the last more than 50 years, this Court has interpreted Articles 14, 19 and 21 and given meaning and colour so that the nation can have a truly republic democratic society."

42. The RTI Act, 2005, as noted in its very preamble, does not create any new right but only provides machinery to effectuate the fundamental right to information. The institution of the CIC and the SICs are part of that machinery. The preamble also inter-alia states "... democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to

hold Governments and their instrumentalities accountable to the governed."

43. The submission of the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of RBI Act and Banking Regulation Act is clearly misconceived. RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail insofar as transparency and access to information is concerned. Moreover, the RTI Act 2005, being a later law, specifically brought in to usher transparency and to transform the way official business is conducted, would have to override all earlier practices and laws in order to achieve its objective. The only exceptions to access to information are contained in RTI Act itself in Section 8.

44. In T.C.No.94 of 2015, the RTI applicant Mr. P.P. Kapoor had asked about the details of the loans taken by the industrialists that have not been repaid, and he had asked about the names of the top defaulters who have not repaid their loans to public sector banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1) (a) and 8(1)(e) of the RTI Act on the ground that disclosure would affect the economic interest of the country, and that the information has been received by the RBI from the banks in fiduciary capacity. The CIC found these arguments made by RBI to be totally misconceived in facts and in law, and held that the disclosure would be in public interest.

45. In T.C.No.95 of 2015, the RTI applicant therein Mr.

Subhash Chandra Agrawal had asked about the details of the show cause notices and fines imposed by the RBI on various banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1)(a), (d) and 8(1) (e) of the RTI Act on the ground that disclosure would affect the

40

economic interest of the country, the competitive position of the banks and that the information has been received by RBI in fiduciary capacity. The CIC, herein also, found these arguments made by RBI to be totally misconceived in facts and in law and held that the disclosure would be in public interest.

46. In reply to the submission of the petitioner about fiduciary relationship, learned counsel submitted that the scope of Section 8(1)(e) of the RTI Act has been decided by this Court in Central Board of Secondary Education vs. Aditya Bandopadhyay, (2011) 8 SCC 497, wherein, while rejecting the argument that CBSE acts in a fiduciary capacity to the students, it was held that:

"...In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the word 'information available to a person in his fiduciary relationship' are used in Section 8(1) (e) of the RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the action of the fiduciary."

41

47. We have extensively heard all the counsels appearing for the petitioner Banks and respondents and examined the law and the facts.

48. While introducing the Right to Information Bill, 2004 a serious debate and discussion took place. The then Prime Minister while addressing the House informed that the RTI Bill is to provide for setting out practical regime of right to information for people, to secure access to information under

the control of public authorities in order to promote transparency and accountability in the working of every public authority. The new legislation would radically alter the ethos and culture of secrecy through ready sharing of information by the State and its agencies with the people.

An era of

transparency and accountability in governance is on the anvil.

Information, and more appropriately access to information would empower and enable people not only to make informed choices but also participate effectively in decision making processes. Tracing the origin of the idea of the then Prime Minister who had stated, "Modern societies are information

42

societies. Citizens tend to get interested in all fields of life and demand information that is as comprehensive, accurate and fair as possible." In the Bill, reference has also been made to the decision of the Supreme Court to the effect that Right to Information has been held as inherent in Article 19 of our Constitution, thereby, elevating it to a fundamental right of the citizen. The Bill, which sought to create an effective mechanism for easy exercise of this Right, was held to have been properly titled as "Right to Information Act".

The Bill

further states that a citizen has to merely make a request to the concerned Public Information Officer specifying the particulars of the information sought by him. He is not required to give any reason for seeking information, or any other personal details except those necessary for contacting him. Further, the Bill states:-

"The categories of information exempted from disclosure are a bare minimum and are contained in clause 8 of the Bill. Even these exemptions are not absolute and access can be allowed to them in public interest if disclosure of the information outweighs the harm to the public authorities. Such disclosure has been permitted even if it is in conflict with the provisions of the Official Secrets Act, 1923. Moreover, barring two categories that relate to information disclosure - which may affect

43

sovereignty and integrity of India etc., or information relating to Cabinet papers etc.-all other categories of exempted information would be disclosed after

twenty years.

There is another aspect about which information is to be made public. We had a lengthy discussion and it is correctly provided in the amendment under clause 8 of the Bill. The following information shall be exempted from disclosure which would prejudicially affect the sovereignty and integrity of India; which has been expressly forbidden; which may result in a breach of privileges of Parliament or the Legislature; and also information pertaining to defence matters. They are listed in clause 8 (a) to (g). There are exceptions to this clause. Where it is considered necessary that the information will be divulged in the interest of the State, that will be done. There must be transparency in public life. There must be transparency in administration and people must have a right to know what has actually transpired in the secretariat of the State as well as the Union Ministry. A citizen will have a right because it will be safe to prevent corruption. Many things are done behind the curtain. Many shoddy deals take place in the secretariats of the Central and State Governments and the information will always be kept hidden. Such practice should not be allowed in a democratic country like ours. Ours is a republic. The citizenry should have a right to know what transpired in the secretariat. Even Cabinet papers, after a decision has been taken, must be divulged as per the provisions of this amendment. It cannot be hidden from the knowledge of others."

49. Addressing the House, it was pointed out by the then Prime Minister that in our country, Government expenditure both at the Central and at the level of the States and local bodies, account for nearly 33% of our Gross National Product. At the same time, the socio-economic imperatives require our

44

Government to intervene extensively in economic and social affairs. Therefore, the efficiency and effectiveness of the government processes are critical variables, which will determine how our Government functions and to what extent it is able to discharge the responsibilities entrusted. It was pointed out that there are widespread complaints in our country about wastefulness of expenditure, about corruption, and matter which have relations with the functioning of the Government. Therefore, it was very important to explore new effective mechanism to ensure that the Government will purposefully and effectively discharge the responsibilities entrusted to it.

50. Finally the Right to Information Act was passed by the Parliament called "The Right to Information Act, 2005".

The Preamble states:-

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

45

WHEREAS the Constitution of India has established democratic Republic;

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

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interest while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

51. Section 2 of the Act defines various authorities and the words. Section 2(j) defines right to information as under :-

"2(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

46

52. Section 3 provides that all citizens shall have the right to information subject to the provisions of this Act. Section 4 makes it obligatory on all public authorities to maintain records in the manner provided therein. According to Section 6, a person who desires to obtain any information under the Act shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made to the competent authority specifying the particulars of information sought by him or her. Sub-section (ii) of Section 6 provides that the applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Section 7 lays down the procedure for disposal of the request so made by the person under Section 6 of the Act. Section 8, however, provides certain exemption from disclosure of information.

For better appreciation

Section 8 is quoted hereinbelow:-

47

"8. Exemption from disclosure of information.--

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(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;

(f) information received in confidence from foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given

in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any

48

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: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

53. The information sought for by the respondents from the petitioner-Bank have been denied mainly on the ground that such information is exempted from disclosure under Section 8(1)(a)(d) and (e) of the RTI Act.

54. Learned counsel appearing for the petitioner-Bank mainly relied upon Section 8(1)(e) of the RTI Act taking the

49

stand that the Reserve Bank of India having fiduciary relationship with the other banks and that there is no reason to disclose such information as no larger public interest

warrants such disclosure. The primary question therefore, is, whether the Reserve Bank of India has rightly refused to disclose information on the ground of its fiduciary relationship with the banks.

55. The Advanced Law Lexicon, 3rd Edition, 2005, defines fiduciary relationship as "a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the fiduciary relationship. Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has

50

traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer."

56. The scope of the fiduciary relationship consists of the following rules:

- "(i) No Conflict rule- A fiduciary must not place himself in a position where his own interests conflicts with that of his customer or the beneficiary. There must be "real sensible possibility of conflict.
- (ii) No profit rule- a fiduciary must not profit from his position at the expense of his customer, the beneficiary;
- (iii) Undivided loyalty rule- a fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs
- (iv) Duty of confidentiality- a fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person."

57. The term fiduciary relationship has been well discussed by this Court in the case of Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors.

(supra). In the said decision, their Lordships referred various authorities to ascertain the meaning of the term fiduciary relationship and observed thus:-

51

"20.1) Black's Law Dictionary (7th Edition, Page 640) defines 'fiduciary relationship' thus:

"A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships - such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client - require the highest duty of care. Fiduciary relationships usually arise in one of four situations : (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer."

20.2) The American Restatements (Trusts and Agency) define 'fiduciary' as one whose intention is to act for the benefit of another as to matters relevant to the relation between them. The Corpus Juris Secundum (Vol. 36A page 381) attempts to define fiduciary thus :

"A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil, or Roman, law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.

The word 'fiduciary,' as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for

52

another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust, or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note."

20.3) Words and Phrases, Permanent Edition (Vol. 16A, Page 41) defines 'fiducial relation' thus :

"There is a technical distinction between a 'fiduciary relation' which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and 'confidential relation' which includes the legal relationships, and also every other relationship wherein confidence is rightly reposed and is exercised.

Generally, the term 'fiduciary' applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations."

20.4) In Bristol and West Building Society vs. Mothew [1998 Ch. 1] the term fiduciary was defined thus :

"A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty..... A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal."

53

20.5) In Wolf vs. Superior Court [2003 (107) California Appeals, 4th 25] the California Court of Appeals defined fiduciary relationship as under :

"any relationship existing between the parties to the transaction where one of the parties is duty bound to act with utmost good faith for the benefit of the other party. Such a relationship ordinarily arises where confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interests of the other party without the latter's knowledge and consent."

21. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has

to act in confidence and expected not to disclose the thing or information to any third party. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are : a partner vis-`-vis another partner and an employer vis-`-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee

54

furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer."

58. In the instant case, the RBI does not place itself in a fiduciary relationship with the Financial institutions (though, in word it puts itself to be in that position) because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other. By attaching an additional "fiduciary" label to the statutory duty, the Regulatory authorities have intentionally or unintentionally created an in terrorem effect.

59. RBI is a statutory body set up by the RBI Act as India's Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country's banking sector. Under Section 35A of the Banking Regulation Act, RBI has been given powers to issue any direction to the banks in

55

public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far-reaching statutory powers.

60. RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector

bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks.

It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein.

61. The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived. In the impugned order, the CIC has given several reasons to state why the disclosure of

56

the information sought by the respondents would hugely serve public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India. RBI's argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country's economic security would be endangered, is not only absurd but is equally misconceived and baseless.

62. The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case, the Financial institutions have an obligation to provide all the information to the RBI and such an information shared under an obligation/ duty cannot be considered to come under the

57

purview of being shared in fiduciary relationship. One of the

main characteristic of a Fiduciary relationship is "Trust and Confidence". Something that RBI and the Banks lack between them.

63. In the present case, we have to weigh between the public interest and fiduciary relationship (which is being shared between the RBI and the Banks). Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economic interests of the country? To what extent the public should be allowed to get information?

64. In the context of above questions, it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to.

58

65. And in this case the RBI and the Banks have sidestepped the General public's demand to give the requisite information on the pretext of "Fiduciary relationship" and "Economic Interest". This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their actions.

66. Furthermore, the RTI Act under Section 2(f) clearly provides that the inspection reports, documents etc. fall under the purview of "Information" which is obtained by the public authority (RBI) from a private body. Section 2(f), reads thus:

"information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

67. From reading of the above section it can be inferred that the Legislature's intent was to make available to the general public such information which had been obtained by the public authorities from the private body. Had it been the case

59

where only information related to public authorities was to be provided, the Legislature would not have included the word "private body". As in this case, the RBI is liable to provide information regarding inspection report and other documents to the general public.

68. Even if we were to consider that RBI and the Financial Institutions shared a "Fiduciary Relationship", Section 2(f) would still make the information shared between them to be accessible by the public. The facts reveal that Banks are trying to cover up their underhand actions, they are even more liable to be subjected to public scrutiny.

69. We have surmised that many Financial Institutions have resorted to such acts which are neither clean nor transparent. The RBI in association with them has been trying to cover up their acts from public scrutiny. It is the responsibility of the RBI to take rigid action against those Banks which have been practicing disreputable business practices.

60

70. From the past we have also come across financial institutions which have tried to defraud the public. These acts are neither in the best interests of the Country nor in the interests of citizens. To our surprise, the RBI as a Watch Dog should have been more dedicated towards disclosing information to the general public under the Right to Information Act.

71. We also understand that the RBI cannot be put in a fix, by making it accountable to every action taken by it. However,

in the instant case the RBI is accountable and as such it has to provide information to the information seekers under Section 10(1) of the RTI Act, which reads as under:

"Section 10(1) Severability --Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information."

72. It was also contended by learned senior counsel for the RBI that disclosure of information sought for will also go

61

against the economic interest of the nation. The submission is wholly misconceived.

73. Economic interest of a nation in most common parlance are the goals which a nation wants to attain to fulfil its national objectives. It is the part of our national interest, meaning thereby national interest can't be seen with the spectacles(glasses) devoid of economic interest.

74. It includes in its ambit a wide range of economic transactions or economic activities necessary and beneficial to attain the goals of a nation, which definitely includes as an objective economic empowerment of its citizens. It has been recognized and understood without any doubt now that one of the tool to attain this goal is to make information available to people. Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better which as stated above also includes its

62

economic interests. Recognizing the significance of this tool it has not only been made one of the fundamental rights under Article 19 of the Constitution but also a Central Act has been

brought into effect on 12th October 2005 as the Right to Information Act, 2005.

75. The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy.

76. But neither the Fundamental Rights nor the Right to Information have been provided in absolute terms. The fundamental rights guaranteed under Article 19 Clause 1(a) are restricted under Article 19 clause 2 on the grounds of national and societal interest. Similarly Section 8, clause 1 of Right to Information Act, 2005, contains the exemption provisions where right to information can be denied to public in the name of national security and sovereignty, national

63

economic interests, relations with foreign states etc. Thus, not all the information that the Government generates will or shall be given out to the public. It is true that gone are the days of closed doors policy making and they are not acceptable also but it is equally true that there are some information which if published or released publicly, they might actually cause more harm than good to our national interest... if not domestically it can make the national interests vulnerable internationally and it is more so possible with the dividing line between national and international boundaries getting blurred in this age of rapid advancement of science and technology and global economy. It has to be understood that rights can be enjoyed without any inhibition only when they are nurtured within protective boundaries. Any excessive use of these rights which may lead to tampering these boundaries will not further the national interest. And when it comes to national economic interest, disclosure of information about currency or exchange

rates, interest rates, taxes, the regulation or supervision of banking, insurance and other financial institutions, proposals

64

for expenditure or borrowing and foreign investment could in some cases harm the national economy, particularly if released prematurely. However, lower level economic and financial information, like contracts and departmental budgets should not be withheld under this exemption. This makes it necessary to think when or at what stage an information is to be provided i.e., the appropriate time of providing the information which will depend on nature of information sought for and the consequences it will lead to after coming in public domain.

77. In one of the case, the respondent S.S. Vohra sought certain information in relation to the Patna Branch of ICICI Bank and advisory issued to the Hong Kong Branch of ICICI Bank. The contention of the respondent was that the Finance Minister had made a written statement on the floor of the House on 24.07.2009 that some banks like SBI, ICICI, Bank of Baroda, Dena Bank etc., were violating FEMA Guidelines for opening of accounts and categorically mentioned that the Patna Branch of ICICI Bank Ltd. had opened some fictitious

65

accounts which were opened by fraudsters and hence an advisory note was issued to the concerned branch on December 2007 for its irregularities. The Finance Minister even mentioned that in the year 2008 the ICICI Bank Ltd. was also warned for alleged irregular dealings in securities in Hong Kong. Hence, the respondent sought such advisory note as issued by the RBI to ICICI Bank. The Central Information Commissioner in the impugned order considered the RBI Master Circular dated 01.07.2009 to all the commercial banks giving various directions and finally held as under :-

"It has been contended by the Counsel on behalf of the ICICI Bank Limited that an advisory note is prepared after reliance on documents such as Inspection Reports,

Scrutiny reports etc. and hence, will contain the contents of those documents too which are otherwise exempt from disclosure. We have already expressed our view in express terms that whether or not an Advisory Note shall be disclosed under the RTI Act will have to be determined on case by case basis. In some other case, for example, there may be a situation where some contents of the Advisory Note may have to be severed to such an extent that details of Inspection Reports etc. can be separated from the Note and then be provided to the RTI Applicant. Section 10 of the RTI Act leaves it open to decide each case on its merits after having satisfied ourselves whether an Advisory Note needs to be provided as it is or whether some of its contents may be severed since they may be exempted per se under the RTI Act. However, we find no reason, whatsoever, to apply Section 10 of the RTI Act in order to sever the contents of the Advisory Note issued by the RBI to the ICICI Bank Limited as the matter has already been placed on the floor of the Lok Sabha by the Hon'ble Finance Minister.

66

This is a matter of concern since it involves the violation of policy Guidelines initiated by the RBI and affects the public at large. Transparency cannot be brought overnight in any system and one can hope to witness accountability in a system only when its end users are well-educated, well-informed and well-aware. If the customers of commercial banks will remain oblivious to the violations of RBI Guidelines and standards which such banks regularly commit, then eventually the whole financial system of the country would be at a monumental loss. This can only be prevented by suo motu disclosure of such information as the penalty orders are already in public domain."

78. Similarly, in another case the respondent Jayantilal N. Mistry sought information from the CPIO, RBI in respect of a Cooperative Bank viz. Saraspur Nagrik Sahkari Bank Limited related to inspection report, which was denied by the CPIO on the ground that the information contained therein were received by RBI in a fiduciary capacity and are exempt under Section 8(1)(e) of RTI Act. The CIC directed the petitioner to furnish that information since the RBI expressed their willingness to disclose a summary of substantive part of the inspection report to the respondent.

While disposing of the

appeal the CIC observed:-

"Before parting with this appeal, we would like to record our observations that in a rapidly unfolding economics scenario, there are public institutions, both in the banking and non-banking sector, whose activities have not served public interest. On the

67

contrary, some such institutions may have attempted to defraud the public of their moneys kept with such

institutions in trust. RBI being the Central Bank is one of the instrumentalities available to the public which as a regulator can inspect such institutions and initiate remedial measures where necessary. It is important that the general public, particularly, the share holders and the depositors of such institutions are kept aware of RBI's appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases. This will serve the public interest. The RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the RTI Act, in particular. The provisions of Section 10(1) of the RTI Act can therefore be judiciously used when necessary to adhere to this objective."

79. In another case, where the respondent P.P. Kapoor sought information inter alia about the details of default in loans taken from public sector banks by industrialists, out of the list of defaulters, top 100 defaulters, names of the businessmen, firm name, principal amount, interest amount, date of default and date of availing the loan etc. The said information was denied by the CPIO mainly on the basis that it was held in fiduciary capacity and was exempt from disclosure of such information. Allowing the appeal, the CIC directed for the disclosure of such information. The CIC in the impugned order has rightly observed as under:-

68

"I wish government and its instrumentalities would remember that all information held by them is owned by citizens, who are sovereign. Further, it is often seen that banks and financial institutions continue to provide loans to industrialists despite their default in repayment of an earlier loan." This Court in UP Financial Corporation vs. Gem Cap India Pvt. Ltd., AIR 1993 SC 1435 has noted that :

"Promoting industrialization at the cost of public funds does not serve the public interest, it merely amounts to transferring public money to private account'. Such practices have led citizens to believe that defaulters can get away and play fraud on public funds. There is no doubt that information regarding top industrialists who have defaulted in repayment of loans must be brought to citizens' knowledge; there is certainly a larger public interest that could be served on ....disclosure of the same. In fact, information about industrialists who are loan defaulters of the country may put pressure on such persons to pay their dues. This would have the impact of alerting Citizens about those who are defaulting in payments and

could also have some impact in shaming them.

RBI had by its Circular DBOD No. BC/CIS/47/20.16.002/94 dated April 23, 1994 directed all banks to send a report on their defaulters, which it would share with all banks and financial institutions, with the following objectives:

- 1) To alert banks and financial institutions (FIs) and to put them on guard against borrowers who have defaulted in their dues to lending institutions;
- 2) To make public the names of the borrowers who have defaulted and against whom suits have been filed by banks/ FIs."

69

80. At this juncture, we may refer the decision of this Court in Mardia Chemicals Limited vs. Union of India, (2004) 4 SCC 311, wherein this court while considering the validity of SARFAESI Act and recovery of non-performing assets by banks and financial institutions in India, held :-

".....it may be observed that though the transaction may have a character of a private contract yet the question of great importance behind such transactions as a whole having far reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions more particularly when financing is through banks and financial institutions utilizing the money of the people in general namely, the depositors in the banks and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio-economic drive of the country....."

81. In rest of the cases the CIC has considered elaborately the information sought for and passed orders which in our opinion do not suffer from any error of law, irrationality or arbitrariness.

70

82. We have, therefore, given our anxious consideration to the matter and came to the conclusion that the Central Information Commissioner has passed the impugned orders

giving valid reasons and the said orders, therefore, need no interference by this Court.

83. There is no merit in all these cases and hence they are dismissed.

..... J.  
(M.Y. Eqbal)

.....J.  
(C. Nagappan )

New Delhi  
December 16, 2015

Transfer Case (Civil) No.91/2015 @ T.P.(C) No.707/2012

RESERVE BANK OF INDIA Petitioner(s)

## VERSUS

JAYANTILAL N. MISTRY Respondent(s))

WITH T.C. (C) No. 92/2015 @ T.P. (C) No. 708/2012  
T.C. (C) No. 93/2015 @ T.P. (C) No. 711/2012  
T.C. (C) No. 94/2015 @ T.P. (C) No. 712/2012  
T.C. (C) No. 95/2015 @ T.P. (C) No. 713/2012  
T.C. (C) No. 96/2015 @ T.P. (C) No. 715/2012  
T.C. (C) No. 97/2015 @ T.P. (C) No. 716/2012  
T.C. (C) No. 98/2015 @ T.P. (C) No. 717/2012  
T.C. (C) No. 99/2015 @ T.P. (C) No. 718/2012  
T.C. (C) No. 100/2015 @ T.P. (C) No. 709/2012  
T.C. (C) No. 101/2015 @ T.P. (C) No. 714/2012

Date : 16/12/2015 These Cases were called on for pronouncement of Judgment today.

For Petitioner(s) Mr. T. R. Andhyarujina, Sr. Adv.  
Mr. Kuldeep S. Parihar, Adv.  
Mr. H. S. Parihar, Adv.  
Mr. Soumik Gitosal, Adv.  
Mr. Siddharth Sijoria, Adv.

Mr. P. Narasimhan, Adv.

Mr. Bharat Sangal, Adv.

For Respondent(s) Dr. Lalit Bhasin, Adv.  
Ms. Nina Gupta, Adv.  
Mr. Mudit Sharma, Adv.

Mr. H. S. Parihar,Adv.

Ms. Jyoti Mendiratta,Adv.

Mr. K.R. Anand, Adv.  
Mr. Vivek Gupta,Adv.

Ms. Manisha T. Karia,Adv.  
Ms. Srishti Rani, Adv.

Mr. Rakesh K. Sharma,Adv.

Mr. Amol B. Karande, Adv.

Hon'ble Mr. Justice M. Y. Eqbal pronounced the reportable Judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice C. Nagappan.

These transferred Cases are dismissed in terms of the signed reportable judgment.

(Sanjay Kumar-II) (Indu Pokhriyal)  
Court Master Court Master  
(Signed Order is placed on the file)

**'REPORTABLE'**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL Nos.823-854 OF 2016**

(Arising out of SLP (C) Nos. 15919- 15950 of 2011)

Kerala Public Service Commission & Ors. ....Appellants

Versus

The State Information Commission & Anr. ....Respondents

**With**

**CIVIL APPEAL NO.855 OF 2016**

(Arising out of SLP (Civil) No.5433 of 2014)

Public Service Commission U.P. ....Appellant

Versus

Raghvendra Singh .. Respondent

**JUDGMENT**

**M.Y. EQBAL, J.**

Leave granted.

2. In these two appeals the short question which needs consideration is as to whether the Division Bench of the Kerala High Court by impugned judgment has rightly held that the respondents are entitled not only to get information with regard to the scan copies of their answer sheet,

tabulation-sheet containing interview marks but also entitled to know the names of the examiners who have evaluated the answer sheet.

3. The information sought for by the respondents were denied by the State Public Information Officer and the Appellate Authority. However, the State Information Commission allowed the second appeal and held that there is no fiduciary relationship in case of answer scripts. Further, the interview marks cannot be considered as personal information, since the public authority had already decided to publish them.

4. Both the High Courts of Kerala and Allahabad have taken the view, following the earlier decisions of this Court that no fiduciary relationship exists between the appellants and the respondents and, therefore, the information sought for have to be supplied to them.

5. We have heard learned counsel for the parties and have gone through the impugned judgments passed by the

Division Bench of the High Court of Kerala at Ernakulam and Allahabad.

6. So far as the information sought for by the respondents with regard to the supply of scanned copies of his answer-sheet of the written test, copy of the tabulation sheet and other information, we are of the opinion that the view taken in the impugned judgment with regard to the disclosure of these information, do not suffer from error of law and the same is fully justified. However, the view of the Kerala High Court is that the information seekers are also entitled to get the disclosure of names of examiners who have evaluated the answer-sheet.

7. The view taken by the Kerala High Court holding that no fiduciary relationship exists between the University and the Commission and the examiners appointed by them cannot be sustained in law. The Kerala High Court while observing held:-

“16.What, if any , is the fiduciary relationship of the PSC qua the examinees? Performance audit of constitutional institutions would only

strengthen the confidence of the citizenry in such institutions. The PSC is a constitutional institution. To stand above board, is one of its own prime requirements. There is nothing that should deter disclosure of the contents of the materials that the examinees provide as part of their performance in the competition for being selected to public service. The confidence that may be reposed by the examinees in the institution of the PSC does not inspire the acceptability of a fiduciary relationship that should kindle the exclusion of information in relation to the evaluation or other details relating to the examination. Once the evaluation is over and results are declared, no more secrecy is called for. Dissemination of such information would only add to the credibility of the PSC, in the constitutional conspectus in which it is placed. A particular examinee would therefore be entitled to access to information in relation to that person's answer scripts. As regards others, information in relation to answer scripts may fall within the pale of "third party information" in terms of section 11 of the RTI Act. This only means that such information cannot be accessed except in conformity with the provisions contained in section 11. It does not, in any manner, provide for any immunity from access.

17. We shall now examine the next contention of PSC that there is a fiduciary relationship between it and the examiners and as a consequence, it is eligible to claim protection from disclosure, except with the sanction of the competent authority, as regards the identity of the examiners as also the materials that were subjected to the examination. We have already approved TREESA and the different precedents and commentaries relied on therein as regards the concept of fiduciary relationship. We are in full agreement with the law laid by the Division Bench of this Court in Centre of Earth Science

Studies (supra), that S.8 (1)(e) deals with information available with the person in his fiduciary relationship with another; that information under this head is nothing but information in trust, which, but for the relationship would not have been conveyed or known to the person concerned. What is it that the PSC holds in trust for the examiners? Nothing. At the best, it could be pointed out that the identity of the examiners has to be insulated from public gaze, having regard to issues relatable to vulnerability and exposure to corruption if the identities of the examiners are disclosed in advance. But, at any rate, such issues would go to oblivion after the conclusion of the evaluation of the answer scripts and the publication of the results. Therefore, it would not be in public interest to hold that there could be a continued secrecy even as regards the identity of the examiners. Access to such information, including as to the identity of the examiners, after the examination and evaluation process are over, cannot be shied off under any law or avowed principle of privacy."

8. We do not find any substance in the reasoning given by the Kerala High Court on the question of disclosure of names of the examiners.

9. In the present case, the PSC has taken upon itself in appointing the examiners to evaluate the answer papers and as such, the PSC and examiners stand in a principal-agent relationship. Here the PSC in the shoes of a Principal

has entrusted the task of evaluating the answer papers to the Examiners. Consequently, Examiners in the position of agents are bound to evaluate the answer papers as per the instructions given by the PSC. As a result, a fiduciary relationship is established between the PSC and the Examiners. Therefore, any information shared between them is not liable to be disclosed. Furthermore, the information seeker has no role to play in this and we don't see any logical reason as to how this will benefit him or the public at large. We would like to point out that the disclosure of the identity of Examiners is in the least interest of the general public and also any attempt to reveal the examiner's identity will give rise to dire consequences. Therefore, in our considered opinion revealing examiner's identity will only lead to confusion and public unrest. Hence, we are not inclined to agree with the decision of the Kerala High Court with respect to the second question.

10. In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the competitive exams, but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the Examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the Examiners have faith that

they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further, create a situation where the potential candidates in the next similar exam, especially in the same state or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam.

11. We, therefore, allow these appeals in part and modify the judgment only to the extent that the respondents-applicants are not entitled to the disclosure of names of the examiners as sought for by them.

.....J.  
**(M.Y. Eqbal)**

.....J.  
**(Arun Mishra)**

New Delhi  
February 4, 2016

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO.4913 OF 2016  
(Arising out of S.L.P. (Civil) NO.1257 OF 2010)

Nisha Priya Bhatia .....Appellant

versus

Ajit Seth & Ors. .....Respondents

**JUDGMENT**

**Madan B. Lokur, J.**

1. Leave granted.
2. The appellant is aggrieved by the judgment and order dated 12<sup>th</sup> November, 2009 passed by the Delhi High Court in Contempt Case (C) No.449 of 2009. By the impugned judgment and order, the High Court held that the respondents had not committed any violation of the order dated 12<sup>th</sup> November, 2008 passed in W.P.
3. In W.P. (C) No.7971 of 2008 the appellant had made several prayers but during the course of hearing in the High Court, five of the prayers were not pressed with liberty to take appropriate proceedings in accordance with law. The sixth prayer which was pressed related to respondent No.2 (Ashok Chaturvedi). It was prayed that he should be asked to proceed on leave pending the independent C.A.4913/2016 (@ SLP (C) No.1257/2010)

enquiry into the appellant's complaint of sexual harassment so that this respondent could not use his power and authority to influence any independent enquiry. As will be evident from the prayer, the enquiry relating to the allegation of sexual harassment made by the appellant was already pending. In the order dated 12th November, 2008 a direction was given by the High Court to expeditiously conclude the enquiry.

4. A few brief facts are necessary for a proper appreciation of the controversy before us.

5. The appellant had complained of sexual harassment by her senior Sunil Uke, Joint Secretary in the department and Ashok Chaturvedi. The allegation of sexual harassment by Sunil Uke was looked into by a Committee constituted for this purpose. The Committee gave its Report on 19<sup>th</sup> May, 2008.

6. A separate enquiry was held by a separate Committee into the allegation of sexual harassment by Ashok Chaturvedi. This Committee gave its Report on 23<sup>rd</sup>

7. In the Contempt Petition filed by the appellant in the Delhi High Court, it was brought out that the Committee inquiring into the allegation against Ashok Chaturvedi had since given its Report. It appears that pursuant to the Report an order dated 22<sup>nd</sup> September, 2009 was passed against the appellant but she disputed that this order was based on the Report. In any event, we are not concerned with

the order dated 22<sup>nd</sup> September, 2009 except to say that it noted that the appellant's disciplinary authority had considered both Reports and had approved the conclusion that there was not enough evidence to take action against Sunil Uke or Ashok Chaturvedi.

8. Be that as it may, the controversy that arose during the pendency of the proceedings in the High Court and in this Court related to the entitlement of the appellant to a copy of the Report dated 23<sup>rd</sup> January, 2009. The High Court did not pass any substantive order relating to furnishing that Report to the appellant.

9. At this stage, it may be noted that on 7th July, 2014 this Court recorded that Ashok Chaturvedi had since passed away.

10. With respect to furnishing the Report dated 23<sup>rd</sup> January, 2009 an affidavit has been filed on behalf of the Union of India claiming privilege under Sections 123 and 124 of the Evidence Act. We have been taken through the affidavit dated 22<sup>nd</sup> July, 2010 and all that the affidavit says is that disclosure of the contents of the Report would be against national interest and would compromise national security. Apparently, this is only because the appellant happens to belong to the highly sensitive organization which is entrusted with the delicate job of collecting and analyzing intelligence inputs necessary to maintain the unity, integrity and sovereignty of the country.

11. Both the Reports and the accompanying documents have been filed by the

Union of India in a sealed cover in this Court.

12. We have gone through both the Reports and the accompanying documents and find absolutely nothing therein which could suggest that there is any threat to the integrity of the country or anything contained therein would be detrimental to the interests of the country. We had also specifically asked the learned Additional Solicitor General to tell us exactly what portion of the Reports and the documents would be detrimental to the interests of the country but nothing could be pointed out during the hearing.

13. We find it very odd that in a matter of an enquiry in respect of an allegation of sexual harassment, the Union of India should claim privilege under Sections 123 and 124 of the Evidence Act. The contents of Reports alleging sexual harassment can hardly relate to affairs of State or anything concerning national security. In any event, absolutely nothing has been shown to us to warrant withholding the Reports and the documents from the appellant in relation to the enquiry of allegations of sexual harassment made by the appellant against Sunil Uke and Ashok Chaturvedi.

14. The Report relating to allegations of sexual harassment made by the appellant against Sunil Uke is not the subject matter of any dispute of controversy before us. However, since that Report has also been filed in this Court in a sealed cover, we did go through it and find nothing in the Report that would require it to

be withheld from the appellant on any ground whatsoever.

15. We accordingly dispose of this appeal by holding that the appellant is entitled to the Reports in respect of the allegations made by her of sexual harassment by Sunil Uke and Ashok Chaturvedi and that none of the respondents have committed any contempt of court. In any case Ashok Chaturvedi has since passed away.

16. While going through the Report dated 19<sup>th</sup> May, 2008 we found that by mistake one or two pages of the deposition marked as Annexure Q-2 and Annexure Q-5 of the witnesses were not photocopied. Similarly, the CD containing the deposition of 6 officers/staff on 22<sup>nd</sup> April, 2008 has not been filed nor has the CD containing the deposition of Sunil Uke been filed in the sealed cover, perhaps to prevent damage to the CD.

17. We direct the Court Master to handover to the appellant the Report and documents pertaining to the enquiry in relation to the allegations made by the appellant against Sunil Uke and against Ashok Chaturvedi and which have been filed in this Court in a sealed cover.

18. We direct the Union of India to supply to the appellant the missing pages of the deposition marked as Annexure Q-2 and Annexure Q-5 of the witnesses as well as the CD containing the deposition of six officers/staff recorded on 22<sup>nd</sup> April, 2008 and the CD containing the deposition of Sunil Uke. The needful be done

within one week from today.

19. With the above directions the appeal is disposed of.

.....J  
**( Madan B. Lokur)**

New Delhi;  
May 6, 2016

.....J  
**( N.V. Ramana )**

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No.22 OF 2009**

Canara Bank Rep. by  
its Deputy Gen. Manager ....Appellant(s)

**VERSUS**

C.S. Shyam & Anr. ...Respondent(s)

**JUDGMENT**

**Abhay Manohar Sapre, J.**

1) This appeal is filed against the final judgment and order dated 20.09.2007 passed by the High Court of Kerala at Ernakulam in Writ Appeal No. 2100 of 2007 whereby the High Court disposed of the writ appeal filed by the appellant herein and upheld the judgment passed by the Single Judge dismissing the writ petition filed by the appellant

herein challenging the order of the Central Information Commission holding that the appellant must provide the information sought by respondent No.1 herein under the Right to Information Act, 2005 (hereinafter referred to as "the Act").

2) Few relevant facts need mention to appreciate the controversy involved in appeal.

3) The appellant herein is a nationalized Bank. It has a branch in District Malappuram in the State of Kerala. Respondent No. 1, at the relevant time, was working in the said Branch as a clerical staff.

4) On 01.08.2006, respondent No.1 submitted an application to the Public Information Officer of the appellant-Bank under Section 6 of the Act and sought information regarding transfer and posting of the entire clerical staff from 01.01.2002 to 31.07.2006 in all the branches of the appellant-Bank.

5) The information was sought on 15 parameters with regard to various aspects of transfers of clerical staff and staff of the Bank with regard to individual employees. This information was in relation to the personal details of individual employee such as the date of his/her joining, designation, details of promotion earned, date of his/her joining to the Branch where he/she is posted, the authorities who issued the transfer orders etc. etc.

6) On 29.08.2006, the Public Information Officer of the Bank expressed his inability to furnish the details sought by respondent No. 1 as, in his view, firstly, the information sought was protected from being disclosed under Section 8(1)(j) of the Act and secondly, it had no nexus with any public interest or activity.

7) Respondent No.1, felt aggrieved, filed appeal before the Chief Public Information Officer. By

order dated 30.09.2006, the Chief Public Information Officer agreeing with the view taken by the Public Information Officer dismissed the appeal and affirmed the order of the Public Information Officer.

8) Felt aggrieved, respondent No.1 carried the matter in further appeal before the Central Information Commission. By order dated 26.02.2007, the appeal was allowed and accordingly directions were issued to the Bank to furnish the information sought by respondent No.1 in his application.

9) Against the said order, the appellant-Bank filed writ petition before the High Court. The Single Judge of the High Court dismissed the writ petition filed by the appellant-Bank. Challenging the said order, the appellant-Bank filed writ appeal before the High Court.

10) By impugned order, the Division Bench of the High Court dismissed the appellant's writ appeal and affirmed the order of the Central Information Commission, which has given rise to filing of this appeal.

11) Having heard the learned counsel for the appellant and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned order and dismiss the application submitted by the 1<sup>st</sup> respondent under Section 6 of the Act.

12) In our considered opinion, the issue involved herein remains no more *res integra* and stands settled by two decisions of this Court in **Girish Ramchandra Deshpande vs. Central Information Commissioner & Ors.**, (2013) 1 SCC 212 and **R.K. Jain vs. Union of India & Anr.**, (2013) 14 SCC 794,

it may not be necessary to re-examine any legal issue urged in this appeal.

13) In **Girish Ramchandra Deshpande's case** (supra), the petitioner therein (Girish) had sought some personal information of one employee working in Sub Regional Office (provident fund) Akola. All the authorities, exercising their respective powers under the Act, declined the prayer for furnishing the information sought by the petitioner. The High Court in writ petition filed by the petitioner upheld the orders. Aggrieved by all the order, he filed special leave to appeal in this Court. Their Lordships dismissed the appeal and upholding the orders passed by the High Court held as under:-

**"12. 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 organisation 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 or 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.

13. The details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.”

- 14) In our considered opinion, the aforementioned principle of law applies to the facts of this case on all force. It is for the reasons that, firstly, the information sought by respondent No.1 of individual employees working in the Bank was personal in nature; secondly, it was exempted from being

disclosed under Section 8(j) of the Act and lastly, neither respondent No.1 disclosed any public interest much less larger public interest involved in seeking such information of the individual employee and nor any finding was recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to respondent No.1.

15) It is for these reasons, we are of the considered view that the application made by respondent No.1 under Section 6 of the Act was wholly misconceived and was, therefore, rightly rejected by the Public Information Officer and Chief Public Information Officer whereas wrongly allowed by the Central Information Commission and the High Court.

16) In this view of the matter, we allow the appeal, set aside the order of the High Court and Central Information Commission and restore the orders

passed by the Public Information Officer and the Chief Public Information Officer. As a result, the application submitted by respondent No.1 to the appellant-Bank dated 01.08.2006 (Annexure-P-1) stands rejected.

.....J.  
[R.K. AGRAWAL]

.....J.  
[ABHAY MANOHAR SAPRE]

New Delhi;  
August 31, 2017

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.(s) .6159-6162 OF 2013

UNION PUBLIC SERVICE COMMISSION ETC.

Appellant(s)

VERSUS

ANGESH KUMAR & ORS. ETC.

Respondent(s)

WITH

C.A. No. 5924/2013

JOINT DIRECTORS AND CENTRAL PUBLIC

INFORMATION OFFICER AND ANR.

Appellant(s)

VERSUS

T.R. RAJESH

Respondent(s)

AND

SLP (C) No. 28817/2014

SLP (C) No. 28801/2014

SLP (C) No. 28811/2014

SLP (C) No. 28816/2014

SLP (C) No. 28805/2014

SLP (C) No. .... of 2018 (@Diary No(s) . 15951/2017)

**O R D E R**

Civil Appeal No(s) .6159-6162 of 2013 :

(1) We have heard learned counsel for the parties and perused the record.

(2) These appeals have been preferred against judgment and Order dated 13.7.2012 in LPA NO.229 of

2011 in W.P. (C) NO.3316 of 2011, 28.08.2012 in Review Petition NO.486 of 2012 in LPA NO.229/2011 and Review Petition NO.484 of 2012 in W.P. (C) NO.3316/2011 of the High Court of Delhi at New Delhi.

(3) The respondents-writ petitioners were unsuccessful candidates in the Civil Services (Preliminary) Examination, 2010. They approached the High Court for a direction to the Union Public Service Commission (UPSC) to disclose the details of marks (raw and scaled) awarded to them in the Civil Services (Prelims) Examination 2010. The information in the form of cut-off marks for every subject, scaling methodology, model answers and complete result of all candidates were also sought. Learned Single Judge directed that the information sought be provided within fifteen days. The said view of the Single Judge has been affirmed by the Division Bench of the High Court.

(4) The main contention in support of these appeals is that the High Court has not correctly appreciated the scheme of the Right to Information Act, 2005 (the Act) and the binding decisions of this Court.

(5) It is submitted that though Sections 3 and 6 of the Act confer right to information (apart from statutory obligation to provide specified information under Section 4), Sections 8, 9 and 11 provide for exemption from giving of information as stipulated therein. The exclusion by Sections 8, 9 and 11 is not exhaustive and parameters under third recital of the preamble of the Act can also be taken into account. Where information is likely to conflict with other public interest, including efficient operation of the Government, optimum use of fiscal resources and preservation of confidentiality of some sensitive information, exclusion of right or information can be applied in a given fact situation.

(6) In support of this submission, reliance has been placed on judgment of this Court in Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay and Ors., (2011) 8 SCC 497 wherein this Court observed :

"**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 fulfilment and preservation of democratic ideals.

**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 visualise 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.**

**66.** 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 the RTI Act should be 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, information other than those enumerated in Sections 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.).

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 be 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, tranquillity 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 prioritising "information furnishing", at the cost of their normal and regular duties."

(emphasis added)

(7) Thus, it is clear that in interpreting the scheme of the Act, this Court has, while adopting purposive interpretation, read inherent limitation in Sections 3 and 6 based on the Third Recital in the Preamble to the Act. While balancing the right to information, public interest including efficient

working of the Government, optimum use of fiscal resources and preservation of confidentiality of sensitive information has to be balanced and can be a guiding factor to deal with a given situation *de hors* Sections 8,9 and 11. The High Court has not applied the said parameters.

(8) The problems in showing evaluated answer sheets in the UPSC Civil Services Examination are recorded in Prashant Ramesh Chakkarwar v. UPSC . From the counter affidavit in the said case, following extract was referred to :

"(B) Problems in showing evaluated answer books to candidates.—(i) Final awards subsume earlier stages of evaluation. Disclosing answer books would reveal intermediate stages too, including the so-called 'raw marks' which would have negative implications for the integrity of the examination system, as detailed in Section (C) below.

(ii) The evaluation process involves several stages. Awards assigned initially by an examiner can be struck out and revised due to (a) totalling mistakes, portions unevaluated, extra attempts (beyond prescribed number) being later corrected as a result of clerical scrutiny, ( b) The examiner changing his own awards during the course of evaluation either because he/she marked it differently initially due to an inadvertent error or because he/she corrected himself/herself to be more in conformity with the accepted standards, after discussion with Head Examiner/colleague examiners, ( c) Initial awards of the Additional Examiner being revised by the Head Examiner during the latter's check of the former's work, (d) the Additional Examiner's work having been found erratic by the Head Examiner, been rechecked entirely by another examiner, with or without the Head

Examiner again rechecking this work.

(iii) The corrections made in the answer book would likely arouse doubt and perhaps even suspicion in the candidate's mind. Where such corrections lead to a lowering of earlier awards, this would not only breed representations/grievances, but would likely lead to litigation. In the only evaluated answer book that has so far been shown to a candidate (Shri Gaurav Gupta in WP No. 3683 of 2012 in Gaurav Gupta v. UPSC dated 6.7.2012(Del.)) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh WP alleging improper evaluation.

(iv) As relative merit and not absolute merit is the criterion here (unlike academic examinations), a feeling of the initial marks/revision made being considered harsh when looking at the particular answer script in isolation could arise without appreciating that similar standards have been applied to all others in the field. Non-appreciation of this would lead to erosion of faith and credibility in the system and challenges to the integrity of the system, including through litigation.

(v) With the disclosure of evaluated answer books, the danger of coaching institutes collecting copies of these from candidates (after perhaps encouraging/inducing them to apply for copies of their answer books under the RTI Act) is real, with all its attendant implications.

(vi) With disclosure of answer books to candidates, it is likely that at least some of the relevant examiners also get access to these. Their possible resentment at their initial awards (that they would probably recognise from the fictitious code numbers and/or their markings, especially for low-candidature subjects) having been superseded (either due to inter-examiner or inter-subject moderation) would lead to bad blood between Additional Examiners and the Head Examiner on the one hand, and between examiners and the Commission, on the other hand. The free and frank manner in which Head Examiners, for instance, review the work of their colleague Additional Examiners, would likely be impacted. Quality of assessment standards would suffer.

(vii) Some of the optional papers have very low candidature (sometimes only one), especially the

literature papers. Even if all examiners' initials are masked (which too is difficult logistically, as each answer book has several pages, and examiners often record their initials and comments on several pages with revisions/corrections, where done, adding to the size of the problem), the way marks are awarded could itself be a give away in revealing the examiner's identity. If the masking falters at any stage, then the examiner's identity is pitilessly exposed. The 'catchment area' of candidates and examiners in some of these low-candidature papers is known to be limited. Any such possibility of the examiner's identity getting revealed in such a high-stakes examination would have serious implications, both for the integrity and fairness of the examination system and for the security and safety of the examiner. The matter is compounded by the fact that we have publicly stated in different contexts earlier that the paper-setter is also generally the Head Examiner.

(viii) UPSC is now able to get some of the best teachers and scholars in the country to be associated in its evaluation work. An important reason for this is no doubt the assurance of their anonymity, for which the Commission goes to great lengths. Once disclosure of answer books starts and the inevitable challenges (including litigation) from disappointed candidates starts, it is only a matter of time before these examiners who would be called upon to explain their assessment/award, decline to accept further assignments from the Commission. A resultant corollary would be that examiners who then accept this assignment would be sorely tempted to play safe in their marking, neither awarding outstanding marks nor very low marks, even where these are deserved. Mediocrity would reign supreme and not only the prestige, but the very integrity of the system would be compromised markedly."

**(9) This Court thereafter approved the method of moderation adopted by the UPSC relying upon earlier judgment in Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 and U.P. Public Service Commission v. Subhash Chandra Dixit, (2003) 12 SCC 701.**

(10) Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation. If rules or practice so require, certainly such rule or practice can be enforced. In the present case, direction has been issued without considering these parameters.

(11) In view of the above, the impugned order(s) is set aside and the writ petitions filed by the writ petitioners are dismissed. This order will not debar the respondents from making out a case on above

parameters and approach the appropriate forum, if so advised.

(12) The appeals are accordingly disposed of.

**Civil Appeal No. 5924 of 2013:**

(1) In view of judgment rendered today in Civil Appeal No(s). 6159-6162 of 2013, the impugned order is set aside. The appeal stands disposed of in the same terms.

**SLP(C) No. 28817/2014, SLP(C) No. 28801/2014, SLP(C) No. 28811/2014 SLP(C) No. 28816/2014, SLP(C) No. 28805/2014, SLP(C) NO..... of 2018 (arising out of Diary No(s). 15951/2017) :**

(1) Delay condoned.

(2) In view of judgment rendered in Civil Appeal Nos. 6159-6162 of 2013, these special leave petitions are disposed of in the same terms.

.....J.  
(ADARSH KUMAR GOEL)

.....J.  
(UDAY UMESH LALIT)

New Delhi,  
February 20, 2018.

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE/ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO.194 OF 2012**

**COMMON CAUSE**

**PETITIONER(S)**

**VERSUS**

**HIGH COURT OF ALLAHABAD & ANR.**

**RESPONDENT(S)**

**WITH**

**T.C. (C) No. 129 of 2013**

**W.P. (C) No. 238 of 2014**

**T.C. (C) No. 32 of 2014**

**W.P. (C) No. 40 of 2016**

**W.P. (C) No. 205 of 2016**

**SLP(C) No. 30659 of 2017**

**O R D E R**

**W.P. (C) No.194 of 2012, W.P. (C) No. 238 of 2014, W.P. (C)  
No. 40 of 2016 & W.P. (C) No. 205 of 2016 :**

Heard learned counsel for the parties.

Challenge in these set of writ petitions is to the Rules framed under Section 28 of the Right to Information Act, 2005 (in short "the Act").

First objection of the petitioners is that the charges for the application fee and per page charges for the information supplied should be reasonable.

We are of the view that, as a normal Rule, the charge for the application should not be more than

Rs.50/- and for per page information should not be more than Rs.5/-. However, exceptional situations may be dealt with differently. This will not debar revision in future, if situation so demands.

Second objection is against requiring of disclosure of motive for seeking the information. No motive needs to be disclosed in view of the scheme of the Act.

Third objection is to the requirement, in the Allahabad High Court Rules, for permission of the Chief Justice or the Judge concerned to the disclosure of information. We make it clear that the said requirement will be only in respect of information which is exempted under the scheme of the Act.

As regards the objection that under Section 6(3) of the Act, the public authority has to transfer the application to another public authority if information is not available, the said provision should also normally be complied with except where the public authority dealing with the application is not aware as to which other authority will be the appropriate authority.

As regards Rules 25 to 27 of the Allahabad High Court Rules which debar giving of information with regard to the matters pending adjudication, it is clarified that the same may be read consistent with Section 8 of the Act, more particularly sub-section (1)

in Clause (J) thereof.

Wherever rules do not comply with the above observations, the same be revisited as our observations are based on mandate of the Act which must be complied with.

The writ petitions are disposed of in above terms.

SLP(C) No. 30659/2017 :

In view of order passed in W.P.(C) No.194 of 2012, the special leave petition is disposed of.

The award of cost imposed by the High Court is set aside.

T.C. (C) No. 129/2013 & T.C. (C) No. 32/2014

In view of order passed in W.P.(C) No.194 of 2012, the transfer cases are disposed of.

.....J.  
[ADARSH KUMAR GOEL]

.....J.  
[UDAY UMESH LALIT]

NEW DELHI  
20<sup>th</sup> March, 2018

R E V I S E D

ITEM NO.15                          COURT NO.11                          SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Writ Petition(s) (Civil) No(s). 194/2012

COMMON CAUSE

**Petitioner(s)**

## VERSUS

**HIGH COURT OF ALLAHABAD & ANR.**

### **Respondent(s)**

WITH

T.C. (C) No. 129/2013 (XVI-A)

W.P. (C) No. 238/2014 (X)

T.C. (C) No. 32/2014 (XVI-A)

W.P. (C) No. 40/2016 (X)

W.P. (C) No. 205/2016 (X)

**SLP(C) No. 30659/2017 (IV-A)**

(IA No.107165/2017-CONDONATION OF DELAY IN FILING and  
IA No.107169/2017-EXEMPTION FROM FILING O.T.)

Date : 20-03-2018 These matters were called on for hearing today.

**CORAM :**

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL  
HON'BLE MR. JUSTICE UDAY UMESH LALIT

**For Petitioner(s)** Mr. Prashant Bhushan, AOR  
Ms. Neha Rathi, Adv.  
Mr. Paranal, Adv.

**Mr. Sunil Kishore Ahya,  
Petitioner-in-person**

**Mr. E. C. Agrawala, AOR**

**Mr. M. Yogesh Kanna, AOR**

**For Respondent(s)** Mr. Raghavendra S. Srivatsa, AOR  
Mr. Venkita Subramoniam T.R., Adv.  
Mr. Rahat Bansal, Adv.  
Mr. Amit A. Pai, Adv.  
Mr. Goutham Shivshankar, Adv.

Mr. Abhinav Mukerji, AOR  
 Mrs. Bihu Sharma, Adv.  
 Ms. Purnima Krishna, Adv.

Mrs. D. Bharathi Reddy, AOR  
 Ms. Rachna Gandhi, Adv.

Mr. Raja Chatterjee, Adv.  
 Ms. Runa Bhuyan, Adv.  
 Mr. Adeel Ahmed, Adv.  
 Mr. Piyush Sachdev, Adv.  
 Mr. Satish Kumar, AOR

Mr. Aniruddha P. Mayee, AOR  
 Mr. Avnish M. Oza, Adv.  
 Mr. Chirag Jain, Adv.

Mr. Rahul Gupta, AOR

Mr. Annam D. N. Rao, AOR  
 Mr. Annam Venkatesh, Adv.  
 Mr. Sudipto Sircar, Adv.  
 Ms. Tulika Chikker, Adv.  
 Mr. Rahul Mishra, Adv.

Mr. P.H. Parekh, Sr. Adv.  
 Mr. Kshatrashal Raj, Adv.  
 Ms. Ritika Sethi, Adv.  
 Mr. Vishal Prasad, Adv.  
 Ms. Tanya Choudhary, Adv.  
 Ms. Aishwarya Dash, Adv.  
 Ms. Pratyusha Priyadarshini, Adv.  
 Ms. Ravleen Sabharwal, Adv.  
 Mr. Utkarsh Dixit, Adv.  
 Mr. Anwesha Padhi, Adv.  
 M/S. Parekh & Co., AOR

Mr. Ashok K. Srivastava, AOR

Mr. Sibo Sankar Mishra, AOR

Mr. Ashok Mathur, AOR

Mr. T. G. Narayanan Nair, AOR  
 Mr. C.N. Sreekumar, Adv.  
 Mr. Amit Sharma, Adv.

Ms. Aruna Mathur, Adv.  
 Mr. Avneesh Arputham, Adv.  
 Ms. Anuradha Arputham, Adv.  
 Ms. Simran Jeet, Adv.  
 M/S. Arputham Aruna And Co, AOR

Mr. Vijay Hansaria, Sr. Adv.  
 Mr. Shashank Mishra, Adv.  
 Mr. P.S. Chandralekha, Adv.  
 Mr. P. I. Jose, AOR

Mr. P.N. Mishra, Sr. Adv.  
 Ms. Alka Sinha, Adv.  
 Mr. Anuvrat Sharma, AOR

Ms. K. R. Chitra, AOR

UPON hearing the counsel the Court made the  
 following O R D E R

W.P. (C) No.194 of 2012, W.P. (C) No. 238 of 2014, W.P. (C)  
No. 40 of 2016 & W.P. (C) No. 205 of 2016 :

The writ petitions are disposed of in terms of  
 the signed order.

Pending applications, if any, are also stand  
 disposed of.

SLP(C) No. 30659/2017 :

Delay condoned.

The special leave petition is disposed of in  
 terms of the signed order.

Pending applications, if any, are also stand  
 disposed of.

T.C. (C) No. 129/2013 & T.C. (C) No. 32/2014

The transfer cases are disposed of in terms of  
 the signed order.

Pending applications, if any, are also stand  
 disposed of.

(SWETA DHYANI)  
 SENIOR PERSONAL ASSISTANT  
 (Signed order is placed on the file)

(SUMAN JAIN)  
 BRANCH OFFICER

ITEM NO.15

COURT NO.11

SECTION PIL-W

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**Writ Petition(s) (Civil) No(s). 194/2012**

**COMMON CAUSE**

**Petitioner(s)**

**VERSUS**

**HIGH COURT OF ALLAHABAD & ANR.**

**Respondent(s)**

**WITH**

**T.C. (C) No. 129/2013 (XVI-A)**

**W.P. (C) No. 238/2014 (X)**

**T.C. (C) No. 32/2014 (XVI-A)**

**W.P. (C) No. 40/2016 (X)**

**W.P. (C) No. 205/2016 (X)**

**SLP(C) No. 30659/2017 (IV-A)**

**(IA No.107165/2017-CONDONATION OF DELAY IN FILING and  
 IA No.107169/2017-EXEMPTION FROM FILING O.T.)**

**Date : 20-03-2018 These matters were called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE ADARSH KUMAR GOEL  
 HON'BLE MR. JUSTICE UDAY UMESH LALIT**

**For Petitioner(s) Mr. Prashant Bhushan, AOR  
 Ms. Neha Rathi, Adv.  
 Mr. Paranal, Adv.**

**Petitioner-in-person**

**Mr. E. C. Agrawala, AOR**

**Mr. M. Yogesh Kanna, AOR**

**For Respondent(s) Mr. Raghavendra S. Srivatsa, AOR  
 Mr. Venkita Subramoniam T.R., Adv.  
 Mr. Rahat Bansal, Adv.  
 Mr. Amit A. Pai, Adv.  
 Mr. Goutham Shivshankar, Adv.**

**Mr. Abhinav Mukerji, AOR**

Mrs. Bihu Sharma, Adv.  
 Ms. Purnima Krishna, Adv.

Mrs. D. Bharathi Reddy, AOR  
 Ms. Rachna Gandhi, Adv.

Mr. Raja Chatterjee, Adv.  
 Ms. Runa Bhuyan, Adv.  
 Mr. Adeel Ahmed, Adv.  
 Mr. Piyush Sachdev, Adv.  
 Mr. Satish Kumar, AOR

Mr. Aniruddha P. Mayee, AOR  
 Mr. Avnish M. Oza, Adv.  
 Mr. Chirag Jain, Adv.

Mr. Rahul Gupta, AOR

Mr. Annam D. N. Rao, AOR  
 Mr. Annam Venkatesh, Adv.  
 Mr. Sudipto Sircar, Adv.  
 Ms. Tulika Chikker, Adv.  
 Mr. Rahul Mishra, Adv.

Mr. P.H. Parekh, Sr. Adv.  
 Mr. Kshatrashal Raj, Adv.  
 Ms. Ritika Sethi, Adv.  
 Mr. Vishal Prasad, Adv.  
 Ms. Tanya Choudhary, Adv.  
 Ms. Aishwarya Dash, Adv.  
 Ms. Pratyusha Priyadarshini, Adv.  
 Ms. Ravleen Sabharwal, Adv.  
 Mr. Utkarsh Dixit, Adv.  
 Mr. Anwesha Padhi, Adv.  
 M/S. Parekh & Co., AOR

Mr. Ashok K. Srivastava, AOR

Mr. Sibo Sankar Mishra, AOR

Mr. Ashok Mathur, AOR

Mr. T. G. Narayanan Nair, AOR  
 Mr. C.N. Sreekumar, Adv.  
 Mr. Amit Sharma, Adv.

Ms. Aruna Mathur, Adv.  
 Mr. Avneesh Arputham, Adv.  
 Ms. Anuradha Arputham, Adv.  
 Ms. Simran Jeet, Adv.  
 M/S. Arputham Aruna And Co, AOR

Mr. Vijay Hansaria, Sr. Adv.

Mr. Shashank Mishra, Adv.  
 Mr. P.S. Chandrakha, Adv.  
 Mr. P. I. Jose, AOR

Mr. P.N. Mishra, Sr. Adv.  
 Ms. Alka Sinha, Adv.  
 Mr. Anuvrat Sharma, AOR

Ms. K. R. Chitra, AOR

UPON hearing the counsel the Court made the  
 following O R D E R

W.P. (C) No.194 of 2012, W.P. (C) No. 238 of 2014, W.P. (C)  
No. 40 of 2016 & W.P. (C) No. 205 of 2016 :

The writ petitions are disposed of in terms of  
 the signed order.

Pending applications, if any, are also stand  
 disposed of.

SLP(C) No. 30659/2017 :

Delay condoned.

The special leave petition is disposed of in  
 terms of the signed order.

Pending applications, if any, are also stand  
 disposed of.

T.C. (C) No. 129/2013 & T.C. (C) No. 32/2014

The transfer cases are disposed of in terms of  
 the signed order.

Pending applications, if any, are also stand  
 disposed of.

(SWETA DHYANI)  
 SENIOR PERSONAL ASSISTANT  
 (Signed order is placed on the file)

(SUMAN JAIN)  
 BRANCH OFFICER

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 10044 OF 2010**

CENTRAL PUBLIC INFORMATION OFFICER,  
SUPREME COURT OF INDIA

..... APPELLANT(S)

VERSUS

SUBHASH CHANDRA AGARWAL

..... RESPONDENT(S)

**W I T H**

**CIVIL APPEAL NO. 10045 OF 2010**

**A N D**

**CIVIL APPEAL NO. 2683 OF 2010**

**J U D G M E N T**

**SANJIV KHANNA, J.**

This judgment would decide the afore-captioned appeals preferred by the Central Public Information Officer ('CPIO' for short), Supreme Court of India (appellant in Civil Appeal Nos. 10044 and 10045 of 2010), and Secretary General, Supreme Court of India (appellant in Civil Appeal No. 2683 of 2010), against the common respondent – Subhash Chandra Agarwal, and seeks

to answer the question as to '*how transparent is transparent enough*'<sup>1</sup> under the Right to Information Act, 2005 ('RTI Act' for short) in the context of collegium system for appointment and elevation of judges to the Supreme Court and the High Courts; declaration of assets by judges, etc.

2. Civil Appeal No. 10045 of 2010 titled ***Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal*** arises from an application moved by Subhash Chandra Agarwal before the CPIO, Supreme Court of India on 6<sup>th</sup> July, 2009 to furnish a copy of the complete correspondence with the then Chief Justice of India as the Times of India had reported that a Union Minister had approached, through a lawyer, Mr. Justice R. Reghupathi of the High Court of Madras to influence his judicial decisions. The information was denied by the CPIO, Supreme Court of India on the ground that the information sought by the applicant-respondent was not handled and dealt with by the Registry of the Supreme Court of India and the information relating thereto was neither maintained nor available with the Registry. First appeal filed by Subhash Chandra Aggarwal was

---

<sup>1</sup> Heading of an article written by Alberto Alemanno: "How Transparent is Transparent Enough? Balancing Access to Information Against Privacy in European Judicial Selection" reproduced in Michal Bobek (ed.) Selecting Europe's Judges: A Critical Review of the Appointment Procedures to the European Courts (Oxford University Press 2015).

dismissed by the appellate authority vide order dated 05<sup>th</sup> September, 2009. On further appeal, the Central Information Commission ('CIC' for short) vide order dated 24<sup>th</sup> November, 2009 has directed disclosure of information observing that disclosure would not infringe upon the constitutional status of the judges. Aggrieved, the CPIO, Supreme Court of India has preferred this appeal.

3. Civil Appeal No. 10044 of 2010 arises from an application dated 23<sup>rd</sup> January, 2009 moved by Subhash Chandra Agarwal before the CPIO, Supreme Court of India to furnish a copy of complete file/papers as available with the Supreme Court of India inclusive of copies of complete correspondence exchanged between the concerned constitutional authorities with file notings relating to the appointment of Mr. Justice H.L. Dattu, Mr. Justice A.K. Ganguly and Mr. Justice R.M. Lodha superseding seniority of Mr. Justice A. P. Shah, Mr. Justice A.K. Patnaik and Mr. Justice V.K. Gupta, which was allegedly objected to by the Prime Minister. The CPIO vide order dated 25<sup>th</sup> February, 2009 had denied this information observing that the Registry did not deal with the matters pertaining to the appointment of the judges to the Supreme Court of India. Appointment of judges to the Supreme Court and the High Courts are made by the President of India as per the procedure

prescribed by law and the matters relating thereto were not dealt with and handled by the Registry of the Supreme Court. The information was neither maintained nor available with the Registry. First appeal preferred by Subhash Chandra Agarwal was rejected vide order dated 25<sup>th</sup> March, 2009 by the appellate authority. On further appeal, the CIC has accepted the appeal and directed furnishing of information by relying on the judgment dated 02<sup>nd</sup> September, 2009 of the Delhi High Court in Writ Petition (Civil) No. 288 of 2009 titled ***Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal & Another.*** The CIC has also relied on the decision of this Court in ***S.P. Gupta v. Union of India & Others***<sup>2</sup> to reach its conclusion. Aggrieved, the CPIO, Supreme Court of India has preferred the present appeal stating, inter alia, that the judgment in Writ Petition (Civil) No. 288 of 2009 was upheld by the Full Bench of the Delhi High Court in LPA No. 501 of 2009 vide judgment dated 12<sup>th</sup> January, 2010, which judgment is the subject matter of appeal before this Court in Civil Appeal No.2683 of 2010.

4. Civil Appeal No. 2683 of 2010 arises from an application dated

10<sup>th</sup>

November,

2007 moved by Subhash  
Chandra Agarwal

---

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



seeking information on declaration of assets made by the judges to the Chief Justices in the States, which application was dismissed by the CPIO, Supreme Court of India vide order/letter dated 30<sup>th</sup> November, 2007 stating that information relating to declaration of assets of the judges of the Supreme Court of India and the High Courts was not held by or was not under control of the Registry of the Supreme Court of India. On the first appeal, the appellate authority had passed an order of remit directing the CPIO, Supreme Court of India to follow the procedure under Section 6(3) of the RTI Act and to inform Subhash Chandra Agarwal about the authority holding such information as was sought. The CPIO had thereafter vide order dated 07<sup>th</sup> February, 2008 held that the applicant should approach the CPIO of the High Courts and filing of the application before the CPIO of the Supreme Court was against the spirit of Section 6(3) of the RTI Act. Thereupon, Subhash Chandra Agarwal had directly preferred an appeal before the CIC, without filing the first appeal, which appeal was allowed vide order dated 06<sup>th</sup> January, 2009 directing:

“... in view of what has been observed above, the CPIO of the Supreme Court is directed to provide the information asked for by the appellant in his RTI application as to whether such declaration of assets etc. has been filed by the Hon’ble Judges of the Supreme Court or not within ten working days from the date of receipt of this decision notice.”

5. Aggrieved, the CPIO, Supreme Court of India had filed Writ Petition (Civil) No. 288 of 2009 before the Delhi High Court, which was decided by the learned Single Judge vide judgment dated 02<sup>nd</sup> September, 2009, and the findings were summarised as:

“84. [...]

*Re Point Nos. 1 & 2 Whether the CJI is a public authority and whether the CPIO, of the Supreme Court of India, is different from the office of the CJI; and if so, whether the Act covers the office of the CJI;*

*Answer:* The CJI is a public authority under the Right to Information Act and the CJI holds the information pertaining to asset declarations in his capacity as Chief Justice; that office is a “public authority” under the Act and is covered by its provisions.

*Re Point No. 3: Whether asset declaration by Supreme Court Judges, pursuant to the 1997 Resolution are “information”, under the Right to Information Act, 2005.*

*Answer:* It is held that the second part of the respondent's application, relating to declaration of assets by the Supreme Court Judges, is “information” within the meaning of the expression, under Section 2 (f) of the Act. The point is answered accordingly; the information pertaining to declarations given, to the CJI and the contents of such declaration are “information” and subject to the provisions of the Right to Information Act.

*Re Point No. 4: If such asset declarations are “information” does the CJI hold them in a “fiduciary” capacity, and are they therefore, exempt from disclosure under the Act*

*Answer:* The petitioners' argument about the CJI holding asset declarations in a fiduciary capacity, (which would be breached if it is directed to be disclosed, in the manner sought by the applicant) is insubstantial. The CJI does not hold such declarations in a fiduciary capacity or relationship.

Re Point No. 5: Whether such information is exempt from disclosure by reason of Section 8(1)(j) of the Act.

**Answer:** It is held that the contents of asset declarations, pursuant to the 1997 resolution—and the 1999 Conference resolution—are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); they are not otherwise subject to disclosure. As far as the information sought by the applicant in this case is concerned, (i.e. whether the declarations were made pursuant to the 1997 resolution) the procedure under Section 8(1)(j) is inapplicable.

Re Point No. (6): Whether the lack of clarity about the details of asset declaration and about their details, as well as lack of security renders asset declarations and their disclosure, unworkable.

**Answer:** These are not insurmountable obstacles; the CJI, if he deems it appropriate, may in consultation with the Supreme Court Judges, evolve uniform standards, devising the nature of information, relevant formats, and if required, the periodicity of the declarations to be made. The forms evolved, as well as the procedures followed in the United States—including the redaction norms—under the Ethics in Government Act, 1978, reports of the US Judicial Conference, as well as the Judicial Disclosure Responsibility Act, 2007, which amends the Ethics in Government Act of 1978 to: (1) restrict disclosure of personal information about family members of Judges whose revelation might endanger them; and (2) extend the authority of the Judicial Conference to redact certain personal information of judges from financial disclosure reports may be considered.”

6. On further appeal by the CPIO, Supreme Court of India, LPA No. 501 of 2009 was referred to the Full Bench, which has vide its decision dated 12<sup>th</sup> January, 2010 dismissed the appeal. This

judgment records that the parties were ad-idem with regard to point Nos. 1 and 2 as the CPIO, Supreme Court of India had fairly conceded and accepted the conclusions arrived at by the learned Single Judge and, thus, need not be disturbed. Nevertheless, the Full Bench had felt it appropriate to observe that they were in full agreement with the reasoning given by the learned Single Judge. The expression ‘public authority’ as used in the RTI Act is of wide amplitude and includes an authority created by or under the Constitution of India, which description holds good for the Chief Justice of India. While the Chief Justice of India is designated as one of the competent authorities under Section 2(e) of the RTI Act, the Chief Justice of India besides discharging his role as ‘head of the judiciary’ also performs a multitude of tasks assigned to him under the Constitution and various other enactments. In the absence of any indication that the office of the Chief Justice of India is a separate establishment with its own CPIO, it cannot be canvassed that “the office of the CPIO of the Supreme Court is different from the office of the CJI” (that is, the Chief Justice of India). Further, neither side had made any submissions on the issue of ‘unworkability’ on account of ‘lack of clarity’ or ‘lack of security’ vis-à-vis asset declarations by the judges. The Full

Bench had, thereafter, re-casted the remaining three questions as under:

"(1) Whether the respondent had any "right to information" under Section 2(j) of the Act in respect of the information regarding making of declarations by the Judges of the Supreme Court pursuant to 1997 Resolution?

(2) If the answer to question (1) above is in affirmative, whether CJI held the "information" in his "fiduciary" capacity, within the meaning of the expression used in Section 8(1)(e) of the Act?

(3) Whether the information about the declaration of assets by the Judges of the Supreme Court is exempt from disclosure under the provisions of Section 8(1)(j) of the Act?"

The above questions were answered in favour of the respondent-Subhash Chandra Aggarwal as the Full Bench has held that the respondent had the right to information under Section 2(j) of the RTI Act with regard to the information in the form of declarations of assets made pursuant to the 1997 Resolution. The Chief Justice did not hold such declarations in a fiduciary capacity or relationship and, therefore, the information was not exempt under Section 8(1)(e) of the RTI Act. Addressing the third question, the Bench had observed:

"116. In the present case the particulars sought for by the respondent do not justify or warrant protection under Section 8(1)(j) inasmuch as the only information the applicant sought was whether 1997 Resolution was complied with. That kind of innocuous information does not warrant the protection granted by Section 8(1)(j)."

We concur with the view of the learned single Judge that the contents of asset declarations, pursuant to the 1997 Resolution, are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); that they are not otherwise subject to disclosure. Therefore, as regards contents of the declarations, information applicants would have to, whenever they approach the authorities, under the Act satisfy them under Section 8(1)(j) that such disclosure is warranted in “larger public interest.”

7. The afore-captioned three appeals were tagged to be heard and decided together vide order dated 26<sup>th</sup> November, 2010, the operative portion of which reads as under:

“12. Having heard the learned Attorney General and the learned counsel for the respondent, we are of the considered opinion that a substantial question of law as to the interpretation of the Constitution is involved in the present case which is required to be heard by a Constitution Bench. The case on hand raises important questions of constitutional importance relating to the position of Hon’ble the Chief Justice of India under the Constitution and the independence of the Judiciary in the scheme of the Constitution on the one hand and on the other, fundamental right to freedom of speech and expression. Right to information is an integral part of the fundamental right to freedom of speech and expression guaranteed by the Constitution. Right to Information Act merely recognizes the constitutional right of citizens to freedom of speech and expression. Independence of Judiciary forms part of basic structure of the Constitution of India. The independence of Judiciary and the fundamental right to free speech and expression are of a great value and both of them are required to be balanced.”

8. This order while referring the matter to a larger bench had framed the following substantial questions of law as to the interpretation of the Constitution, which read as under:

- “1. Whether the concept of independence of judiciary requires and demands the prohibition of furnishing of the information sought? Whether the information sought for amounts to interference in the functioning of the Judiciary?
- 2. Whether the information sought for cannot be furnished to avoid any erosion in the credibility of the decisions and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision?
- 3. Whether the information sought for is exempt under Section 8(1)(j) of the Right to Information Act?”

9. We have heard Mr. K.K. Venugopal, Attorney General of India, Mr. Tushar Mehta, Solicitor General of India on behalf of the Supreme Court of India and Mr. Prashant Bhushan, learned advocate for Subhash Chandra Agarwal. The appellants have contended that disclosure of the information sought would impede the independence of judges as it fails to recognise the unique position of the judiciary within the framework of the Constitution which necessitates that the judges ought not to be subjected to ‘litigative public debate’ and such insulation is constitutional, deliberate and essential to the effective functioning of the institution. Right to information is not an unfettered constitutional right, *albeit* a right

available within the framework of the RTI Act, which means that the right is subject, among other conditions, to the exclusions, restrictions and conditions listed in the Second Schedule and in Sections 8 to 11 of the RTI Act. In support, the appellants have relied upon ***Re Coe's Estate Ebert et al v. State et. al<sup>3</sup>, Bhudan Singh and Another v. Nabi Bux and Another<sup>4</sup>, Kailash Rai v. Jai Ram<sup>5</sup>*** and ***Dollfus Mieg et Compagnie S.A. v. Bank of England<sup>6</sup>***. Information sought when exempt under Section 8 of the RTI Act cannot be disclosed. Information on assets relates to personal information, the disclosure of which has no bearing on any public activity or interest and is, therefore, exempt under Section 8(1)(j) of the RTI Act. Similarly, information of prospective candidates who are considered for judicial appointments and/or elevation relates to their personal information, the disclosure of which would cause unwarranted invasion of an individual's privacy and serves no larger public interest. Further, the information on assets is voluntarily declared by the judges to the Chief Justice of India in his fiduciary capacity as the *pater familias* of the judiciary. Consultations and correspondence between the office of the Chief Justice of India and other constitutional functionaries are made on

---

<sup>3</sup> 33 Cal.2d 502

<sup>4</sup> 1969 (2) SCC 481

<sup>5</sup> 1973 (1) SCC 527

<sup>6</sup> (1950) 2 All E.R. 611

the basis of trust and confidence which ascribes the attributes of a fiduciary to the office of the Chief Justice. Information relating to the appointment of judges is shared among other constitutional functionaries in their fiduciary capacities, which makes the information exempt under Section 8(1)(e) of the RTI Act. The respondent, on the other hand, has by relying on the dicta in ***State of U.P. v. Raj Narain and Others***<sup>7</sup> and ***S. P. Gupta*** (supra) argued that disclosure of the information sought does not undermine the independence of the judiciary. Openness and transparency in functioning would better secure the independence of the judiciary by placing any attempt made to influence or compromise the independence of the judiciary in the public domain. Further, the citizens have a legitimate and constitutional right to seek information about the details of any such attempt. Thus, disclosure, and not secrecy, enhances the independence of the judiciary. No legitimate concerns exist which may inhibit consultees from freely expressing themselves or which might expose candidates to spurious allegations by disclosing the consultative process for appointing judges. Given the nature of the information sought, disclosure of the information will serve the larger public interest and, therefore, such interest outweighs the

---

<sup>7</sup> (1975) 4 SCC 428

privilege of exemption granted to personal information under Section 8(1)(j) of the RTI Act. If any personal information is involved, the same could be dealt with on a case-by-case basis by disclosing the information that serves public interest after severing the records as per Section 10 of the RTI Act. There is no fiduciary relationship between the Chief Justice and the judges or among the constitutional functionaries as envisaged under Section 8(1)(e) of the RTI Act which could be a ground for holding back the information. Reliance was placed on the decisions of this Court in ***Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others***<sup>8</sup> and ***Reserve Bank of India v. Jayantilal N. Mistry***<sup>9</sup>, to contend that the duty of a public servant is not to act for the benefit of another public servant, that is, the Chief Justice and other functionaries are meant to discharge their constitutional duties and not act as a fiduciary of anyone, except the people. In arguendo, even if there exists a fiduciary relationship among the functionaries, disclosure can be made if it serves the larger public interest. Additionally, candour and confidentiality are not heads of exemption under the RTI Act and, therefore, cannot be invoked as exemptions in this case.

---

<sup>8</sup> (2011) 8 SCC 497

<sup>9</sup> (2016) 3 SCC 525

10. For clarity and convenience, we would deal with the issues point-wise, *albeit* would observe that Point no. 1 (referred to as point Nos.1 and 2 in the judgment in LPA No. 501 of 2009 dated 12<sup>th</sup> January, 2010) was not contested before the Full Bench but as some clarification is required, it has been dealt below.

**POINT NO. 1: WHETHER THE SUPREME COURT OF INDIA AND THE CHIEF JUSTICE OF INDIA ARE TWO SEPARATE PUBLIC AUTHORITIES?**

11. Terms 'competent authority' and 'public authority' have been specifically defined in clauses (e) and (h) to Section 2 of the RTI Act, which read:

"(e) "competent authority" means—

- (i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;
- (ii) the Chief Justice of India in the case of the Supreme Court;
- (iii) the Chief Justice of the High Court in the case of a High Court;
- (iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
- (v) the administrator appointed under article 239 of the Constitution;

XX            XXXX

(h) "public authority" means any authority or body or institution of self-government established or constituted—

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any—
  - (i) body owned, controlled or substantially financed;
  - (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;"

12. Term 'public authority' under Section 2(h) of the RTI Act includes any authority or body or an institution of self-government established by the Constitution or under the Constitution.

Interpreting the expression 'public authority' in ***Thalappalam Service Cooperative Bank Limited and Others v. State of Kerala and Others***<sup>10</sup>, this Court had observed:

"30. The legislature, in its wisdom, while defining the expression "public authority" under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions "means" and "includes". When a word is defined to "mean" something, the definition is *prima facie* restrictive and where the word is defined to "include" some other thing, the definition is *prima facie* extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there

---

<sup>10</sup>(2013) 16 SCC 82

would exhaust themselves. The meanings of the expressions “means” and “includes” have been explained by this Court in *DDA v. Bhola Nath Sharma* (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

31. Section 2(h) exhausts the categories mentioned therein. The former part of Section 2(h) deals with:

- (1) an authority or body or institution of self-government established by or under the Constitution,
- (2) an authority or body or institution of self-government established or constituted by any other law made by Parliament,
- (3) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature, and
- (4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate Government.”

13. Article 124 of the Constitution, which relates to the establishment and constitution of the Supreme Court of India, states that there shall be a Supreme Court of India consisting of a Chief Justice and other judges. It is undebatable that the Supreme Court of India is a ‘public authority’, as defined vide clause (h) to Section 2 of the RTI Act as it has been established and constituted by or under the Constitution of India. The Chief Justice of India as per sub-clause (ii) in clause (e) to Section 2 is the competent authority in the case of the Supreme Court. Consequently, in terms of Section 28 of the RTI Act, the Chief Justice of India is empowered

to frame rules, which have to be notified in the Official Gazette, to carry out the provisions of the RTI Act.

14. The Supreme Court of India, which is a 'public authority', would necessarily include the office of the Chief Justice of India and the judges in view of Article 124 of the Constitution. The office of the Chief Justice or for that matter the judges is not separate from the Supreme Court, and is part and parcel of the Supreme Court as a body, authority and institution. The Chief Justice and the Supreme Court are not two distinct and separate 'public authorities', *albeit* the latter is a 'public authority' and the Chief Justice and the judges together form and constitute the 'public authority', that is, the Supreme Court of India. The interpretation to Section 2(h) cannot be made in derogation of the Constitution. To hold to the contrary would imply that the Chief Justice of India and the Supreme Court of India are two distinct and separate public authorities, and each would have their CPIOs and in terms of subsection (3) to Section 6 of the RTI Act an application made to the CPIO of the Supreme Court or the Chief Justice would have to be transferred to the other when 'information' is held or the subject matter is more closely connected with the 'functions' of the other. This would lead to anomalies and difficulties as the institution, authority or body is one. The Chief Justice of India is the head of

the institution and neither he nor his office is a separate public authority.

15. This is equally true and would apply to the High Courts in the country as Article 214 states that there shall be a High Court for each State and Article 216 states that every High Court shall consist of a Chief Justice and such other judges as the President of India may from time to time deem it appropriate to appoint.

## **POINT NO. 2: INFORMATION AND RIGHT TO INFORMATION UNDER THE RTI ACT**

16. Terms 'information', 'record' and 'right to information' have been defined under clauses (f), (i) and (j) to Section 2 of the RTI Act which are reproduced below:

"(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

xx                    xx                    xx

(i) "record" includes—

- (a) any document, manuscript and file;
- (b) any microfilm, microfiche and facsimile copy of a document;
- (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(d) any other material produced by a computer or any other device;

(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

17. 'Information' as per the definition clause is broad and wide, as it is defined to mean "material in any form" with amplifying words including records (a term again defined in widest terms vide clause (i) to Section 2 of the RTI Act), documents, emails, memos, advices, logbooks, contracts, reports, papers, samples, models, data material held in electronic form, etc. The last portion of the definition clause which states that the term 'information' would include '*information relating to any private body which can be accessed by a public authority under any other law for the time being in force*' has to be read as reference to 'information' not presently available or held by the public authority but which can be accessed by the public authority from a private body under any

other law for the time being in force. The term – ‘private body’ in the clause has been used to distinguish and is in contradistinction to the term – ‘public authority’ as defined in Section 2(h) of the RTI Act. It follows that any requirement in the nature of precondition and restrictions prescribed by any other law would continue to apply and are to be satisfied before information can be accessed and asked to be furnished by a private body.

18. What is explicit as well as implicit from the definition of ‘information’ in clause (f) to Section 2 follows and gets affirmation from the definition of ‘right to information’ that the information should be accessible by the public authority and ‘held by or under the control of any public authority’. The word ‘hold’ as defined in Wharton’s Law Lexicon, 15<sup>th</sup> Edition, means to have the ownership or use of; keep as one’s own, but in the context of the present legislation, we would prefer to adopt a broader definition of the word ‘hold’ in Black’s Law Dictionary, 6<sup>th</sup> Edition, as meaning; to keep, to retain, to maintain possession of or authority over. The words ‘under the control of any public authority’ as per their natural meaning would mean the right and power of the public authority to get access to the information. It refers to dominion over the information or the right to any material, document etc. The words ‘under the control of any public

'authority' would include within their ambit and scope information relating to a private body which can be accessed by a public authority under any other law for the time being in force subject to the pre-imposed conditions and restrictions as applicable to access the information.

19. When information is accessible by a public authority, that is, held or under its control, then the information must be furnished to the information seeker under the RTI Act even if there are conditions or prohibitions under another statute already in force or under the Official Secrets Act, 1923, that restricts or prohibits access to information by the public. In view of the *non-obstante* clause in Section 22<sup>11</sup> of the RTI Act, any prohibition or condition which prevents a citizen from having access to information would not apply. Restriction on the right of citizens is erased. However, when access to information by a public authority itself is prohibited or is accessible subject to conditions, then the prohibition is not obliterated and the pre-conditions are not erased. Section 2(f) read with Section 22 of the RTI Act does not bring any modification or amendment in any other enactment, which bars or

---

<sup>11</sup>Section 22 of the RTI Act reads:

"22. Act to have overriding effect. -The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

prohibits or imposes pre-condition for accessing information of the private bodies. Rather, clause (f) to Section 2 upholds and accepts the said position when it uses the expression – “which can be accessed”, that is the public authority should be in a position and be entitled to ask for the said information. Section 22 of the RTI Act, an overriding provision, does not militate against the interpretation as there is no contradiction or conflict between the provisions of Section 2(f) of the RTI Act and other statutory enactments/law. Section 22 of the RTI Act is a key that unlocks prohibitions/limitations in any prior enactment on the right of a citizen to access information which is accessible by a public authority. It is not a key with the public authority that can be used to undo and erase prohibitions/limitations on the right of the public authority to access information. In other words, a private body will be entitled to the same protection as is available to them under the laws of this country.

20. Full Bench of the Delhi High Court in its judgment dated 12<sup>th</sup> January 2010 in LPA No. 501 of 2009 had rightly on the interpretation of word ‘held’, referred to Philip Coppel’s work ‘*Information Rights*’ (2<sup>nd</sup> Edition, Thomson, Sweet & Maxwell

2007)<sup>12</sup> interpreting the provisions of the Freedom of Information Act, 2000 (United Kingdom) in which it has been observed:

**“When information is “held” by a public authority**

For the purposes of the Freedom of Information Act 2000, information is “held” by a public authority if it is held by the authority otherwise than on behalf of another person, or if it is held by another person on behalf of the authority. The Act has avoided the technicalities associated with the law of disclosure, which has conventionally drawn a distinction between a document in the power, custody or possession of a person. Putting to one side the effects of s.3(2) (see para.9-009 below), the word “held” suggests a relationship between a public authority and the information akin to that of ownership or bailment of goods.

Information:

- that is, without request or arrangement, sent to or deposited with a public authority which does not hold itself out as willing to receive it and which does not subsequently use it;
- that is accidentally left with a public authority;
- that just passes through a public authority; or
- that “belongs” to an employee or officer of a public authority but which is brought by that employee or officer onto the public authority’s premises,

will, it is suggested, lack the requisite assumption by the public authority of responsibility for or dominion over the information that is necessary before it can be said that the public authority can be said to “hold” the information. ...”

Thereafter, the Full Bench had observed:

“59. Therefore, according to Coppel the word “held” suggests a relationship between a public authority and

---

<sup>12</sup>Also, see Philip Coppel, ‘*Information Rights*’ (4<sup>th</sup> Edition, Hart Publishing 2014) P. 361-62

the information akin to that of an ownership or bailment of goods. In the law of bailment, a slight assumption of control of the chattel so deposited will render the recipient a depository (see *Newman v. Bourne and Hollingsworth* (1915) 31 T.L.R. 209). Where, therefore, information has been created, sought, used or consciously retained by a public authority will be information held within the meaning of the Act. However, if the information is sent to or deposited with the public authority which does not hold itself out as willing to receive it and which does not subsequently use it or where it is accidentally left with a public authority or just passes through a public authority or where it belongs to an employee or officer of a public authority but which is brought by that employee or officer unto the public authority's premises it will not be information held by the public authority for the lack of the requisite assumption by the public authority of responsibility for or dominion over the information that is necessary before the public authority can be said to hold the information....”

Therefore, the word “hold” is not purely a physical concept but refers to the appropriate connection between the information and the authority so that it can properly be said that the information is held by the public authority.<sup>13</sup>

21. In ***Khanapuram Gandaiah v. Administrative Officer and Others***<sup>14</sup>, this Court on examining the definition clause 2(f) of the RTI Act had held as under:

“10. [...] This definition shows that an applicant under Section 6 of the RTI Act can get any information which

---

<sup>13</sup>*New Castle upon Tyne v. Information Commissioner and British Union for Abolition of Vivisection*, [2011] UKUT 185 AAC

<sup>14</sup>(2010) 2 SCC 1

is already in existence and accessible to the public authority under law. ...

xx                    xx                    xx

12. [...] the Public Information Officer is not supposed to have any material which is not before him; or any information he could (*sic not*) have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the “public authority” under any other law for the time being in force. ...”

The aforesaid observation emphasises on the mandatory requirement of accessibility of information by the public authority under any other law for the time being in force. This aspect was again highlighted by another Division Bench in ***Aditya Bandopadhyay*** (supra), wherein information was divided into three categories in the following words:

“59. The effect of the provisions and scheme of the RTI Act is to divide “information” into three categories. They are:

(i) Information which promotes *transparency and accountability* in the working of every public authority, disclosure of which may also help in containing or discouraging corruption [enumerated in clauses (b) and (c) of Section 4(1) of the RTI Act].

(ii) Other information held by public authority [that is, all information other than those falling under clauses (b) and (c) of Section 4(1) of the RTI Act].

(iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.

Information under the third category does not fall within the scope of the RTI Act. Section 3 of the RTI Act gives every citizen, the right to “information” held by or under the control of a public authority, which falls either under the first or second category. In regard to the information falling under the first category, there is also a special responsibility upon the public authorities to *suo motu publish and disseminate such information* so that they will be easily and readily accessible to the public without any need to access them by having recourse to Section 6 of the RTI Act. There is no such obligation to publish and disseminate the other information which falls under the second category.”

The first category refers to the information specified in clause (b) to sub-section (1) to Section 4 which consists of as many as seventeen sub-clauses on diverse subjects stated therein. It also refers to clause (c) to sub-section (1) to Section 4 by which public authority is required to publish all relevant facts while formulating important public policies or pronouncing its decision which affects the public. The rationale behind these clauses is to disseminate most of the information which is in the public interest and promote openness and transparency in government.

22. The expressions ‘held by or under the control of any public authority’ and ‘information accessible under this Act’ are restrictive<sup>15</sup> and reflect the limits to the ‘right to information’

---

<sup>15</sup>See ‘Central Board of Secondary Education v. Aditya Bandopadhyay’ (2011) 8 SCC 497

conferred vide Section 3 of the RTI Act, which states that subject to the provisions of the RTI Act, all citizens shall have the right to information. The right to information is not absolute and is subject to the conditions and exemptions under the RTI Act.

23. This aspect was again highlighted when the terms ‘information’ and ‘right to information’ were interpreted in ***Thalappalam Service Cooperative Bank Limited*** (supra) with the following elucidation:

“63. Section 8 begins with a non obstante clause, which gives that section an overriding effect, in case of conflict, over the other provisions of the Act. Even if, there is any indication to the contrary, still there is no obligation on the public authority to give information to any citizen of what has been mentioned in clauses (a) to (j). The public authority, as already indicated, cannot access all the information from a private individual, but only those information which he is legally obliged to pass on to a public authority by law, and also only those information to which the public authority can have access in accordance with law. Even those information, if personal in nature, can be made available only subject to the limitations provided in Section 8(j) of the RTI Act. Right to be left alone, as propounded in *Olmstead v. United States* is the most comprehensive of the rights and most valued by civilised man.

xx                    xx                    xx

67. The Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a “public authority” within the meaning of Section 2(h) of the Act. As a public authority, the Registrar of Cooperative Societies has been conferred with lot of statutory powers under the respective Act under which he is

functioning. He is also duty-bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. Information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. The Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Cooperative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the society, to the extent permitted by law. The Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that, under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank. Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a society could be said to be the information which is "held" or "under the control of public authority". Even those information, the Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a co-operative bank of a private account maintained by a member of society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.

68. Consequently, if an information which has been sought for 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, the Registrar of Cooperative Societies, even if he has got that information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public

interest justifies the disclosure of such information, that too, for reasons to be recorded in writing."

Thus, the scope of the expressions 'information' and 'right to information' which can be accessed by a citizen under the RTI Act have to be understood in light of the above discussion.

### **POINT NO. 3: SECTIONS 8, 9, 10 AND 11 OF THE RTI ACT**

24. To ensure transparency and accountability and to make Indian democracy more participatory, the RTI Act sets out a practical and pragmatic regime to enable citizens to secure greater access to information available with public authorities by balancing diverse interests including efficient governance, optimum use of limited fiscal operations and preservation of confidentiality of sensitive information. The preamble to the RTI Act appropriately summarises the object of harmonising various conflicts in the following words:

" xx xx xx "

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

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

xx            xx            xx"

25. An attempt to resolve conflict and disharmony between these aspects is evident in the exceptions and conditions on access to information set out in Sections 8 to 11 of the RTI Act. At the outset, we would reproduce Section 8 of the RTI Act, which reads as under:

"8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (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;

- (f) information received in confidence from foreign Government;
- (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(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:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in

disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

Sub-section (1) of Section 8 begins with a *non-obstante* clause giving primacy and overriding legal effect to different clauses under the sub-section in case of any conflict with other provisions of the RTI Act. Section 8(1) without modifying or amending the term 'information', carves out exceptions when access to 'information', as defined in Section 2(f) of the RTI Act would be denied. Consequently, the right to information is available when information is accessible under the RTI Act, that is, when the exceptions listed in Section 8(1) of the RTI Act are not attracted. In terms of Section 3 of the RTI Act, all citizens have right to information, subject to the provisions of the RTI Act, that is, information 'held by or under the control of any public authority', except when such information is exempt or excluded.

26. Clauses in sub-section (1) to Section 8 can be divided into two categories: clauses (a), (b), (c), (f), (g), (h) and (i), and clauses (d), (e) and (j). The latter clauses state that the prohibition specified would not apply or operate when the competent authority in clauses (d) and (e) and the PIO in clause (j) is satisfied that larger public interest warrants disclosure of such information.<sup>16</sup> Therefore, clauses (d), (e) and (j) of Section 8(1) of the RTI Act incorporate qualified prohibitions and are conditional and not absolute exemptions. Clauses (a), (b), (c), (f), (g), (h) and (i) do not have any such stipulation. Prohibitory stipulations in these clauses do not permit disclosure of information on satisfaction of the larger public interest rule. These clauses, therefore, incorporate absolute exclusions.

27. Sub-section (2) to Section 8 states that notwithstanding anything contained in the Official Secrets Act, 1923 or any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information if the public interest in disclosure outweighs the harm to the protected interests. The disclosure under Section 8(2) by the public authority

---

<sup>16</sup>For the purpose of the present decision, we do not consider it appropriate to decide who would be the 'competent authority' in the case of other public authorities, if sub-clauses (i) to (v) to clause (e) of Section 2 are inapplicable. This 'anomaly' or question is not required to be decided in the present case as the Chief Justice of India is a competent authority in the case of the Supreme Court of India.

is not a mandate or compulsion but is in the form of discretionary disclosure. Section 8(2) acknowledges and empowers the public authority to lawfully disclose information held by them despite the exemptions under sub-section (1) to Section 8 if the public authority is of the opinion that the larger public interest warrants disclosure. Such disclosure can be made notwithstanding the provisions of the Official Secrets Act. Section 8(2) does not create a vested or justiciable right that the citizens can enforce by an application before the PIO seeking information under the RTI Act. PIO is under no duty to disclose information covered by exemptions under Section 8(1) of the RTI Act. Once the PIO comes to the conclusion that any of the exemption clauses is applicable, the PIO cannot pass an order directing disclosure under Section 8(2) of the RTI Act as this discretionary power is exclusively vested with the public authority.

28. Section 9 provides that without prejudice to the provisions of Section 8, a request for information may be rejected if such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.
29. Section 10 deals with severability of exempted information and sub-section (1) thereof reads as under:

**"10. Severability.—**(1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information."

30. Section 11, which deals with third party information, and incorporates conditional exclusion based on breach of confidentiality by applying public interest test, reads as under:

**"11. (1)** Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

**(2)** Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part

thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.”

We shall subsequently interpret and expound on Section 11 of the RTI Act.

31. At the present stage, we would like to quote from **Aditya Bandopadhyay** (*supra*) wherein this Court, on the aspect of general principles of interpretation while deciding the conflict between the right to information and exclusions under Section 8 to 11 of the RTI Act, had observed:

“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 fulfilment and preservation of democratic ideals.

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 visualise 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 authority has any information in the

form of data or analysed data, or abstracts, or statistics, an 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. It is also not required to provide "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 definition of "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."

Paragraph 63 quoted above has to be read with our observations on the last portion of clause (f) to Section 2 defining the word 'information', *albeit*, on the observations and findings recorded, we respectfully concur. For the present decision, we are required to primarily examine clauses (e) and (j) of sub-section (1) to Section 8 and Section 11 of the RTI Act.

**Point No. 3 (A): Fiduciary Relationship under Section 8(1)(e) of the RTI Act**

32. Clause (e) to Section 8(1) of the RTI Act states that information made available to a person in his fiduciary relationship shall not be disclosed unless the competent authority is satisfied that the

larger public interest warrants the disclosure of such information.

The expression '*fiduciary relationship*' was examined and explained in ***Aditya Bandopadhyay*** (*supra*), in the following words:

"39. The term "fiduciary" refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term "fiduciary relationship" is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.

40. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or

disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "information available to a person in his fiduciary relationship" are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary—a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a director of a company with reference to a shareholder, an executor with reference to a legatee, a receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body."

This Court held that the exemption under section 8(1)(e) of the RTI Act does not apply to beneficiaries regarding whom the fiduciary holds information. In other words, information available with the public authority relating to beneficiaries cannot be withheld from or denied to the beneficiaries themselves. A

fiduciary would, ergo, be duty-bound to make thorough disclosure of all relevant facts of all transactions between them in a fiduciary relationship to the beneficiary. In the facts of the said case, this Court had to consider whether an examining body, the Central Board of Secondary Education, held information in the form of evaluated answer-books of the examinees in fiduciary capacity. Answering in the negative, it was nevertheless observed that even if the examining body is in a fiduciary relationship with an examinee, it will be duty-bound to disclose the evaluated answer-books to the examinee and at the same time, they owe a duty to the examinee not to disclose the answer-books to anyone else, that is, any third party. This observation is of significant importance as it recognises that Section 8(1)(j), and as noticed below - Section 11, encapsulates another right, that is the right to protect privacy and confidentiality by barring the furnishing of information to third parties except when the public interest as prescribed so requires. In this way, the RTI Act complements both the right to information and the right to privacy and confidentiality. Further, it moderates and regulates the conflict between the two rights by applying the test of larger public interest or comparative examination of public interest in disclosure of information with possible harm and injury to the protected interests.

33. In ***Reserve Bank of India*** (supra) this Court had expounded upon the expression ‘*fiduciary relationship*’ used in clause (e) to subsection (1) of Section 8 of the RTI Act by referring to the definition of ‘*fiduciary relationship*’ in the Advanced Law Lexicon, 3<sup>rd</sup> Edition, 2005, which reads as under:

“57. [...] *Fiduciary relationship.* — A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the fiduciary relationship. Fiduciary relationship usually arises in one of the four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer.”

Thereafter, the Court had outlined the contours of the fiduciary relationship by listing out the governing principles which read:

“58. [...] (i) *No conflict rule* — A fiduciary must not place himself in a position where his own interest conflicts with that of his customer or the beneficiary. There must be ‘real sensible possibility of conflict’.

(ii) *No profit rule* — A fiduciary must not profit from his position at the expense of his customer, the beneficiary.

(iii) *Undivided loyalty rule* — A fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts

with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs.

(iv) *Duty of confidentiality* — A fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person.”

34. Fiduciary relationships, regardless of whether they are formal, informal, voluntary or involuntary, must satisfy the four conditions for a relationship to classify as a fiduciary relationship. In each of the four principles, the emphasis is on trust, reliance, the fiduciary's superior power or dominant position and corresponding dependence of the beneficiary on the fiduciary which imposes responsibility on the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself. Section 8(1)(e) is a legal acceptance that there are ethical or moral relationships or duties in relationships that create rights and obligations, beyond contractual, routine or even special relationships with standard and typical rights and obligations. Contractual or non-fiduciary relationships could require that the party should protect and promote the interest of the other and not cause harm or damage, but the fiduciary relationship casts a positive obligation and demands that the fiduciary should protect the beneficiary and not promote personal self-interest. A

fiduciary's loyalty, duties and obligations are stricter than the morals of the market place and it is not honesty alone, but the *punctilio* of an honour which is the most sensitive standard of behaviour which is applied {See – Opinion of Cardozo, J. in ***Meinhard v. Salmon***<sup>17</sup>}. Thus, the level of judicial scrutiny in cases of fiduciary relationship is intense as the level of commitment and loyalty expected is higher than non-fiduciary relationships. Fiduciary relationship may arise because of the statute which requires a fiduciary to act selflessly with integrity and fidelity and the other party, that is the beneficiary, depends upon the wisdom and confidence reposed in the fiduciary. A contractual, statutory and possibly all relationships cover a broad field, but a fiduciary relationship could exist, confined to a limited area or an act, as relationships can have several facets. Thus, relationships can be partly fiduciary and partly non-fiduciary with the former being confined to a particular act or action which need not manifest itself in entirety in the interaction and relationship between two parties. What would distinguish non-fiduciary relationship from fiduciary relationship or an act is the requirement of trust reposed, higher standard of good faith and honesty required on the part of the fiduciary with reference to a particular transaction(s) due to moral,

---

<sup>17</sup>(1928) 164 N.E. 545, 546

personal or statutory responsibility of the fiduciary as compared to the beneficiary, resulting in dependence of the beneficiary. This may arise due to superior knowledge and training of the fiduciary or the position he occupies.

35. Ordinarily the relationship between the Chief Justice and judges would not be that of a fiduciary and a beneficiary. However, it is not an absolute rule/code for in certain situations and acts, fiduciary relationship may arise. Whether or not such a relationship arises in a particular situation would have to be dealt with on the tests and parameters enunciated above.

**Point No. 3 (B): Right to Privacy under Section 8(1)(j) and Confidentiality under Section 11 of the RTI Act**

36. If one's right to know is absolute, then the same may invade another's right to privacy and breach confidentiality, and, therefore, the former right has to be harmonised with the need for personal privacy, confidentiality of information and effective governance. The RTI Act captures this interplay of the competing rights under clause (j) to Section 8(1) and Section 11. While clause (j) to Section 8(1) refers to personal information as distinct from information relating to public activity or interest and seeks to exempt disclosure of such information, as well as such information which, if disclosed, would cause unwarranted invasion of privacy

of an individual, unless public interest warrants its disclosure, Section 11 exempts the disclosure of ‘information or record...which relates to or has been supplied by a third party and has been treated as confidential by that third party’. By differently wording and inditing the challenge that privacy and confidentiality throw to information rights, the RTI Act also recognises the interconnectedness, yet distinctiveness between the breach of confidentiality and invasion of privacy, as the former is broader than the latter, as will be noticed below.

37. Breach of confidentiality has an older conception and was primarily an equitable remedy based on the principle that one party is entitled to enforce equitable duty on the persons bound by an obligation of confidentiality on account of the relationship they share, with actual or constructive knowledge of the confidential relationship. Conventionally a conception of equity, confidentiality also arises in a contract, or by a statute.<sup>18</sup> Contractually, an obligation to keep certain information confidential can be effectuated expressly or implicitly by an oral or written agreement, whereas in statutes certain extant and defined relationships are imposed with the duty to maintain details, communication

---

<sup>18</sup> See Prince Albert v. Strange, (1849) 1 Mac.&G 25, and Lord Oliver of Aylmerton, Spycatcher: Confidence, Copyright and Contempt, Israel Law Review (1989) 23(4), 407 [as also quoted in Philip Coppel, Information Rights, Law and Practice (4<sup>th</sup> Edition Hart Publishing 2014)].

exchanged and records confidential. Confidentiality referred to in the phrase 'breach of confidentiality' was initially popularly perceived and interpreted as confidentiality arising out of a pre-existing confidential relationship, as the obligation to keep certain information confidential was on account of the nature of the relationship. The insistence of a pre-existing confidential relationship did not conceive a possibility that a duty to keep information confidential could arise even if a relationship, in which such information is exchanged and held, is not pre-existing. This created a distinction between confidential information obtained through the violation of a confidential relationship and similar confidential information obtained in some other way. With time, courts and jurists, who recognised this anomaly, have diluted the requirement of the existence of a confidential relationship and held that three elements were essential for a case of breach of confidentiality to succeed, namely – (a) information should be of confidential nature; (b) information must be imparted in circumstances importing an obligation of confidentiality; and (c) that there must be unauthorised use of information (See **Coco v. AN Clark (Engineers) Ltd.**<sup>19</sup>). The "artificial"<sup>20</sup> distinction was emphatically abrogated by the test adopted by Lord Goff of

---

<sup>19</sup>[1969] RPC 41

<sup>20</sup>Campbell v. Mirror Group Newspapers Limited (2004) UKHL 22

Chieveley in ***Attorney-General v. Guardian Newspaper Limited***

(No. 2)<sup>21</sup>, who had observed:

"a duty of confidence arises when confidential information comes to the knowledge of a person... in circumstances where he has notice, or is held to have agreed, that the information is confidential, with the effect that it would be just in all the circumstances that he should be precluded from disclosing the information to others."

Lord Goff, thus, lifted the limiting constraint of a need for initial confidential relationship stating that a 'duty of confidence' would apply whenever a person receives information he knows or ought to know is fairly and reasonably to be regarded as confidential. Therefore, confidential information must not be something which is a public property and in public knowledge/public domain as confidentiality necessarily attributes inaccessibility, that is, the information must not be generally accessible, otherwise it cannot be regarded as confidential. However, self-clarification or certification will not be relevant because whether or not the information is confidential has to be determined as a matter of fact. The test to be applied is that of a reasonable person, that is, information must be such that a reasonable person would regard it as confidential. Confidentiality of information also has reference to the quality of information

---

<sup>21</sup>(1990) 1 AC 109

though it may apply even if the information is false or partly incorrect. However, the information must not be trivial or useless.

38. While previously information that could be considered personal would have been protected only if it were exchanged in a confidential relationship or considered confidential by nature, significant developments in jurisprudence since the 1990's have posited the acceptance of privacy as a separate right and something worthy of protection on its own as opposed to being protected under an actionable claim for breach of confidentiality. A claim to protect privacy is, in a sense, a claim for the preservation of confidentiality of personal information. With progression of the right to privacy, the underlying values of the law that protects personal information came to be seen differently as the courts recognised that unlike law of confidentiality that is based upon duty of good faith, right to privacy focuses on the protection of human autonomy and dignity by granting the right to control the dissemination of information about one's private life and the right to the esteem and respect of other people (See - Sedley LJ in *Douglas v. Hello! Ltd*<sup>22</sup>). In *PJS v. News Group Newspapers Ltd*<sup>23</sup>, the Supreme Court of the United Kingdom had drawn a

---

<sup>22</sup>(2001) QB 967

<sup>23</sup>(2016) UKSC 26

distinction between the right to respect private and family life or privacy and claims based upon confidentiality by observing that the law extends greater protection to privacy rights than rights in relation to confidential matters. In the former case, the claim for misuse of private information can survive even when information is in the public domain as its repetitive use itself leads to violation of the said right. The right to privacy gets the benefit of both the quantitative and the qualitative protection. The former refers to the disclosure already made and what is yet undisclosed, whereas the latter refers to the privateness of the material, invasion of which is an illegal intrusion into the right to privacy. Claim for confidentiality would generally fail when the information is in public domain. The law of privacy is, therefore, not solely concerned with the information, but more concerned with the intrusion and violation of private rights. Citing an instance of how publishing of defamatory material can be remedied by a trial establishing the falsity of such material and award of damages, whereas invasion of privacy cannot be similarly redressed, the Court had highlighted the reason why truth or falsity of an allegation or information may be irrelevant when it comes to invasion of privacy. Therefore, claims for protection against invasion of private and family life do not depend upon confidentiality alone. This distinction is important to

understand the protection given to two different rights vide Section 8(1)(j) and 11 of the RTI Act.

39. In **District Registrar and Collector v. Canara Bank**<sup>24</sup> this Court had referred to the judgment of the U.S. Supreme Court in **United States v. Miller**<sup>25</sup> on the question of “voluntary” parting with information and under the heading ‘*Criticism of Miller*’ had observed:

“48. ... (A) *Criticism of Miller*

(i) The majority in Miller laid down that a customer who has conveyed his affairs to another had thereby lost his privacy rights. Prof. Tribe states in his treatise (see p. 1391) that this theory reveals “alarming tendencies” because the Court has gone back to the old theory that privacy is in relation to property while it has laid down that the right is one attached to the person rather than to property. If the right is to be held to be not attached to the person, then “we would not shield our account balances, income figures and personal telephone and address books from the public eye, but might instead go about with the information written on our ‘foreheads or our bumper stickers’.” He observes that the majority in Miller confused “privacy” with “secrecy” and that “even their notion of secrecy is a strange one, for a secret remains a secret even when shared with those whom one selects for one’s confidence”. Our cheques are not merely negotiable instruments but yet the world can learn a vast amount about us by knowing how and with whom we have spent our money. Same is the position when we use the telephone or post a letter. To say that one assumes great risks by opening a bank account appeared to be a wrong conclusion. Prof. Tribe asks a very pertinent question (p. 1392):

---

<sup>24</sup>(2005) 1 SCC 496

<sup>25</sup>425 US 435 (1976)

‘Yet one can hardly be said to have assumed a risk of surveillance in a context where, as a practical matter, one had no choice. Only the most committed — and perhaps civilly committable — *hermit can live without a telephone, without a bank account, without mail*. To say that one must take a bitter pill with the sweet when one licks a stamp is to exact a high constitutional price indeed for living in contemporary society.’

He concludes (p. 1400):

‘In our information-dense technological era, when living inevitably entails leaving not just informational footprints but parts of one's self in myriad directories, files, records and computers, to hold that the Fourteenth Amendment did not reserve to individuals some power to say *when and how and by whom* that information and those confidences were to be used, would be to denigrate the central role that informational autonomy must play in any developed concept of the self.’

(ii) Prof. Yale Kamisar (again quoted by Prof. Tribe) (p. 1392) says:

‘It is beginning to look as if the only way someone living in our society can avoid ‘*assuming the risk*’ that various intermediate institutions will reveal information to the police is by engaging in drastic discipline, the kind of discipline of life under *totalitarian regimes*.’...”

Thereafter, it was noticed that with the enactment of the Right to Financial Privacy Act, 1978 the legal effect of ‘*Miller*’ was statutorily done away.

40. The right to privacy though not expressly guaranteed in the Constitution of India is now recognized as a basic fundamental

right vide decision of the Constitutional Bench in **K.S. Puttaswamy and Another v. Union of India and Others**<sup>26</sup> holding that it is an intrinsic part of the right to life and liberty guaranteed under Article 21 of the Constitution and recognised under several international treaties, chief among them being Article 12 of the Universal Declaration of Human Rights, 1948 which states that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. The judgment recognises that everyone has a right to the protection of laws against such interference or attack.

41. In **K.S. Puttaswamy** (supra) the main judgment (authored by D.Y. Chandrachud, J.) has referred to provisions of Section 8(1)(j) of the RTI Act to highlight that the right to privacy is entrenched with constitutional status in Part III of the Constitution, thus providing a touchstone on which validity of executive decisions can be assessed and validity of laws can be determined vide judicial review exercised by the courts. This observation highlights the status and importance of the right to privacy as a constitutional right. The ratio as recorded in the two concurring judgments of

---

<sup>26</sup>(2017) 10 SCC 1

the learned judges (R.F. Nariman and Sanjay Kishan Kaul, JJ.) are similar. It is observed that privacy involves a person's right to his physical body; right to informational privacy which deals with a person's mind; and the right to privacy of choice which protects an individual's autonomy over personal choices. While physical privacy enjoys constitutional recognition in Article 19(1)(d) and (e) read with Article 21, personal informational privacy is relatable to Article 21 and right to privacy of choice is enshrined in Articles 19(1)(a) to (c), 20(3), 21 and 25 of the Constitution. In the concurring opinion, there is a reference to '*The Right to Privacy*' by Samuel Warren and Louis D. Brandeis on an individual's right to control the dissemination of personal information and that an individual has a right to limit access to such information/shield such information from unwarranted access. Knowledge about a person gives another power over that person, as personal data collected is capable of effecting representations in his decision making process and shaping behaviour which can have a stultifying effect on the expression of dissent which is the cornerstone of democracy. In the said concurring judgment, it has been further held that the right to protection of reputation from being unfairly harmed needs to be zealously guarded not only against falsehood but also against certain truths by observing:

"623. An individual has a right to protect his reputation from being unfairly harmed and such protection of reputation needs to exist not only against falsehood but also certain truths. It cannot be said that a more accurate judgment about people can be facilitated by knowing private details about their lives – people judge us badly, they judge us in haste, they judge out of context, they judge without hearing the whole story and they judge with hypocrisy. Privacy lets people protect themselves from these troublesome judgments."<sup>27</sup>

42. Privacy, it is uniformly observed in **K.S. Puttaswamy** (supra), is essential for liberty and dignity. Therefore, individuals have the need to preserve an intrusion-free zone for their personality and family. This facilitates individual freedom. On the question of invasion of personal liberty, the main judgment has referred to a three-fold requirement in the form of – (i) legality, which postulates the existence of law (RTI Act in the present case); (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means to be adopted to achieve them. The third requirement, we would observe, is achieved in the present case by Sections 8(1)(j) and 11 of the RTI Act and the RTI Act cannot be faulted on this ground. The RTI Act also defines the legitimate aim, that is a public interest in the dissemination of information which can be confidential or private (or held in a fiduciary relationship) when

---

<sup>27</sup>Daniel Solove: "10 Reasons Why Privacy Matters" published on 20<sup>th</sup> January 2014 and available at <https://www.teachprivacy.com/10-reasons-privacy-matters/>

larger public interest or public interest in disclosure outweighs the protection or any possible harm or injury to the interest of the third party.

43. Privacy and confidentiality encompass a bundle of rights including the right to protect identity and anonymity. Anonymity is where an individual seeks freedom from identification, even when and despite being in a public space. In **K.S. Puttaswamy** (supra) reference is made to **Spencer v. R.**<sup>28</sup> which had set out three key elements of informational privacy: privacy as secrecy, privacy as control, and privacy as anonymity, to observe:

“214. [...] anonymity may, depending on the totality of the circumstances, be the foundation of a privacy interest that engages constitutional protection against unreasonable search and seizure.

xx                    xx                    xx

[...] The disclosure of this information will often amount to the identification of a user with intimate or sensitive activities being carried out online, usually on the understanding that these activities would be anonymous. A request by a police officer that an ISP voluntarily disclose such information amounts to a search.”

Privacy and confidentiality, therefore, include information about one's identity.

---

<sup>28</sup>2014 SCC Online Can SC 34: (2014) 2 SCR 212: 2014 SCC 43

44. In **K.S. Puttaswamy** (supra), it is observed that the Canadian Supreme Court in **Spencer** (supra) had stopped short of recognising an absolute right of anonymity, but had used the provisions of Canadian Charter of Rights and Freedoms of 1982 to expand the scope of the right to privacy, used traditionally to protect individuals from an invasion of their property rights, to an individual's "reasonable expectation of privacy". Yet the Court has observed that there has to be a careful balancing of the requirements of privacy with legitimate concerns of the State after referring to an article<sup>29</sup> wherein it was observed that:

"Privacy is the terrorist's best friend, and the terrorist's privacy has been enhanced by the same technological developments that have both made data mining feasible and elicited vast quantities of personal information from innocents ..."

45. Referring to an article titled '*Reasonable Expectations of Anonymity*'<sup>30</sup> authored by Jeffrey M. Skopek, it is observed that distinction has been drawn between anonymity on one hand and privacy on the other as privacy involves hiding information whereas anonymity involves hiding what makes it personal by giving an example that furnishing of medical records of a patient would amount to an invasion of privacy, whereas a State may

---

<sup>29</sup> Richard A. Posner, "Privacy, Surveillance, and Law", *The University of Chicago Law Review* (2008), Vol. 75, 251.

<sup>30</sup>Virginia Law Review (2015), Vol. 101, at pp. 691-762.

have legitimate interest in analysing data borne from hospital records to understand and deal with a public health epidemic and to obviate serious impact on the population. If the anonymity of the individual/patient is preserved, it would legitimately assert a valid State interest in the preservation of public health.

46. For the purpose of the present case, we are not concerned with the specific connotations of the right to anonymity and the restrictions/limitations appended to it. In the context of the RTI Act, suffice would be to say that the right to protect identity and anonymity would be identically subjected to the public interest test.
47. Clause (j) to sub-section (1) of Section 8 of the RTI Act specifically refers to invasion of the right to privacy of an individual and excludes from disclosure information that would cause unwarranted invasion of privacy of such individual, unless the disclosure would satisfy the larger public interest test. This clause also draws a *distinction* in its treatment of *personal information*, whereby disclosure of such information is exempted if such information has no relation to public activity or interest. We would like to, however, clarify that in their treatment of this exemption, this Court has treated the word ‘information’ which if disclosed

would lead to invasion of privacy to mean personal information, as distinct from public information. This aspect has been dealt with in the succeeding paragraphs.

48. As per Black's Law Dictionary, 8<sup>th</sup> Edition, the word '*personal*' means '*of or affecting a person or of or constituting personal property*'. In Collins Dictionary of the English Language, the word '*personal*' has been defined as under:
1. Of or relating to the private aspects of a person's life.
2. Of or relating to a person's body, its care or its appearance.
3. Belonging to or intended for a particular person and no one else.
4. Undertaken by an individual himself.
5. Referring to, concerning, or involving a person's individual personality, intimate affairs, etc., esp. in an offensive way.
6. Having the attributes of an individual conscious being.
7. Of or arising from the personality.
8. Of or relating to, or denoting grammatical person.
9. Of or relating to movable property (Law).
10. An item of movable property (Law)."

49. In ***Peck v. United Kingdom***<sup>31</sup>, the European Court of Human Rights had held that private life is a broad term not susceptible to exhaustive definition but includes the right to establish and develop relationships with other human beings such that there is a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life. Recognised facets of an individual's private life include a person's health, ethnicity, personal relationships, sexual conduct; religious or philosophical convictions and personal image. These facets resemble what has been categorised as sensitive personal data within the meaning of the Data Protection Act, 2018 as applicable in the United Kingdom.

50. Gleeson CJ in ***Australian Broadcasting Corporation v. Lenah Game Meats Pty Ltd***<sup>32</sup> had distinguished between what is public and private information in the following manner:

“An activity is not private simply because it is not done in public. It does not suffice to make an act private that, because it occurs on private proper property, it has such measure of protection from the public gaze as the characteristics of the property, the property owner combine to afford. Certain kinds of information about a person, such as information relating to health, personal relationships, or finances, may be easy to identify as private, as may certain kinds of activity which a reasonable person, applying contemporary

---

<sup>31</sup>(2003) EMLR 15

<sup>32</sup>(2001) 185 ALR 1

standards of morals and behaviour, would understand to be meant to be unobserved. The requirement that disclosure or observation of information or conduct would be highly offensive to a reasonable person of ordinary sensibilities is in many circumstances a useful practical test of what is private.”

51. This test had been adopted in several English decisions including decision of the House of Lords in **Campbell v. Mirror Group Newspapers Limited**<sup>33</sup> wherein Lord Hope of Craighead had further elucidated that the definition is taken from the definition of ‘privacy’ in the United States, where the right to privacy is invaded if the matter which is publicised is of a kind that – (a) would be highly offensive to a reasonable person and (b) not of legitimate concern to the public. Law of privacy in **Campbell** (supra), it was observed, was not intended for the protection of the unduly sensitive and would cover matters which are offensive and objectionable to a reasonable man of ordinary sensibilities who must expect some reporting of his daily activities. The mind that has to be examined is not that of a reader in general, but that of the person who is affected by the publicising/dissemination of his information. The question is what a reasonable person of ordinary sensibilities would feel if he/she is subjected to such publicity. Only when publicity is such that a reasonable person would feel

---

<sup>33</sup>(2004) UKHL 22

justified in feeling seriously aggrieved that there would be an invasion in the right to privacy which gives rise to a cause of action.

52. In **Douglas** (*supra*), it was also held that there are different degrees of privacy which would be equally true for information given in confidentiality, and the potential for disclosure of the information to cause harm is an important factor to be taken into account in the assessment of the extent of the restriction to protect the right to privacy.
53. While clause (j) exempts disclosure of two kinds of information, as noted in paragraph 47 above, that is “personal information” with no relation to public activity or interest and “information” that is exempt from disclosure to prevent unwarranted invasion of privacy, this Court has not underscored, as will be seen below, such distinctiveness and treated personal information to be exempt from disclosure if such disclosure invades on balance the privacy rights, thereby linking the former kind of information with the latter kind. This means that information, which if disclosed could lead to an unwarranted invasion of privacy rights, would mean personal information, that is, which is not having co-relation with public information.

54. In ***Girish Ramchandra Deshpande v. Central Information Commissioner and Others***<sup>34</sup>, the applicant had sought copies of all memos, show-cause notices and censure/punishment awarded to a Government employee from his employer and also details of his movable/immovable properties, details of investment, loan and borrowings from financial institutions, details of gifts accepted by the employee from his family members and relatives at the time of the marriage of his son. In this context, it was observed:

“12. 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 organisation 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 or 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.

13. The details disclosed by a person in his income tax returns are “personal information” which stand

---

<sup>34</sup>(2013) 1 SCC 212

exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.”

(emphasis supplied)

55. In ***Canara Bank v. C.S. Shyam and Another***<sup>35</sup>, the applicant had sought information on parameters with regard to transfer of clerical staff with details of individual employees, such as date of their joining, promotion earned, date of their joining the branch, the authorities who had posted the transfer letters, etc. The information sought was declared to be personal in nature, which was conditionally exempted from disclosure under Section 8(1)(j) of the RTI Act.
56. In ***Subhash Chandra Agarwal v. Registrar, Supreme Court of India and Others***<sup>36</sup>, the applicant (who is also the respondent in the present appeals) had sought information relating to details of medical facilities availed by individual judges of the Supreme Court and their family members, including information relating to private treatment in India and abroad in last three years. This Court had held that the information sought by the applicant was

---

<sup>35</sup>(2018) 11 SCC 426

<sup>36</sup>(2018) 11 SCC 634

‘personal’ information and was protected under Section 8(1)(j) of the RTI Act, for disclosure would cause unwarranted invasion of privacy which prohibition would not apply where larger public interest justifies disclosure of such information.

57. In ***R.K. Jain v. Union of India and Another***<sup>37</sup>, the applicant had sought inspection of documents relating to Annual Confidential Reports (ACRs) of a Member of Customs Excise and Service Tax Appellate Tribunal (CESTAT) and follow up action taken by the authorities based on the ACRs. The information sought was treated as personal information, which, except in cases involving overriding public interest, could not be disclosed. It was observed that the procedure under Section 11 of the RTI Act in such cases has to be followed. The matter was remitted to examine the aspect of larger public interest and to follow the procedure prescribed under Section 11 of the RTI Act which, it was held, was mandatory.
58. Reference can also be made to ***Aditya Bandopadhyay*** (supra), as discussed earlier in paragraph 32, where this Court has held that while a fiduciary could not withhold information from the beneficiary in whose benefit he holds such information, he/she

---

<sup>37</sup>(2013) 14 SCC 794

owed a duty to the beneficiary to not disclose the same to anyone else. This exposition of the Court equally reconciles the right to know with the rights to privacy under clause (j) to Section 8(1) of the RTI Act.

59. Reading of the aforesaid judicial precedents, in our opinion, would indicate that personal records, including name, address, physical, mental and psychological status, marks obtained, grades and answer sheets, are all treated as personal information. Similarly, professional records, including qualification, performance, evaluation reports, ACRs, disciplinary proceedings, etc. are all personal information. Medical records, treatment, choice of medicine, list of hospitals and doctors visited, findings recorded, including that of the family members, information relating to assets, liabilities, income tax returns, details of investments, lending and borrowing, etc. are personal information. Such personal information is entitled to protection from unwarranted invasion of privacy and conditional access is available when stipulation of larger public interest is satisfied. This list is indicative and not exhaustive.

60. In *Arvind Kejriwal v. Central Public Information Officer and Another*<sup>38</sup>, the Delhi High Court had examined and interpreted Section 11 of the RTI Act in the following manner:

"12. Section 11(1), (2), (3) and (4) are the procedural provisions which have to be complied with by the PIO/appellant authority, when they are required to apply the said test and give a finding whether information should be disclosed or not disclosed. If the said aspect is kept in mind, we feel there would be no difficulty in interpreting Section 11(1) and the so called difficulties or imparability as pointed out by the appellant will evaporate and lose significance. This will be also in consonance with the primary rule of interpretation that the legislative intent is to be gathered from language employed in a statute which is normally the determining factor. The presumption is that the legislature has stated what it intended to state and has made no mistake. (See *Prakash Nath Khanna vs. CIT*, (2004) 9 SCC 686; and several judgments of Supreme Court cited in *B. Premanand and Ors. vs. Mohan Koikal and Ors.*..

13. Read in this manner, what is stipulated by Section 11(1) is that when an information seeker files an application which relates to or has been supplied by third party, the PIO has to examine whether the said information is treated as confidential or can be treated as confidential by the third party. If the answer is in the possible sphere of affirmative or "maybe yes", then the procedure prescribed in Section 11 has to be followed for determining whether the larger public interest requires such disclosure. When information per se or ex facie cannot be regarded as confidential, then the procedure under section 11 is not to be followed. All information relating to or furnished by a third party need not be confidential for various reasons including the factum that it is already in public domain or in circulation, right of third party is not affected or by law

---

<sup>38</sup>AIR 2012 Delhi 29

is required to be disclosed etc. The aforesaid interpretation takes care of the difficulties visualised by the appellant like marks obtained in an examination, list of BPL families, etc. In such cases, normally plea of privacy or confidentiality does not arise as the said list has either been made public, available in the public domain or has been already circulated to various third parties. On the other hand, in case the word "or" is read as "and", it may lead to difficulties and problems, including invasion of right of privacy/confidentiality of a third party. For example, a public authority may have in its records, medical reports or prescriptions relating to third person but which have not been supplied by the third person. If the interpretation given by the appellant is accepted then such information can be disclosed to the information seeker without following the procedure prescribed in Section 11(1) as the information was not furnished or supplied by the third person. Such examples can be multiplied. Furthermore, the difficulties and anomalies pointed out can even arise when the word "or" is read as "and" in cases where the information is furnished by the third party. For example, for being enrolled as a BPL family, information may have been furnished by the third party who is in the list of BPL families. Therefore, the reasonable and proper manner of interpreting Section 11(1) is to keep in mind the test stipulated by the proviso. It has to be examined whether information can be treated and regarded as being of confidential nature, if it relates to a third party or has been furnished by a third party. Read in this manner, when information relates to a third party and can be *prima facie* regarded and treated as confidential, the procedure under Section 11(1) must be followed. Similarly, in case information has been provided by the third party and has been *prima facie* treated by the said third party as confidential, again the procedure prescribed under Section 11(1) has to be followed.

xx                    xx                    xx

16. Thus, Section 11(1) postulates two circumstances when the procedure has to be followed. Firstly when the information relates to a third party and can be

prima facie regarded as confidential as it affects the right of privacy of the third party. The second situation is when information is provided and given by a third party to a public authority and prima facie the third party who has provided information has treated and regarded the said information as confidential. The procedure given in Section 11(1) applies to both cases.”

61. We would clarify that Section 11 is not merely procedural but also a substantive provision which applies when the PIO intends to disclose information that relates to or has been supplied by a third party and has been treated as confidential by that third party. It requires the PIO to issue notice to the third party who may make submission in writing or orally, which submission has to be kept in view while taking a decision. Proviso to Section 11(1) applies in all cases except trade or commercial secrets protected by law. Pertinently, information including trade secrets, intellectual property rights, etc. are governed by clause (d) to sub-section (1) of Section 8 and Section 9 of the RTI Act. In all other cases where the information relates to or has been supplied by the third party and treated as confidential by that third party, disclosure in terms of the proviso may be allowed where the public interest in disclosure outweighs in importance any possible harm or injury to the interest of the third party. Confidentiality is protected and preserved in law because the public interest requires such

protection. It helps and promotes free communication without fear of retaliation. However, public interest in protecting confidentiality is subject to three well-known exceptions. The first exception being a public interest in the disclosure of iniquity for there cannot be any loss of confidentiality involving a wrongdoing. Secondly, there cannot be any public interest when the public has been misled. Thirdly, the principle of confidentiality does not apply when the disclosure relates to matters of public concern, which expression is vastly different from news value or news to satiate public curiosity. Public concern relates to matters which are an integral part of free speech and expression and entitlement of everyone to truth and fair comment about it. There are certain circumstances where the public interest in maintaining confidentiality may be outweighed by the public interest in disclosure and, thus, in common law, it may not be treated by the courts as confidential information. These aspects would be relevant under the proviso to Section 11(1) of the RTI Act.

62. Proviso to Section 11(1) of the RTI Act is a statutory recognition of three exceptions and more when it incorporates public interest test. It states that information, otherwise treated confidential, can be disclosed if the public interest in disclosure outweighs the possible harm and injury to the interest of such a third party. The

expression ‘third party’ has been defined in clause (n) to Section 2 to mean a person other than the citizen making a request for information and includes a public authority. Thus, the scope of ‘information’ under Section 11 is much broader than that of clause (j) to Section 8 (1), as it could include information that is personal as well as information that concerns the government and its working, among others, which relates to or is supplied by a third party and treated as confidential. Third-party could include any individual, natural or juristic entity including the public authority.

63. Confidentiality in case of personal information and its co-relation with the right to privacy and disclosure of the same on the anvil of the public interest test has been discussed above. We now proceed to look at confidentiality of information concerning the government and information relating to its inner-workings and the difference in approach in applying the public interest test in disclosing such information, as opposed to the approach adopted for other confidential/personal information. The reason for such jurisprudential distinction with regard to government information is best expressed in *Attorney General (UK) v. Heinemann*

**Publishers Pty Ltd.**<sup>39</sup> wherein the High Court of Australia had observed:

“[...] the relationship between the modern State and its citizens is so different in kind from that which exists between private citizens that rules worked out to govern contractual, property, commercial and private confidences are not fully applicable where the plaintiff is a government or one of its agencies. Private citizens are entitled to protect or further own interests... [whereas] governments act, or at all events are constitutionally required to act, in the public interest. Information is held, received and imparted by governments, their departments and agencies to further the public interest. Public and not private interest, therefore, must be the criterion by which equity determines whether it will protect information which a government or governmental body claims is confidential.”

The High Court of Australia had earlier in **Commonwealth v. John Fairfax and Sons Ltd.**<sup>40</sup> observed:

“The question, then when the executive government seeks the protection given by equity, is: What detriment does it need to show?

The equitable principle has been fashioned to protect the personal, private and proprietary interests of the citizen, not to protect the very different interests of the executive government. It acts, or is supposed to act, not according to standards of private interest, but in the public interest. This is not to say that equity will not protect information in the hands of the government, but it is to say that when equity protects government information it will look at the matter through different spectacles.

---

<sup>39</sup>(1987) 10 NSWLR 86 at 191.

<sup>40</sup>(1980) 147 CLR 39 at 51.

It may be a sufficient detriment to the citizen that disclosure of information relating to his affairs will expose his actions to public discussion and criticism. But it can scarcely be a relevant detriment to the government that publication of material concerning its actions will merely expose it to public discussion and criticism. It is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticize government action.

Accordingly, the court will determine the government's claim to confidentiality by reference to the public interest. Unless disclosure is likely to injure the public interest, it will not be protected.

The court will not prevent the publication of information which merely throws light on the past workings of government, even if it be not public property, so long as it does not prejudice the community in other respects. Then disclosure will itself serve the public interest in keeping the community informed and in promoting discussion of public affairs. If, however, it appears that disclosure will be inimical to the public interest because national security, relations with foreign countries or the ordinary business of government will be prejudiced, disclosure will be restrained. There will be cases in which the conflicting considerations will be finely balanced, where it is difficult to decide whether the public's interest in knowing and in expressing its opinion, outweighs the need to protect confidentiality."

The above principles have also been reiterated and relied upon by the courts in the United Kingdom [See **Coco** (supra),

**Attorney General v. Jonathan Cape Ltd.**<sup>41</sup>. In **Guardian Newspapers** (supra), Lord Keith of Kinkel had observed:

"The position of the Crown, as representing the continuing government of the country may, however, be regarded as being special. In some instances disclosure of confidential information entrusted to a servant of the Crown may result in a financial loss to the public. In other instances such disclosure may tend to harm the public interest by impeding the efficient attainment of proper governmental ends, and the revelation of defence or intelligence secrets certainly falls into that category. The Crown, however, as representing the nation as a whole, has no private life or personal feelings capable of being hurt by the disclosure of confidential information. In so far as the Crown acts to prevent such disclosure or to seek redress for it on confidentiality grounds, it must necessarily, in my opinion, be in a position to show that the disclosure is likely to damage or has damaged the public interest. How far the Crown has to go in order to show this must depend on the circumstances of each case. In a question with a Crown servant himself, or others acting as his agents, the general public interest in the preservation of confidentiality, and in encouraging other Crown servants to preserve it, may suffice."

64. In **R.K. Jain v. Union of India**<sup>42</sup>, this Court, while examining Section 123 of the Evidence Act, 1872, had paraphrased the earlier judgment of the Constitution Bench of this Court penned down by Fazal Ali, J. in **S.P. Gupta** (supra) (the first Judge's case) in which the question of privilege against disclosure of correspondence between the Chief Justice of Delhi High Court,

---

<sup>41</sup>[1976] QB 752

<sup>42</sup>(1993) 4 SCC 119

Chief Justice of India and the Law Minister of the Union had arisen, in the following words:

"41. [...] in a democracy, citizens are to know what their Govt. is doing. No democratic Govt. can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Govt. It is only if the people know how the Govt. is functioning and that they can fulfill their own democratic rights given to them and make the democracy a really effective participatory democracy. There can be little doubt that exposure to public scrutiny is one of the surest means of running a clean and healthy administration. By disclosure of information in regard to the functioning of the Govt. must be the rule and secrecy can be exceptionally justified only where strict requirement of public information was assumed. The approach of the court must be to alleviate the area of secrecy as much as possible constantly with the requirement of public interest bearing in mind all the time that the disclosure also serves an important aspect of public interest."

65. In **R.K. Jain** (1993) (*supra*), reference was also made to Articles 74(2) and 75(3) of the Constitution, to observe:

"21...Article 74(2) precludes this Court from enquiring into the nature of the advice tendered to the President and the documents are, therefore, immuned from disclosure. The disclosure would cause public injury preventing candid and frank discussion and expression of views by the bureaucrats at higher level and by the Minister/Cabinet Sub-committee causing serious injury to public service. Therefore, Cabinet papers, minutes of discussion by heads of departments; high level documents relating to the inner working of the government machine and all papers concerned with the government policies belong to a class documents which in the public interest they or contents thereof must be protected against disclosure.

30. Collective responsibility under Article 75(3) of the Constitution inheres maintenance of confidentiality as enjoined in oaths of office and of secrecy set forth in Schedule III of the Constitution that the Minister will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under his/her consideration or shall become known to him/her as Minister except as may be required for the "due discharge of his/her duty as Minister". The base and basic postulate of its significance is unexceptionable. But the need for and effect of confidentiality has to be nurtured not merely from political imperatives of collective responsibility envisaged by Article 75(3) but also from its pragmatism.

XX                  XX                  XX

34. Equally every member is entitled to insist that whatever his own contribution was to the making of the decision, whether favourable or unfavourable, every other member will keep it secret. Maintenance of secrecy by an individual's contribution to discussion, or vote in the Cabinet guarantees most favourable and conducive atmosphere to express view formally..."

It was held that the Ministers and the government servants were required to maintain secrecy and confidentiality in the performance of the duties of the office entrusted by the Constitution and the laws. Elucidating on the importance of confidentiality, it was observed:

"34. [...] Confidentiality and collective responsibility in that scenario are twins to effectuate the object of frank and open debate to augment efficiency of public service or effectiveness of collective decision to elongate public interest. To hamper and impair them without any compelling or at least strong reasons, would be detrimental to the efficacy of public administration. It would tantamount to wanton rejection of

the fruits of democratic governance, and abdication of an office of responsibility and dependability. Maintaining of top secrecy of new taxation policies is a must but leaking budget proposals a day before presentation of the budget may be an exceptional occurrence as an instance."

66. Thereafter, reference was made to the decision of the House of Lords in **Burmah Oil Ltd v. Governor And Company Of The Bank Of England And Another**<sup>43</sup> wherein the Lords had rejected the notion that "any competent and conscientious public servant would be inhibited at all in the candour of his writings by consideration of the off chance that they might have to be produced in a litigation as grotesque" to hold that this contention would be utterly insubstantial ground to deny access to the relevant document. In **Burma Oil Ltd.** (supra), it was held that the candour doctrine stands in a different category from that aspect of public interest, which, in appropriate circumstances, may require that the '*sources and nature of information confidentially tendered*' should be withheld from disclosure. Several other cases were also referred expressing the same ratio [See – **Butters Gas and Oil Co. v. Hammer**<sup>44</sup>; **Air Canada v. Secretary of State for**

---

<sup>43</sup>[1980] AC 1090

<sup>44</sup>1982 AC 888 (H.L.)

***Trade<sup>45</sup>; and Council of Civil Service Unions v. Minister for the Civil Service<sup>46</sup>].***

67. Having held so, the Bench in ***R.K. Jain*** (1993) (supra) had proceeded to observe:

“48. In a democracy it is inherently difficult to function at high governmental level without some degree of secrecy. No Minister, nor a Senior Officer would effectively discharge his official responsibilities if every document prepared to formulate sensitive policy decisions or to make assessment of character rolls of co-ordinate officers at that level if they were to be made public. Generally assessment of honesty and integrity is a high responsibility. At high co-ordinate level it would be a delicate one which would further get compounded when it is not backed up with material. Seldom material will be available in sensitive areas. Reputation gathered by an officer around him would form the base. If the reports are made known, or if the disclosure is routine, public interest grievously would suffer. On the other hand, confidentiality would augment honest assessment to improve efficiency and integrity in the officers.

49. The business of the Govt., when transacted by bureaucrats, even in personal, it would be difficult to have equanimity if the inner working of the Govt. machinery is needlessly exposed to the public. On such sensitive issues it would hamper to express frank and forthright views or opinions. therefore, it may be that at that level the deliberations and in exceptional cases that class or category or documents get protection, in particular, on policy matters. Therefore, the court would be willing to respond to the executive public interest immunity to disclose certain documents where national security or high policy, high sensitivity is involved.

---

<sup>45</sup>1983 2 AC 394 (H.L.)

<sup>46</sup>1985 AC 374 (H.L.)

54. [...] In President Nixon's case, the Supreme Court of the United States held that it is the court's duty to construe and delineate claims arising under express powers, to interpret claims with respect to powers alleged to derive from enumerated powers of the Constitution, In deciding whether the matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is the responsibility of the court as ultimate interpreter of the Constitution..."

68. At the same time, it was held:

"55. [...] Article 74(2) is not a total bar for production of the records. Only the actual advice tendered by the Minister or Council of Ministers to the President and the question whether any and if so, what advice was tendered by the Minister or Council of Ministers to the President, shall not be enquired into by the court. In other words the bar of Judicial review is confined to the factum of advice, its extent, ambit and scope but not the record i.e. the material on which the advice is founded. In S.P. Gupta's case this Court held that only the actual advice tendered to the President is immuned from enquiry and the immunity does not extend to other documents or records which form part of the advice tendered to the President.

56. There is discernible modern trends towards more open government than was prevalent in the past. In its judicial review the court would adopt in camera procedure to inspect the record and evaluate the balancing act between the competing public interest and administration of justice. It is equally the paramount consideration that justice should not only be done but also would be publicly recognised as having been done. Under modern conditions of responsible government, Parliament should not always be relied on as a check on excess of power by the Council of

Ministers or Minister. Though the court would not substitute its views to that of the executive on matters of policy, it is its undoubted power and duty to see that the executive exercises its power only for the purpose for which it is granted. Secrecy of the advice or opinion is by no means conclusive. Candour, frankness and confidentiality though are integral facets of the common genus i.e., efficient governmental functioning, per se by means conclusive but be kept in view in weighing the balancing act. Decided cases show that power often was exercised in excess thereof or for an ulterior purpose etc. Sometimes the public service reasons will be decisive of the issue, but they should never prevent the court from weighing them against the injury which would be suffered in the administration of justice if the document was not to be disclosed, and the likely injury to the cause of justice must also be assessed and weighed. Its weight will vary according to the nature of the proceedings in which disclosure is sought, level at which the matter was considered; the subject matter of consideration; the relevance of the documents and that degree of likelihood that the document will be of importance in the litigation. In striking the balance, the court may always, if it thinks it necessary, itself inspect the documents. It is, therefore the constitutional, legitimate and lawful power and duty of this Court to ensure that powers, constitutional, statutory or executive are exercised in accordance with the Constitution and the law. This may demand, though no doubt only in limited number of cases, yet the inner workings of government may be exposed to public gaze. The contentions of Attorney General and Solicitor General that the inner workings of the government would be exposed to public gaze, and that some one who would regard this as an occasion without sufficient material to ill-informed criticism is no longer relevant. Criticism calculated to improve the nature of that working as affecting the individual citizen is welcome.”

69. The aforesaid passages highlight the relevance of confidentiality in the government and its functioning. However, this is not to state

that plea of confidentiality is an absolute bar, for in terms of proviso to Section 11(1) of the RTI Act, the PIO has to undertake the balancing exercise and weigh the advantages and benefits of disclosing the information with the possible harm or injury to the third party on the information being disclosed. We have already referred to the general approach on the right of access to government records under the heading “*Section 8(1)(j) and Section 11 of the RTI Act*” with reference to the decisions of the High Court of Australia in ***Heinemann Publishers Pty Ltd.*** (supra) and ***John Fairfax and Sons Ltd.*** (supra).

70. Most jurists would accept that absolute transparency in all facets of government is neither feasible nor desirable,<sup>47</sup> for there are several limitations on complete disclosure of governmental information, especially in matters relating to national security, diplomatic relations, internal security or sensitive diplomatic correspondence. There is also a need to accept and trust the government’s decision-makers, which they have to also earn, when they plead that confidentiality in their meetings and

---

<sup>47</sup> Michael Schudson, ‘The Right to Know vs the Need for Secrecy: The US Experience’ The Conversation (May 2015) <<https://theconversation.com/the-right-to-know-vs-the-need-for-secrecy-the-us-experience-40948>>; Eric R. Boot, ‘The Feasibility of a Public Interest Defense for Whistleblowing’, Law and Philosophy (2019). See generally Michael Schudson, *The Rise of the Right to Know: Politics and the Culture of Transparency, 1945–1975* (Cambridge (MA): Harvard University Press 2015).

exchange of views is needed to have a free flow of views on sensitive, vexatious and pestilent issues in which there can be divergent views. This is, however, not to state that there are no dangers in maintaining secrecy even on aspects that relate to national security, diplomatic relations, internal security or sensitive diplomatic correspondence. Confidentiality may have some bearing and importance in ensuring honest and fair appraisals, though it could work the other way around also and, therefore, what should be disclosed would depend on authentic enquiry relating to the public interest, that is, whether the right to access and the right to know outweighs the possible public interest in protecting privacy or outweighs the harm and injury to third parties when the information relates to such third parties or the information is confidential in nature.

#### **POINT NO. 4: MEANING OF THE TERM ‘PUBLIC INTEREST’**

71. In ***Union of India v. Association for Democratic Reforms and Another***<sup>48</sup> recognising the voters' right to know the antecedents of the candidates and the right to information which stems from Article 19(1)(a) of the Constitution, it was held that directions could

---

<sup>48</sup>(2002) 5 SCC 294

be issued by the Court to subserve public interest in creating an informed citizenry, observing:

"46. [...] The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

6. Cumulative reading of plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Article 141 and 142 of the Constitution to issue necessary directions to the Executive to subserve public interest."

Clearly, the larger public interest in having an informed electorate, fair elections and creating a dialectical democracy had outweighed and compelled this Court to issue the directions notwithstanding disclosure of information relating to the personal assets, educational qualifications and antecedents including previous involvement in a criminal case of the contesting candidate.

72. Public interest, sometimes criticised as inherently amorphous and incapable of a precise definition, is a time tested and historical conflict of rights test which is often applied in the right to information legislation to balance right to access and protection of the conflicting right to deny access. In ***Mosley v. News Group Papers Ltd.***<sup>49</sup> it has been observed:

“130... It is not simply a matter of personal privacy versus the public interest. The modern perception is that there is a public interest in respecting personal privacy. It is thus a question of taking account of conflicting public interest considerations and evaluating them according to increasingly well recognized criteria.”

The RTI Act is no exception. Section 8(1)(j) of the RTI Act prescribes the requirement of satisfaction of '*larger public interest*' for access to information when the information relates to personal information having no relationship with any public activity or interest, or would cause unwarranted invasion of privacy of the individual. Proviso to Section 11(1) states that except in case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interest of the third party. The words '*possible harm or injury*' to the interest of the third party is preceded by the word '*importance*' for the purpose of comparison.

---

<sup>49</sup>2008 EWHC 1777 (QB)

'Possible' in the context of the proviso does not mean something remote, far-fetched or hypothetical, but a calculable, foreseeable and substantial possibility of harm and injury to the third party.

73. Comparison or balancing exercise of competing public interests has to be undertaken in both sections, *albeit* under Section 8(1)(j) the comparison is between public interest behind the exemption, that is personal information or invasion of privacy of the individual and public interest behind access to information, whereas the test prescribed by the proviso to Section 11(1) is somewhat broader and wider as it requires comparison between disclosure of information relating to a third person or information supplied and treated as confidential by the third party and possible harm or injury to the third party on disclosure, which would include all kinds of 'possible' harm and injury to the third party on disclosure.
74. This Court in ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi and Another***<sup>50</sup> has held that the phrase 'public interest' in Section 8(1)(j) has to be understood in its true connotation to give complete meaning to the relevant provisions of the RTI Act. However, the RTI Act does not specifically identify factors to be taken into account in determining where the public

---

<sup>50</sup>(2012) 13 SCC 61

interest lies. Therefore, it is important to understand the meaning of the expression ‘public interest’ in the context of the RTI Act. This Court held ‘public interest’ to mean the general welfare of the public warranting the disclosure and the protection applicable, in which the public as a whole has a stake, and observed:

“23. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to the circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India.”

75. Public interest in access to information refers to something that is in the interest of the public welfare to know. Public welfare is widely different from what is of interest to the public. “Something which is of interest to the public” and “something which is in the public interest” are two separate and different parameters. For example, the public may be interested in private matters with which the public may have no concern and pressing need to know. However, such interest of the public in private matters would repudiate and directly traverse the protection of privacy. The object and purpose behind the specific exemption vide clause (j) to Section 8(1) is to protect and shield oneself from unwarranted access to personal information and to protect facets like reputation, honour, etc. associated with the right to privacy. Similarly, there is a public interest in the maintenance of confidentiality in the case of private individuals and even government, an aspect we have already discussed.

76. The public interest test in the context of the RTI Act would mean reflecting upon the object and purpose behind the right to information, the right to privacy and consequences of invasion, and breach of confidentiality and possible harm and injury that would be caused to the third party, with reference to a particular information and the person. In an article '*Freedom of Information*

*and the Public Interest: the Commonwealth experience'* published in the Oxford University Commonwealth Law Journal,<sup>51</sup> the factors identified as favouring disclosure, those against disclosure and lastly those irrelevant for consideration of public interest have been elucidated as under:

"it is generally accepted that the public interest is not synonymous with what is of interest to the public, in the sense of satisfying public curiosity about some matter. For example, the UK Information Tribunal has drawn a distinction between 'matters which were in the interests of the public to know and matters which were merely interesting to the public (i.e. which the public would like to know about, and which sell newspapers, but... are not relevant).

Factors identified as favouring disclosure include the public interest in: contributing to a debate on a matter of public importance; accountability of officials; openness in the expenditure of public funds, the performance by a public authority of its regulatory functions, the handling of complaints by public authorities; exposure of wrongdoing, inefficiency or unfairness; individuals being able to refute allegations made against them; enhancement of scrutiny of decision-making; and protecting against danger to public health or safety.

Factors that have been found to weigh against disclosure include: the likelihood of damage to security or international relations; the likelihood of damage to the integrity or viability of decision-making processes; the public interest in public bodies being able to perform their functions effectively; the public interest in preserving the privacy of individuals and the public interest in the preservation of confidences.

---

<sup>51</sup> Published online on 28th August, 2017

Factors irrelevant to the consideration of the public interest have also been identified. These include: that the information might be misunderstood; that the requested information is overly technical in nature; and that disclosure would result in embarrassment to the government or to officials.”

77. In **Campbell** (supra), reference was made to the Press Complaints Commission Code of Practice to further elucidate on the test of public interest which stands at the intersection of freedom of expression and the privacy rights of an individual to hold that:

“1. Public interest includes:

- (i) Detecting or exposing crime or a serious misdemeanour.
- (ii) Protecting public health and safety.
- (iii) Preventing the public from being misled by some statement or action of an individual or organisation....”

78. Public interest has no relationship and is not connected with the number of individuals adversely affected by the disclosure which may be small and insignificant in comparison to the substantial number of individuals wanting disclosure. It will vary according to the information sought and all circumstances of the case that bear upon the public interest in maintaining the exemptions and those in disclosing the information must be accounted for to judge the right balance. Public interest is not immutable and even time-gap

may make a significant difference. The type and likelihood of harm to the public interest behind the exemption and public interest in disclosure would matter. The delicate balance requires identification of public interest behind each exemption and then cumulatively weighing the public interest in accepting or maintaining the exemption(s) to deny information in a particular case against the public interest in disclosure in that particular case. Further, under Section 11(1), reference is made to the ‘possible’ harm and injury to the third party which will also have to be factored in when determining disclosure of confidential information relating to the third parties.

79. The last aspect in the context of public interest test would be in the form of clarification as to the effect of sub-section (2) to Section 6 of the RTI Act which does not require the information seeker to give any reason for making a request for the information. Clearly, ‘motive’ and ‘purpose’ for making the request for information is irrelevant, and being extraneous cannot be a ground for refusing the information. However, this is not to state that ‘motive’ and ‘purpose’ may not be relevant factor while applying the public interest test in case of qualified exemptions governed by the public interest test. It is in this context that this Court in ***Aditya Bandopadhyay*** (supra) has held that beneficiary

cannot be denied personal information relating to him. Similarly, in other cases, public interest may weigh in favour of the disclosure when the information sought may be of special interest or special significance to the applicant. It could equally be a negative factor when the ‘motive’ and ‘purpose’ is vexatious or it is a case of clear abuse of law.

80. In the RTI Act, in the absence of any positive indication as to the considerations which the PIO has to bear in mind while making a decision, the legislature had intended to vest a general discretion in the PIO to weigh the competing interests, which is to be limited only by the object, scope and purpose of the protection and the right to access information and in Section 11(1), the ‘possible’ harm and injury to the third party. It imports a discretionary value judgment on the part of the PIO and the appellate forums as it mandates that any conclusion arrived at must be fair and just by protecting each right which is required to be upheld in public interest. There is no requirement to take a *fortiori* view that one trumps the other.

#### **POINT NO. 5: JUDICIAL INDEPENDENCE**

81. Having dealt with the doctrine of the public interest under the RTI Act, we would now turn to examining its co-relation with

transparency in the functioning of the judiciary in matters of judicial appointments/selection and importance of judicial independence.

82. Four major arguments are generally invoked to deny third-party or public access to information on appointments/selection of judges, namely, (i) confidentiality concerns; (ii) data protection; (iii) reputation of those being considered in the selection process, especially those whose candidature/eligibility stands negated; and (iv) potential chilling effect on future candidates given the degree of exposure and public scrutiny involved.<sup>52</sup> These arguments have become subject matter of considerable debate, if not outright criticism at the hands of jurists and authors.<sup>53</sup> Yet there are those who have expressed cynicism about the ‘interview’ process undertaken by the Judicial Service Commission (JSC) in recommending judges for appointment in South Africa, by pointing out the precariousness and the chilling effect it has on prospective candidates and consequently the best candidates often do not apply.<sup>54</sup> Recently, the majority judgment of the Constitutional Court

---

<sup>52</sup> See: How Transparent is Transparent Enough?: Balancing Access to Information Against Privacy in European Judicial Selections by Alberto Alemanno in Michal Bobek (ed.), Selecting Europe’s Judges, 2015 Edition.

<sup>53</sup> Kate Malleson, ‘Parliamentary Scrutiny of Supreme Court Nominees: A View from the United Kingdom’ Osgoode Hall Law Journal (2007) 44, 557.

<sup>54</sup> WH Gravett, ‘Towards an algorithmic model of judicial appointment: The necessity for radical revision of the Judicial Service Commission’s interview procedures’ 2017 (80) THRHR.

of South Africa in *Helen Suzman Foundation v. Judicial Service Commission*<sup>55</sup> by relying upon Rule 53(1)(b) of the Uniform Rules of Court, South Africa,<sup>56</sup> had directed the JSC to furnish the record of its deliberations, rejecting the contrary argument of candour and robustness as that of ‘timorous fainhearts’. Debating with candour, the Court observed, is not equivalent to expression of impropriety. The candidates, it was noticed, had undergone gruelling scrutiny in the public interviews, and therefore disclosure of deliberation would not act as a dampener for future candidates. More importantly, the Constitutional Court had distinguished the authority and power with the Courts under Rule 53 to access the deliberation record, with the different right to access information under the Promotion to Access to Information Act, 2000 (PAIA), which was the basis of the minority judgment for rejection of production of the JSC’s deliberation record. The majority held that PAIA and Rule 53 serve different purposes, there being a

---

<sup>55</sup>Case 289/16 decided on 24<sup>th</sup> April 2018

<sup>56</sup>Rule 53(1)(b) of the Uniform Rules of Court, South Africa states:

“(1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairman of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected-

- (a) [...]
- (b) calling upon the magistrate, presiding officer, chairman or officer, as the case may be, to despatch, within fifteen days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be corrected or set aside, together with such reasons as he is by law required or desires to give or make, and to notify the applicant that he has done so.”

difference in the nature of, and purposes, and therefore it would be inapt to transpose PAIA proscriptions on access under Rule 53. The PAIA grants any person or busybody a right to access any information without explaining whatsoever as to why she or he requires the information. This had to be balanced, with the need to incentivise people to furnish private information, where such information is required for facilitating the government machinery, and therefore, considerations of confidentiality are applied as the person furnishing information must be made aware that the information would not be unhesitatingly divulged to others, including busybodies, for no particular reason. This facilitates the exercise of power and performance of functions of the state functionaries. In court matters under Rule 53, concerns of confidentiality could be addressed by imposing stringent and restrictive conditions on the right to access information, including furnishing of confidentiality undertakings for restraining the divulgence of details to third parties.

83. The United Kingdom's Data Protection Act, 2018 grants class exemption to all personal data processed for the purpose of assessing a person's suitability for judicial office, from certain rights including the right of the data subject to be informed, guaranteed under the European Union General Data Protection

Regulation being given effect to by the Data Protection Act.<sup>57</sup> Similarly, in the context of the European Union, opinions of ‘the Article 255 Panel’<sup>58</sup> and ‘the Advisory Panel’<sup>59</sup>, entrusted with the task of advising on the suitability of candidates as judges to the Court of Justice of the European Union and the European Court of Human Rights are inaccessible to the public and their opinions have limited circulation, as they are exclusively forwarded to the representatives of governments of the member states in the case of European Union<sup>60</sup> and the individual governments in the case of Council of Europe<sup>61</sup>, respectively. The Council of the European Union,<sup>62</sup> for instance, in consultation with ‘Article 255’ Panel, has denied requests for public access to opinions issued by the Panel,<sup>63</sup> in light of the applicable exceptions provided for in Regulation No 1049/2001<sup>64</sup>. Such opinions, the Council has

---

<sup>57</sup> Schedule 2, Part-2, Paragraph 14.

<sup>58</sup> Article 255, Treaty on the Functioning of the European Union states:

“A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 253 and 254...”

<sup>59</sup> Set up under Resolution ‘Establishment of an Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights’, CM/Res (2010) 26 adopted by the Committee of Ministers on 10 November 2010.

<sup>60</sup> CJEU is the judicial branch of the European Union, administering justice in the 28 member states of the international organisation.

<sup>61</sup> Comprising of 47 member European states, Council of Europe adopted the European Convention on Human Rights, which established ECtHR.

<sup>62</sup> One of the seven constituent bodies of the European Union comprising of the ministers from the member states of the European Union.

<sup>63</sup> Reply Adopted by the Council on 12 July 2016 to Confirmatory Application 13/c/01/16 pursuant to Article 7(2) of Regulation (EC) No 1049/2001 for public access to all the opinions issued by the Panel provided for by Article 255 of the Treaty on the Functioning of the European Union.

<sup>64</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

observed, largely include personal data of the candidates, viz. factual elements concerning the candidates' professional experience and qualifications and the Panel's assessment of the candidate's competences and, therefore, access to relevant documents is denied in order to protect the privacy and integrity of the individual.<sup>65</sup> However, a part of these opinions which do not contain personal data and provide a description of the procedure adopted and criteria applied by the Panel have been released as "Activity Reports" in the framework of partial access to such information. Opinions that are unfavourable to the appointment of the candidates will be exempt from disclosure as they can hamper commercial interests of the candidates in their capacity as legal practitioners,<sup>66</sup> whereas positive opinions are exempted from disclosure as such opinions can lead to comparison and public scrutiny of the most and least favoured qualities of the successful candidates, potentially interfering with the proceedings of the Court of Justice.<sup>67</sup> Lastly, disclosure of opinions, the Council has observed, will be exempted if such disclosure could "seriously

---

<sup>65</sup> Article 4(1)(b), Regulation No 1049/2001

<sup>66</sup> First indent of Article 4(2), Regulation No 1049/2001

<sup>67</sup> Second indent of Article 4(2), Regulation No 1049/2001

undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.”<sup>68</sup>

84. More direct and relevant in the Indian context would be the decision of this Court in ***Supreme Court Advocates-on-Record Association v. Union of India***<sup>69</sup>, where a Constitutional Bench of five judges had dealt with the constitutional validity of the National Judicial Appointments Commission. A concurring judgment had dealt with the aspect of transparency in appointment and transfer of judges and the privacy concerns of the judges who divulge their personal information in confidence, to opine as under:

“949. In the context of confidentiality requirements, the submission of the learned Attorney General was that the functioning of NJAC would be completely transparent. Justifying the need for transparency it was submitted that so far the process of appointment of Judges in the Collegium System has been extremely secret in the sense that no one outside the Collegium or the Department of Justice is aware of the recommendations made by the Chief Justice of India for appointment of a Judge of the Supreme Court or the High Courts. Reference was made to *Renu v. District & Sessions Judge*, (2014) 14 SCC 50 to contend that in the matter of appointment in all judicial institutions “complete darkness in the lighthouse has to be removed”.

950. In addition to the issue of transparency a submission was made that in the matter of appointment of Judges, civil society has the right to know who is being considered for appointment. In this regard, it was

---

<sup>68</sup> Article 4(3), Regulation No 1049/2001

<sup>69</sup> (2016) 5 SCC 1

held in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* (1985) 1 SCC 641 that the people have a right to know. Reliance was placed on *Attorney General v. Times Newspapers Ltd.* 1974 AC 273: (1973) 3 WLR 298: (1973) 3 All ER 54 (HL) where the right to know was recognised as a fundamental principle of the freedom of expression and the freedom of discussion.

951. In *State of U.P. v. Raj Narain* (1975) 4 SCC 428 the right to know was recognised as having been derived from the concept of freedom of speech.

952. Finally, in *Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd.*, (1988) 4 SCC 592 it was held that the right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution.

953. The balance between transparency and confidentiality is very delicate and if some sensitive information about a particular person is made public, it can have a far-reaching impact on his/her reputation and dignity. The 99th Constitution Amendment Act and the NJAC Act have not taken note of the privacy concerns of an individual. This is important because it was submitted by the learned Attorney General that the proceedings of NJAC will be completely transparent and any one can have access to information that is available with NJAC. This is a rather sweeping generalisation which obviously does not take into account the privacy of a person who has been recommended for appointment, particularly as a Judge of the High Court or in the first instance as a Judge of the Supreme Court. The right to know is not a fundamental right but at best it is an implicit fundamental right and it is hedged in with the implicit fundamental right to privacy that all people enjoy. The balance between the two implied fundamental rights is difficult to maintain, but the 99th Constitution Amendment Act and the NJAC Act do not even attempt to consider, let alone achieve that balance.

954. It is possible to argue that information voluntarily supplied by a person who is recommended for appointment as a Judge might not have a right to privacy, but at the same time, since the information is supplied in confidence, it is possible to argue that it

ought not to be disclosed to third party unconcerned persons. Also, if the recommendation is not accepted by the President, does the recommended person have a right to non-disclosure of the adverse information supplied by the President? These are difficult questions to which adequate thought has not been given and merely on the basis of a right to know, the reputation of a person cannot be whitewashed in a dhobi-ghat."

85. Earlier, the Constitution Bench of nine judges had in Second Judges' Case, that is **Supreme Court Advocates on Record Association and Others v. Union of India**<sup>70</sup> overruled the majority opinion in **S.P. Gupta** (supra) (the first Judge's case) and had provided for primacy to the role of the Chief Justice of India and the collegium in the matters of appointment and transfer of judges. Speaking on behalf of the majority, J.S. Verma, J., had with regard to the justiciability of transfers, summarised the legal position as under:

"480. The primacy of the judiciary in the matter of appointments and its determinative nature in transfers introduces the judicial element in the process, and is itself a sufficient justification for the absence of the need for further judiciary review of those decisions, which is ordinarily needed as a check against possible executive excess or arbitrariness. Plurality of judges in the formation of the opinion of the Chief Justice of India, as indicated, is another inbuilt check against the likelihood of arbitrariness or bias, even subconsciously, of any individual. The judicial element being predominant in the case of appointments, and decisive in transfers, as indicated, the need for further judicial review, as in other executive actions, is eliminated.

---

<sup>70</sup>(1993) 4 SCC 441

The reduction of the area of discretion to the minimum, the element of plurality of judges in formation of the opinion of the Chief Justice of India, effective consultation in writing, and prevailing norms to regulate the area of discretion are sufficient checks against arbitrariness.

481. These guidelines in the form of norms are not to be construed as conferring any justiciable right in the transferred Judge. Apart from the constitutional requirement of a transfer being made only on the recommendation of the Chief Justice of India, the issue of transfer is not justiciable on any other ground, including the reasons for the transfer or their sufficiency. The opinion of the Chief Justice of India formed in the manner indicated is sufficient safeguard and protection against any arbitrariness or bias, as well as any erosion of the independence of the judiciary.

482. This is also in accord with the public interest of excluding these appointments and transfers from litigative debate, to avoid any erosion in the credibility of the decisions, and to ensure a free and frank expression of honest opinion by all the constitutional functionaries, which is essential for effective consultation and for taking the right decision. The growing tendency of needless intrusion by strangers and busy-bodies in the functioning of the judiciary under the garb of public interest litigation, in spite of the caution in *S.P. Gupta* which expanding the concept of locus standi, was adverted to recently by a Constitution Bench in *Krishna Swami v. Union of India* (1992) 4 SCC 605. It is therefore, necessary to spell out clearly the limited scope of judicial review in such matters, to avoid similar situations in future. Except on the ground of want of consultation with the named constitutional functionaries or lack of any condition of eligibility in the cases of an appointment, or of a transfer being made without the recommendation of the Chief Justice of India, these matters are not justiciable on any other ground, including that of bias, which in any case is excluded by the element of plurality in the process of decision-making."

86. That the independence of the judiciary forms part of our basic structure is now well established. **S. P. Gupta** (supra) (the first Judge's case) had observed that this independence is one amongst the many other principles that run through the entire fabric of the Constitution and is a part of the rule of law under the Constitution. The judiciary is entrusted with the task of keeping the other two organs within the limits of law and to make the rule of law meaningful and effective. Further, the independence of judiciary is not limited to judicial appointments to the Supreme Court and the High Courts, as it is a much wider concept which takes within its sweep independence from many other pressures and prejudices. It consists of many dimensions including fearlessness from other power centres, social, economic and political, freedom from prejudices acquired and nurtured by the class to which the judges belong and the like. This wider concept of independence of judiciary finds mention in **C. Ravichandran Iyer v. Justice A.M. Bhattacharjee and Others<sup>71</sup>, High Court of Judicature at Bombay v. Shashikant S. Patil<sup>72</sup> and Jasbir Singh v. State of Punjab<sup>73</sup>.**

---

<sup>71</sup>(1995) 5 SCC 457

<sup>72</sup>(1997) 6 SCC 339

<sup>73</sup>(2006) 8 SCC 294

87. In ***Supreme Court Advocates' on Record Association*** (2016)

(supra) on the aspect of the independence of the judiciary, it has been observed:

“713. What are the attributes of an independent judiciary? It is impossible to define them, except illustratively. At this stage, it is worth recalling the words of Sir Ninian Stephen, a former Judge of the High Court of Australia who memorably said:

“[An] independent judiciary, although a formidable protector of individual liberty, is at the same time a very vulnerable institution, a fragile bastion indeed.”

It is this fragile bastion that needs protection to maintain its independence and if this fragile bastion is subject to a challenge, constitutional protection is necessary.

714. The independence of the judiciary takes within its fold two broad concepts: (1) Independence of an individual Judge, that is, decisional independence; and (2) Independence of the judiciary as an institution or an organ of the State, that is, functional independence. In a lecture on Judicial Independence, Lord Phillips said:

“In order to be impartial a Judge must be independent; personally independent, that is free of personal pressures and institutionally independent, that is free of pressure from the State.”

xx                    xx                    xx

726. Generally speaking, therefore, the independence of the judiciary is manifested in the ability of a Judge to take a decision independent of any external (or internal) pressure or fear of any external (or internal) pressure and that is “decisional independence”. It is also manifested in the ability of the institution to have “functional independence”. A comprehensive and composite definition of “independence of the judiciary” is elusive but it is easy to perceive.”

It is clear from the aforesaid quoted passages that the independence of the judiciary refers to both decisional and functional independence. There is reference to a report titled '*Judicial Independence: Law and Practice of Appointments to the European Court of Human Rights*'<sup>74</sup> which had observed that judges are not elected by the people (relevant in the context of India and the United Kingdom) and, therefore, derive their authority and legitimacy from their independence from political or other interference.

88. We have referred to the decisions and viewpoints to highlight the contentious nature of the issue of transparency, accountability and judicial independence with various arguments and counter-arguments on both sides, each of which commands merit and cannot be ignored. Therefore, it is necessary that the question of judicial independence is accounted for in the balancing exercise. It cannot be doubted and debated that the independence of the judiciary is a matter of ennobled public concern and directly relates to public welfare and would be one of the factors to be

---

<sup>74</sup>Contributors: Professor Dr. Jutta Limbach, Professor Dr. Pedro Villalon, Roger Errera, The Rt Hon Lord Lester of Herne Hill QC, Professor Dr. Tamara Morschakova, The Rt Hon Lord Justice Sedley, Professor Dr. Andrzej Zoll. <<http://www.interights.org/document/142/index.html>>

taken into account in weighing and applying the public interest test. Thus, when the public interest demands the disclosure of information, judicial independence has to be kept in mind while deciding the question of exercise of discretion. However, we should not be understood to mean that the independence of the judiciary can be achieved only by denial of access to information. Independence in a given case may well demand openness and transparency by furnishing the information. Reference to the principle of judicial independence is not to undermine and avoid accountability which is an aspect we perceive and believe has to be taken into account while examining the public interest in favour of disclosure of information. Judicial independence and accountability go hand in hand as accountability ensures, and is a facet of judicial independence. Further, while applying the proportionality test, the type and nature of the information is a relevant factor. Distinction must be drawn between the final opinion or resolutions passed by the collegium with regard to appointment/elevation and transfer of judges with observations and indicative reasons and the inputs/data or details which the collegium had examined. The rigour of public interest in divulging the input details, data and particulars of the candidate would be different from that of divulging and furnishing details of the output,

that is the decision. In the former, public interest test would have to be applied keeping in mind the fiduciary relationship (if it arises), and also the invasion of the right to privacy and breach of the duty of confidentiality owed to the candidate or the information provider, resulting from the furnishing of such details and particulars. The position represents a principled conflict between various factors in favour of disclosure and those in favour of withholding of information. Transparency and openness in judicial appointments juxtaposed with confidentiality of deliberations remain one of the most delicate and complex areas. Clearly, the position is progressive as well as evolving as steps have been taken to make the selection and appointment process more transparent and open. Notably, there has been a change after concerns were expressed on disclosure of the names and the reasons for those who had not been approved. The position will keep forging new paths by taking into consideration the experiences of the past and the aspirations of the future.

Questions referred to the Constitution Bench are accordingly answered, observing that it is not possible to answer these questions in absolute terms, and that in each case, the public interest test would be applied to weigh the scales and on balance determine whether information should be furnished or would be

exempt. Therefore, a universal affirmative or negative answer is not possible. However, independence of judiciary is a matter of public interest.

## **CONCLUSIONS**

89. In view of the aforesaid discussion, we dismiss Civil Appeal No.2683 of 2010 and uphold the judgment dated 12<sup>th</sup> January, 2010 of the Delhi High Court in LPA No. 501 of 2009 which had upheld the order passed by the CIC directing the CPIO, Supreme Court of India to furnish information on the judges of the Supreme Court who had declared their assets. Such disclosure would not, in any way, impinge upon the personal information and right to privacy of the judges. The fiduciary relationship rule in terms of clause (e) to Section 8(1) of the RTI Act is inapplicable. It would not affect the right to confidentiality of the judges and their right to protect personal information and privacy, which would be the case where details and contents of personal assets in the declaration are called for and sought, in which event the public interest test as applicable vide Section 8(1)(j) and proviso to Section 11 (1) of the RTI Act would come into operation.

90. As far as Civil Appeal Nos. 10045 of 2010 and 10044 of 2010 are concerned, they are to be partly allowed with an order of remit to

the CPIO, Supreme Court of India to re-examine the matter after following the procedure under Section 11(1) of the RTI Act as the information relates to third parties. Before a final order is passed, the concerned third parties are required to be issued notice and heard as they are not a party before us. While deciding the question of disclosure on remit, the CPIO, Supreme Court of India would follow the observations made in the present judgment by keeping in view the objections raised, if any, by the third parties. We have refrained from making specific findings in the absence of third parties, who have rights under Section 11(1) and their views and opinions are unknown.

The reference and the appeals are accordingly disposed of.

.....**CJI**  
**(RANJAN GOGOI)**

.....**J.**  
**(N.V. RAMANA)**

.....**J.**  
**(DR. D.Y. CHANDRACHUD)**

.....**J.**  
**(DEEPAK GUPTA)**

.....**J.**  
**(SANJIV KHANNA)**

**NEW DELHI;**  
**NOVEMBER 13, 2019.**

**REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO. 9828 OF 2013**

D.A.V. COLLEGE TRUST AND  
MANAGEMENT SOCIETY & ORS.

...APPELLANT(S)

VERSUS

DIRECTOR OF PUBLIC  
INSTRUCTIONS & ORS.

...RESPONDENT(S)

With

**CIVIL APPEAL NOS. 9844-9845 OF 2013**

**CIVIL APPEAL NOS. 9846-9857 OF 2013**

**CIVIL APPEAL NO. 9860 OF 2013**

**JUDGMENT**

**Deepak Gupta, J.**

Whether non-governmental organisations substantially financed by the appropriate government fall within the ambit of ‘public authority’ under Section 2(h) of the Right to Information Act, 2005 is the issue for consideration in this case.

2. The Right to Information Act (for short ‘the Act’) was enacted by Parliament in the year 2005, for the purpose of setting out a practical

regime of right to information for citizens to secure access to information. The relevant portion of the Objects & Reasons of the Act reads as follows:-

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

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal; ...”

3. Under the Act, a public authority is required to maintain records in terms of Chapter II and every citizen has the right to get information from the public authority. ‘Public authority’ is defined in Section 2(h) of the Act which reads as follows:-

“...  
(h) “public authority” means any authority or body or institution of self-government established or constituted –

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government,

and includes any –

- (i) body owned, controlled or substantially financed;
- (ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;"

4. The appellants before us are all colleges or associations running the colleges and/or schools and their claim is that Non-Governmental Organisations (NGOs) are not covered under the Act. According to the appellants, the objective of the Act was to cover only Government and its instrumentalities which are accountable to the Government. It has also been urged that the words 'public authority' mean any authority or body or institution of self-government and such body or institution must be constituted under the Constitution, or by any law of Parliament, or by any law made by the State Legislature or by a notification issued or order made by the appropriate Government.

5. It is urged that unless a specific notification is issued, in terms of clause (d), no body or institution outside the ambit of clauses (a) to (c) of Section 2(h) can be deemed to be public authority. It is further urged that there are 4 types of public authorities as pointed out above, i.e., those set up (a) under the Constitution, (b) by an Act of Parliament, (c) by any law made by State Legislature, or (d) by notification issued or order made by the appropriate Government. No other authority can be considered a public authority. Since the

appellants do not fall under any of the above mentioned 4 categories, they cannot be termed to be public authority.

6. As far as definition of public authority is concerned this Court has dealt with the matter in detail in ***Thalappalam Service***

***Cooperative Bank Ltd. and Ors. v. State of Kerala and Ors.***<sup>1</sup> It would however, be pertinent to mention that in that case the Registrar of Cooperative Societies had issued a Circular No. 23 of 2006 directing that all cooperative societies would fall within the ambit of the Act. This notification was challenged before this Court. Dealing with Section 2(h) of the Act, this Court in the aforesaid judgment held as follows:-

**“30.** The legislature, in its wisdom, while defining the expression “public authority” under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions “means” and “includes”. When a word is defined to “mean” something, the definition is *prima facie* restrictive and where the word is defined to “include” some other thing, the definition is *prima facie* extensive. But when both the expressions “means” and “includes” are used, the categories mentioned there would exhaust themselves. The meanings of the expressions “means” and “includes” have been explained by this Court in *DDA v. Bhola Nath Sharma* (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

**31.** Section 2(h) exhausts the categories mentioned therein. The former part of Section 2(h) deals with:

- (1) an authority or body or institution of self-government established by or under the Constitution,
- (2) an authority or body or institution of self-government established or constituted by any other law made by Parliament,

1 (2013) 16 SCC 82

(3) an authority or body or institution of self-government established or constituted by any other law made by the State Legislature, and

(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate Government.

**32.** The Societies, with which we are concerned, admittedly, do not fall in the abovementioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate Government. Let us now examine whether they fall in the latter part of Section 2(h) of the Act, which embraces within its fold:

(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government,

(6) non-governmental organisations substantially financed directly or indirectly by funds provided by the appropriate Government.”

7. At this stage we may note that in the ***Thalappalam case***

(supra) there was an order issued directing that cooperative societies would fall within the ambit of the Act. The validity of this order was challenged on the grounds that the cooperative societies were neither bodies owned, controlled and/or substantially financed by the government nor could they be said to be NGOs substantially financed, directly or indirectly, by funds provided by the appropriate Government.

8. It is a well settled statutory rule of interpretation that when in the definition clause a meaning is given to certain words then that meaning alone will have to be given to those words. However, when the definition clause contains the words ‘means and includes’ then

both these words must be given the emphasis required and one word cannot override the other.

9. In **P. Kasilingam v. P.S.G. College of Technology & Ors.<sup>2</sup>**

this Court was dealing with the expression ‘means and includes’, wherein Justice S.C. Agrawal observed as follows:-

“19. ...A particular expression is often defined by the Legislature by using the word ‘means’ or the word ‘includes’. Sometimes the words ‘means and includes’ are used. The use of the word ‘means’ indicates that “definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition”. (See : *Gough v. Gough; Punjab Land Development and Reclamation Corp. Ltd. v. Presiding Officer, Labour Court.*) The word ‘includes’ when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words “means and includes”, on the other hand, indicate “an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions”. (See : *Dilworth v. Commissioner of Stamps* (Lord Watson); *Mahalakshmi Oil Mills v. State of A.P.* The use of the words “means and includes” in Rule 2(b) would, therefore, suggest that the definition of ‘college’ is intended to be exhaustive and not extensive and would cover only the educational institutions falling in the categories specified in Rule 2(b) and other educational institutions are not comprehended. Insofar as engineering colleges are concerned, their exclusion may be for the reason that the opening and running of the private engineering colleges are controlled through the Board of Technical Education and Training and the Director of Technical Education in accordance with the directions issued by the AICTE from time to time...”

This judgment was followed in **Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union<sup>3</sup>** and **Delhi Development Authority v. Bhola Nath Sharma (Dead) by L.Rs. and Ors.<sup>4</sup>**

2 (1995) Supp 2 SCC 348

3 (2007) 4 SCC 685

4 (2011) 2 SCC 54

10. It is thus clear that the word ‘means’ indicates that the definition is exhaustive and complete. It is a hard and fast definition and no other meaning can be given to it. On the other hand, the word ‘includes’ enlarges the scope of the expression. The word ‘includes’ is used to signify that beyond the meaning given in the definition clause, other matters may be included keeping in view the nature of the language and object of the provision. In **P.**

**Kasilingam's case** (supra) the words ‘means and includes’ has been used but in the present case the word ‘means’ has been used in the first part of sub-section (h) of Section 2 whereas the word ‘includes’ has been used in the second part of the said Section. They have not been used together.

11. One of the arguments raised before us is that the words “self-government” occurring in the opening portion of Section 2(h) will govern the words ‘authority’, ‘body’ or ‘institution’. It is urged that only such authorities, bodies or institutions actually concerned with self-governance can be declared to be public authorities. This objection has to be rejected outright. There are three categories in the opening lines viz., (a) authorities; (b) bodies; and (c) institutions of self-government. There can be no doubt in this regard and, therefore, we reject this contention.

12. The next contention is that a public authority can only be an authority or body or institution which has been established or constituted (a) under the Constitution; (b) by any law of Parliament; (c) by any law of State Legislature or (d) by notification made by the appropriate Government. It is the contention of the appellants that only those authorities, bodies or institutions of self-government which fall in these four categories can be covered under the definition of public authority. It is also contended that in the ***Thalappalam case*** (supra) the Court did not consider the effect of clause (d) on the remaining portion of the definition.

13. On the other hand, on behalf of the respondents it is urged that the reading of Section 2(h) clearly shows that in addition to the four categories referred to in the first part, there is an inclusive portion which includes (i) body owned, controlled or substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

14. The Section, no doubt, is unartistically worded and therefore, a duty is cast upon us to analyse the Section, find out its true meaning and interpret it in a manner which serves the purpose of the Act.

15. If we analyse Section 2(h) carefully it is obvious that the first part of Section 2(h) relates to authorities, bodies or institutions of self-government established or constituted (a) under the Constitution; (b) by any law of Parliament; (c) by any law of State Legislature or (d) by notification made by the appropriate Government. There is no dispute with regard to clauses (a) to (c). As far as clause (d) is concerned it was contended on behalf of the appellants that unless a notification is issued notifying that an authority, body or institution of self-government is brought within the ambit of the Act, the said Act would not apply. We are not impressed with this argument. The notification contemplated in clause (d) is a notification relating to the establishment or constitution of the body and has nothing to do with the Act. Any authority or body or institution of self-government, if established or constituted by a notification of the Central Government or a State Government, would be a public authority within the meaning of clause (d) of Section 2(h) of the Act.

16. We must note that after the end of clause (d) there is a comma and a big gap and then the definition goes on to say 'and includes any –' and thereafter the definition reads as:

- "(i) body owned, controlled or substantially financed;
- (ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;"

The words 'and includes any', in our considered view, expand the definition as compared to the first part. The second part of the definition is an inclusive clause which indicates the intention of the Legislature to cover bodies other than those mentioned in clauses (a) to (d) of Section 2(h).

17. We have no doubt in our mind that the bodies and NGOs mentioned in sub-clauses (i) and (ii) in the second part of the definition are in addition to the four categories mentioned in clauses (a) to (d). Clauses (a) to (d) cover only those bodies etc., which have been established or constituted in the four manners prescribed therein. By adding an inclusive clause in the definition, Parliament intended to add two more categories, the first being in sub-clause (i), which relates to bodies which are owned, controlled or substantially financed by the appropriate Government. These can be bodies which may not have been constituted by or under the Constitution, by an Act of Parliament or State Legislature or by a notification. Any body which is owned, controlled or substantially financed by the Government, would be a public authority.

18. As far as sub-clause (ii) is concerned it deals with NGOs substantially financed by the appropriate Government. Obviously,

such an NGO cannot be owned or controlled by the Government.

Therefore, it is only the question of financing which is relevant.

19. Even in the ***Thalappalam case*** (supra) in para 32 of the judgment, this Court held that in addition to the four categories there would be two more categories, (5) and (6).

20. The principle of purposive construction of a statute is a well-recognised principle which has been incorporated in our jurisprudence. While giving a purposive interpretation, a court is required to place itself in the chair of the Legislature or author of the statute. The provision should be construed in such a manner to ensure that the object of the Act is fulfilled. Obviously, if the language of the Act is clear then the language has to be followed, and the court cannot give its own interpretation. However, if the language admits of two meanings then the court can refer to the Objects and Reasons, and find out the true meaning of the provisions as intended by the authors of the enactment. Justice S.B. Sinha in ***New India Assurance Company Ltd. v. Nusli Neville Wadia and Anr.***<sup>5</sup> held

“**51.** ...to interpret a statute in a reasonable manner, the court must place itself in the chair of reasonable legislator/author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled; which in turn would lead the

5 (2008) 3 SCC 279

beneficiary under the statutory scheme to fulfil its constitutional obligations as held by the court inter alia in Ashoka Marketing Ltd.”

Justice Sinha quoted with approval the following passage from Barak's treatise on Purposive Interpretation in Law,<sup>6</sup> which reads as follows:-

“**52.** ...Hart and Sachs also appear to treat ‘purpose’ as a subjective concept. I say ‘appear’ because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator’s shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfil their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably.”

21. Justice M.B. Lokur speaking for the majority in ***Abhiram Singh v. C.D. Commachen (Dead) by L.Rs. and Ors.***<sup>7</sup> held as follows:-

“**39.** ...Ordinarily, if a statute is well drafted and debated in Parliament there is little or no need to adopt any interpretation other than a literal interpretation of the statute. However, in a welfare State like ours, what is intended for the benefit of the people is not fully reflected in the text of a statute. In such legislations, a pragmatic view is required to be taken and the law interpreted purposefully and realistically so that the benefit reaches the masses...”

22. Therefore, in our view, Section 2(h) deals with six different categories and the two additional categories are mentioned in sub clauses (i) and (ii). Any other interpretation would make clauses (i)

6 (2008) 3 SCC 279: Aharon Barak, Purposive Interpretation in Law, (2007) at pg.87

7 (2017) 2 SCC 629

and (ii) totally redundant because then an NGO could never be covered. By specifically bringing NGOs it is obvious that the intention of the Parliament was to include these two categories mentioned in sub clauses (i) and (ii) in addition to the four categories mentioned in clauses (a) to (d). Therefore, we have no hesitation in holding that an NGO substantially financed, directly or indirectly, by funds provided by the appropriate government would be a public authority amenable to the provisions of the Act.

23. NGO is not defined under the Act or any other statute as far as we are concerned. In fact, the term NGO appears to have been used for the first time describing an international body which is legally constituted but non-governmental in nature. It is created by natural or legal entities with no participation or representation by the Government. Even NGOs which are funded totally or partially by the Governments essentially maintain the NGO status by excluding Government representations in all their organisations. In some jurisprudence, they are also referred to as civil society organisations.

24. A society which may not be owned or controlled by the Government, may be an NGO but if it is substantially financed directly or indirectly by the government it would fall within the ambit of sub-clause (ii).

25. That brings us to the second limb of the argument of the appellants that the colleges/schools are not substantially financed. In this regard, we may again make reference to the judgment in the ***Thalappam case*** (supra) wherein this Court dealing with the issue of substantially financed made the following observations:-

**47.** We often use the expressions “questions of law” and “substantial questions of law” and explain that any question of law affecting the right of parties would not by itself be a substantial question of law. In *Black’s Law Dictionary* (6th Edn.) the word “substantial” is defined as

“*Substantial*.—Of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. ... Something worthwhile as distinguished from something without value or merely nominal. ... Synonymous with material.”

The word “substantially” has been defined to mean “essentially; without material qualification; in the main; in substance; materially”. In *Shorter Oxford English Dictionary* (5th Edn.), the word “substantial” means “of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure, etc. having force or effect, effective, thorough”. The word “substantially” has been defined to mean “in substance; as a substantial thing or being; essentially, intrinsically”. Therefore the word “substantial” is not synonymous with “dominant” or “majority”. It is closer to “material” or “important” or “of considerable value”. “Substantially” is closer to “essentially”. Both words can signify varying degrees depending on the context.

**48.** Merely providing subsidies, grants, exemptions, privileges, etc. as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD, etc. but those facilities or assistance cannot be termed as “substantially financed” by the State Government to bring the body within the fold of “public authority” under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety-five per cent grant-in-aid from the appropriate Government, may answer the definition of public authority under Section 2(h)(d)(i).”

26. In our view, 'substantial' means a large portion. It does not necessarily have to mean a major portion or more than 50%. No hard and fast rule can be laid down in this regard. Substantial financing can be both direct or indirect. To give an example, if a land in a city is given free of cost or on heavy discount to hospitals, educational institutions or such other body, this in itself could also be substantial financing. The very establishment of such an institution, if it is dependent on the largesse of the State in getting the land at a cheap price, would mean that it is substantially financed. Merely because financial contribution of the State comes down during the actual funding, will not by itself mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially financed.

27. Whether an NGO or body is substantially financed by the government is a question of fact which has to be determined on the facts of each case. There may be cases where the finance is more than 50% but still may not be called substantially financed. Supposing a small NGO which has a total capital of Rs.10,000/- gets a grant of Rs.5,000/- from the Government, though this grant may be

50%, it cannot be termed to be substantial contribution. On the other hand, if a body or an NGO gets hundreds of crores of rupees as grant but that amount is less than 50%, the same can still be termed to be substantially financed.

28. Another aspect for determining substantial finance is whether the body, authority or NGO can carry on its activities effectively without getting finance from the Government. If its functioning is dependent on the finances of the Government then there can be no manner of doubt that it has to be termed as substantially financed.

29. While interpreting the provisions of the Act and while deciding what is substantial finance one has to keep in mind the provisions of the Act. This Act was enacted with the purpose of bringing transparency in public dealings and probity in public life. If NGOs or other bodies get substantial finance from the Government, we find no reason why any citizen cannot ask for information to find out whether his/her money which has been given to an NGO or any other body is being used for the requisite purpose or not.

30. It is in the light of the aforesaid proposition of law that we now propose to examine the cases individually.

### **Civil Appeal No. 9828 of 2013**

31. This has been filed by D.A.V. College Trust and Management Society, New Delhi; D.A.V. College, Chandigarh; M.C.M. D.A.V. College, Chandigarh and D.A.V. Senior Secondary School, Chandigarh.

32. Appellant no.1 is the Society which runs various colleges/schools but each has an identity of its own and, in our view, each of the college/school is a public authority within the meaning of the Act. It has been urged that these colleges/schools are not being substantially financed by the Government in as much as that they do not receive more than 50% of the finance from the Government. Even the documents filed by the appellants themselves show that M.C.M. D.A.V. College, Chandigarh, in the years 2004-05, 2005-06 and 2006-07, has received grants in excess of 1.5 crores each year which constituted about 44% of the expenditure of the College. As far as D.A.V. College, Chandigarh is concerned the grant for these three years ranged from more than 3.6 crores to 4.5 crores and in percentage terms it is more than 40% of the total financial outlay for each year. Similar is the situation with D.A.V. Senior Secondary School, Chandigarh, where the contribution of the State is more than 44%.

33. Another important aspect, as far as the colleges are

concerned, is that 95% of the salary of the teaching and non-teaching staff of the College is borne by the State Government. A major portion of the remaining expenses shown by the College is with regard to the hostels, etc. It is teaching which is the essential part of the College and not the hostels or other infrastructure like auditorium, etc. The State has placed on record material to show that now these grants have increased substantially and in the years 2013-14, 2014-15 and 2015-16, the D.A.V. College, Chandigarh received amounts more than Rs.15 crores yearly, M.C.M. D.A.V. College, Chandigarh received amounts more than Rs.10 crores yearly and the D.A.V. Senior Secondary School, Chandigarh received grant of more than Rs.4 crores yearly. It can be safely said that they are substantially financed by the Government.

34. During the course of hearing, some information was placed on record by the learned counsel for the respondents showing how much is the fund being granted to these institutions from the year 2013-14 to 2015-16. As far as these institutions are concerned the payments received are as follows:-

Institution	2013-14 (Rs.)	2014-15 (Rs.)	2015-16 (Rs.)
D.A.V. College, Sector 10, Chandigarh	14,97,31,954/-	15,15,91,074/-	17,57,90,476/-

M.C.M. D.A.V.	10,06,91,020/-	10,47,79,495/-	11,33,94,771/-
College, Sector-36,	-	-	-
Chandigarh			

D.A.V. Sr. Sec.	3,97,39,280/-	4,17,85,658/-	5,06,88,770/-
School, Sector-8,			
Chandigarh			

35. These are substantial payments and amount to almost half the expenditure of the Colleges/School and more than 95% of the expenditure as far as the teaching and other staff is concerned. Therefore, in our opinion, these Colleges/School are substantially financed and are public authority within the meaning of Section 2(h) of the Act.

**CIVIL APPEAL NOS. 9844-9845 OF 2013**

**CIVIL APPEAL NOS. 9846-9857 OF 2013**

**CIVIL APPEAL NO. 9860 OF 2013**

36. As far as these cases are concerned, we find from the judgments of the High Court that the aspect with regard to substantial financing has not been fully taken into consideration, as explained by us above. Therefore, though we hold that these bodies are NGOs, the issue whether these are substantially financed or not needs to be decided by the High Court. The High Court shall give

both the parties opportunity to file documents and decide the issue in light of the law laid down by us.

37. With these observations, all the appeals are disposed of in the aforesaid terms. Civil Appeal No. 9828 of 2013 is dismissed. Civil Appeal Nos. 9844-9845 of 2013, 9846-9857 of 2013 and 9860 of 2013 are remitted to the High Court for determination whether the institutions are substantially financed or not. The High Court shall treat the writ petitions to be filed in the year 2013 and give them priority accordingly.

.....J.  
**(Deepak Gupta)**

.....J.  
**(Aniruddha Bose)**

**New Delhi**  
**September 17, 2019**

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CRIMINAL ORIGINAL JURISDICTION**

**REVIEW PETITION (CRIMINAL) NO. 46 OF 2019**

**IN**

**WRIT PETITION (CRIMINAL) NO. 298 OF 2018**

**YASHWANT SINHA & ORS.**

**...PETITIONER(S)**

**VERSUS**

**CENTRAL BUREAU OF INVESTIGATION THROUGH**

**ITS DIRECTOR & ANR.**

**... RESPONDENT(S)**

**WITH**

**M.A.NO. 58/2019 in W.P. (CRL.) 225/2018**

**R.P. (CRL.) NO. 122/2019 IN W.P. (CRL.) 297/2018**

**M.A. NO. 403/2019 IN W.P. (CRL.) NO. 298/2018**

**R.P.(C) No. 719/2019 in W.P.(C) 1205/2018**

**JUDGMENT**

**RANJAN GOGOI, CJI**

1. A preliminary objection with regard to the maintainability of the review petition has been raised by the Attorney General on behalf of the respondents. The learned Attorney General contends

that the review petition lacks in bona fides inasmuch as three documents unauthorizedly removed from the office of the Ministry of Defence, Government of India, have been appended to the review petition and relied upon by the review petitioners. The three documents in question are:

- (a) An eight-page note written by three members of the Indian Negotiating Team ('INT') charged in reference to the Rafale Deal (note dated 01.06.2016)
- (b) Note-18 of the Ministry of Defence (Government of India), F.No. AirHQ/S/96380/3/ASR PC-XXVI (Marked Secret under the Official Secrets Act)
- (c) Note-10 written by S.K. Sharma (Deputy Secretary, MoD, Air-III), Note dated 24.11.2015 (Marked Secret under the Official Secrets Act)

2. It is contended that the alleged unauthorized removal of the documents from the custody of the competent authority of the Government of India and the use thereof to support the pleas urged in the review petition is in violation of the provisions of Sections 3 and 5 of the Official Secrets Act, 1923. It is further contended that the documents cannot be accessed under the Right to Information Act in view of the provisions contained in Section 8(1)(a) of the said

Act. Additionally, the provisions contained in Section 123 of the Indian Evidence Act, 1872 have been pressed into service and privilege has been claimed so as to bar their disclosure in the public domain. Section 3, 5(1) of the Official Secrets Act; Section 8(1)(a) and 8(2) of the Right to Information Act and Section 123 of the Evidence Act on which the learned Attorney has relied upon is extracted below.

**3. Penalties for spying:-** (1) If any person for any purpose prejudicial to the safety or interests of the State –

- (a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or
- (b) makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly, useful to any enemy; or
- (c) obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States:

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval,

military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or password is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document, information, code or password shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State.

**5. Wrongful communication, etc., of information.**-(1) If any person having in his possession or control any secret official code or password or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person

holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract-

- (a) willfully communicates the code or password, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorized to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or
- (b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or
- (c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or
- (d) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or password or information;

He shall be guilty of an offence under this section.

(2) xxxx xxxx xxxx xxxx

(3) xxxx xxxx xxxx xxxx

**8. Exemption from disclosure of information.** – (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, -

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) xxxx xxxx xxxx xxxx
- (c) xxxx xxxx xxxx xxxx
- (d) xxxx xxxx xxxx xxxx
- (e) xxxx xxxx xxxx xxxx
- (f) xxxx xxxx xxxx xxxx
- (g) xxxx xxxx xxxx xxxx
- (h) xxxx xxxx xxxx xxxx
- (i) xxxx xxxx xxxx xxxx

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

- (2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.
- (3) xxxx xxxx xxxx xxxx

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall

be final, subject to the usual appeals provided for in this Act.

**123. Evidence as to affairs of State.**- No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

3. The three documents which are the subject matter of the present controversy, admittedly, was published in 'The Hindu' newspaper on different dates in the month of February, 2019. One of the documents i.e. Note-18 of the Ministry of Defence was also published in 'The Wire' a member of the Digital Print Media.

4. The fact that the three documents had been published in the Hindu and were thus available in the public domain has not been seriously disputed or contested by the respondents. No question has been raised and, in our considered opinion, very rightly, with regard to the publication of the documents in 'The Hindu' newspaper. The right of such publication would seem to be in consonance with the constitutional guarantee of freedom of speech.

No law enacted by Parliament specifically barring or prohibiting

the publication of such documents on any of the grounds mentioned in Article 19(2) of the Constitution has been brought to our notice. In fact, the publication of the said documents in ‘The Hindu’ newspaper reminds the Court of the consistent views of this Court upholding the freedom of the press in a long line of decisions

commencing from ***Romesh Thappar vs. State of Madras***<sup>1</sup> and

***Brij Bhushan vs. The State of Delhi***<sup>2</sup>. Though not in issue, the present could very well be an appropriate occasion to recall the views expressed by this Court from time to time. Illustratively and only because of its comprehensiveness the following observations in

**Indian Express Newspapers (Bombay) Private Limited vs. Union**

**of India**<sup>3</sup> may be extracted:

“The freedom of press, as one of the members of the Constituent Assembly said, is one of the items around which the greatest and the bitterest of constitutional struggles have been waged in all countries where liberal constitutions prevail. The said freedom is attained at considerable sacrifice and suffering and ultimately it has come to be incorporated in the various written constitutions. James Madison when he offered the Bill of Rights to

<sup>1</sup> AIR 1950 SC 124

<sup>2</sup> AIR 1950 SC 129

<sup>3</sup> 1985(1) SCC 641

the Congress in 1789 is reported as having said: "The right of freedom of speech is secured, the liberty of the press is expressly declared to be beyond the reach of this Government" (See, 1 Annals of Congress (1789-96) p. 141). Even where there are no written constitutions, there are well established constitutional conventions or judicial pronouncements securing the said freedom for the people. The basic documents of the United Nations and of some other international bodies to which reference will be made hereafter give prominence to the said right.

The leaders of the Indian independence movement attached special significance to the freedom of speech and expression which included freedom of press apart from other freedoms. During their struggle for freedom, they were moved by the American Bill of Rights containing the First Amendment to the Constitution of the United States of America which guaranteed the freedom of the press. Pandit Jawaharlal Nehru in his historic resolution containing the aims and objects of the Constitution to be enacted by the Constituent Assembly said that the Constitution should guarantee and secure to all the people of India among others freedom of thought and expression. He also stated elsewhere that "I would rather have a completely free press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated press" [See, D. R Mankekar: The Press under Pressure (1973) p. 25]. The Constituent Assembly and its various committees and sub-committees considered freedom of speech and expression which included freedom of press also as a precious right. The Preamble to the Constitution says that it is intended to secure to all citizens among others liberty of thought expression, and

belief. In Romesh Thapar v. State of Madras<sup>4</sup> and Brij Bhushan v. The State of Delhi<sup>5</sup>, this Court firmly expressed its view that there could not be any kind of restriction on the freedom of speech and expression other than those mentioned in Article 19(2) and thereby made it clear that there could not be any interference with that freedom in the name of public interest. Even when clause (2) of Article 19 was subsequently substituted under the Constitution (First Amendment) Act, 1951, by a new clause which permitted the imposition of reasonable restrictions on the freedom of speech and expression in the interests of sovereignty and integrity of India the security of the State, friendly relations with foreign States, public order, decency or morality in relation to contempt of Court defamation or incitement to an offence, Parliament did not choose to include a clause enabling the imposition of reasonable restrictions in the, public interest.”

A later view equally eloquent expressed by this Court in

Printers (Mysore) Limited vs. Assistant Commercial Tax Officer<sup>6</sup> may also be usefully recapitulated.

“Freedom of press has always been a cherished right in all democratic countries. The newspapers not only purvey news but also ideas, opinions and ideologies besides much else. They are supposed to guard public interest by bringing to fore the

---

<sup>4</sup> AIR 1950 SC 124

<sup>5</sup> AIR 1950 SC 129

<sup>6</sup> 1994 (2) SCC 434

misdemeanors, failings and lapses of the government and other bodies exercising governing power. Rightly, therefore, it has been described as the Fourth Estate. The democratic credentials of a State is judged today by the extent of freedom the press enjoys in that State. According to Justice Douglas (An Almanac of Liberty) "acceptance by government of a dissident press is a measure of the maturity of the nation". The learned Judge observed in Terminiello v. Chicago, (1949) 93 L.Edn. 1131., that "a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effect as it presses for acceptance of an idea. ...There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardisation of ideas either by legislatures, courts, "or dominant political or community ground". The said observations were of course made with reference to the First Amendment to the U.S. Constitution which expressly guarantees freedom of press but they are no less relevant in the India context; subject, of course, to clause (2) of Article 19 of our Constitution. We may be pardoned for quoting another passage from Hughese, C.J., in De Jonge v. State of Oregon, (1937) 299 U.S. 353, to emphasise the fundamental significance of free speech. The learned Chief Justice said: "the greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, ferrets and free assembly in order to maintain the opportunity for free political

discussion, to the end that Government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

It is true that very often the press, whether out of commercial reason or excessive competition, descends to undesirable levels and may cause positive public mischief but the difficulty lies in the fact, recognised by Thomas Jefferson, that this freedom "cannot be limited without being lost". Thomas Jefferson said, "it is, however, an evil for which there is no remedy; our liberty depends on the freedom of the press and that cannot be limited without being lost". (In a letter to Dr. J. Currie, 1786). It is evident that "an able, disinterested, public-spirited press, with trained intelligence to know the right and courage to do it, can preserve that public virtue without which popular government is a sham and a mockery. A cynical, mercenary, demagogic press will produce in time a people as base as itself. The power to mould the future of the Republic will be in the hands of the journalism of future generations", as stated by Joseph Pulitzer."

5. The above views of the Supreme Court of India on the issue of the freedom of the press has been echoed by the U.S. Supreme Court in New York Times Company vs. United States<sup>7</sup> wherein

Marshall, J. refused to recognize a right in the executive

---

<sup>7</sup> 403 U.S. 713 (1971)

government to seek a restraint order or publication of certain papers titled "Pentagon Papers" primarily on the ground that the first Amendment guaranteed freedom of the press and 18 U.S. Code § 793 did not contemplate any restriction on publication of items or materials specified in the said Code. By a majority of 6:3 the U.S. Supreme Court declined to pass prohibitory orders on publication of the "Pentagon Papers" on the ground that the Congress itself not having vested any such power in the executive, which it could have so done, the courts cannot carve out such a jurisdiction as the same may amount to unauthorized judicial law making thereby violating the sacred doctrine of separation of powers. We do not see how and why the above principle of law will not apply to the facts of the present case. There is no provision in the Official Secrets Act and no such provision in any other statute has been brought to our notice by which Parliament has vested any power in the executive arm of the government either to restrain publication of documents marked as secret or from placing such documents before a Court of Law which may have been called upon to adjudicate a legal issue concerning the parties.

6. Insofar as the claim of privilege is concerned, on the very face of it, Section 123 of the Indian Evidence Act, 1872 relates to unpublished public records. As already noticed, the three documents have been published in different editions of 'The Hindu' newspaper. That apart, as held in S.P.

**Gupta vs. Union of India<sup>8</sup>**

a claim of immunity against disclosure under Section 123 of the Indian Evidence Act has to be essentially adjudged on the touchstone of public interest and to satisfy itself that public interest is not put to jeopardy by requiring disclosure the Court may even inspect the document in question though the said power has to be sparingly exercised. Such an exercise, however, would not be necessary in the present case as the document(s) being in public domain and within the reach and knowledge of the entire citizenry, a practical and common sense approach would lead to the obvious conclusion that it would be a meaningless and an exercise in utter futility for the Court to refrain from reading and considering the said document or from shutting out its evidentiary worth and value. As the claim of immunity under Section 123 of the Indian Evidence

---

<sup>8</sup> AIR 1982 SC, 149

Act is plainly not tenable, we do not consider it necessary to delve into the matter any further.

7. An issue has been raised by the learned Attorney with regard to the manner in which the three documents in question had been procured and placed before the Court. In this regard, as already noticed, the documents have been published in ‘The Hindu’ newspaper on different dates. That apart, even assuming that the documents have not been procured in a proper manner should the same be shut out of consideration by the Court?

In *Pooran Mal vs. Director of Inspection (Investigation) of Income-Tax, New*

*Delhi*<sup>9</sup> this Court has taken the view that the “test of admissibility of evidence lies in its relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law evidence obtained as a result of illegal search or seizure is not liable to be shut out.”

8. Insofar as the Right to Information Act is concerned in *Chief Information Commissioner vs. State of Manipur*<sup>10</sup> this Court had

---

<sup>9</sup> AIR 1974 SC 348

<sup>10</sup> (2011) 15 SCC,1

occasion to observe the object and purpose behind the enactment of the Act in the following terms:

“The preamble (of the Right to Information Act, 2005) would obviously show that the Act is based on the concept of an open society. As its preamble shows, the Act was enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic republic. It is clear that the Parliament enacted the said Act keeping in mind the rights of an informed citizenry in which transparency of information is vital in curbing corruption and making the Government and its instrumentalities accountable. The Act is meant to harmonise the conflicting interests of Government to preserve the confidentiality of sensitive information with the right of citizens to know the functioning of the governmental process in such a way as to preserve the paramountcy of the democratic ideal.”

9. Section 8(2) of the Right to Information Act (already extracted) contemplates that notwithstanding anything in the Official Secrets Act and the exemptions permissible under sub-section (1) of Section 8, a public authority would be justified in allowing access to information, if on proper balancing, public interest in disclosure outweighs the harm sought to be protected. When the documents in question are already in the public domain, we do not see how the protection under Section 8(1)(a) of the Act would serve public interest.

10. An omnibus statement has been made by the learned Attorney that there are certain State actions that are outside the purview of judicial review and which lie within the political domain. The present would be such a case. In the final leg of the arguments, the learned Attorney General states that this case, if kept alive, has the potential to threaten the security of each and every citizen residing within our territories. The learned Attorney-General thus exhorts us to dismiss this case, *in limine*, in light of *public policy* considerations.

11. All that we would like to observe in this regard is a reiteration of what had already been said by this Court in *Kesavananda Bharati Sripadagalvaru v. State of Kerala*<sup>11</sup>

“Judicial review is not intended to create what is sometimes called Judicial Oligarchy, the Aristocracy of the Robe, Covert Legislation, or Judge-Made Law. The proper forum to fight for the wise use of the legislative authority is that of public opinion and legislative assemblies. Such contest cannot be transferred to the judicial arena. That all

Constitutional interpretations have political consequences should not obliterate the fact that the decision has to be arrived at in the calm and dispassionate atmosphere of the court room, that

---

11 AIR 1973 SC 1461

judges in order to give legitimacy to their decision have to keep aloof from the din and controversy of politics and that the fluctuating fortunes of rival political parties can have for them only academic interest. Their primary duty is to uphold the Constitution and the laws without fear or favour and in doing so, they cannot allow any political ideology or economic theory, which may have caught their fancy, to colour the decision.”

(Justice Khanna – para 1535)

12. In the light of the above, we deem it proper to dismiss the preliminary objections raised by the Union of India questioning the maintainability of the review petitions and we hold and affirm that the review petitions will have to be adjudicated on their own merit by taking into account the relevance of the contents of the three documents, admissibility of which, in the judicial decision making process, has been sought to be questioned by the respondents in the review petitions.

....., CJI  
[RANJAN GOGOI]

....., J.  
[SANJAY KISHAN KAUL]

NEW DELHI  
APRIL 10, 2019

---

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (C) NO. 137 OF 2018**

**Aseer Jamal** ... Petitioner

**Versus**

**Union of India & Ors.** ... Respondents

**JUDGMENT**

**Dipak Misra, CJI**

Almost a century back, Nobel Laureate T.S. Eliot had disenchantedly written, “Where is the wisdom we have lost in knowledge? Where is the knowledge we have lost in information?” Though the content of the statement cannot be said to have lost its fragrance or flavour, yet today, information has become a strong sense of power. Right to information has been treated as a right to freedom of speech and expression as contained in Article 19(1)(a) of the

Constitution of India. The right to acquire and to disseminate information has been regarded as an intrinsic component of freedom of speech and expression, as stated in **Secretary,**

**Ministry of Information & Broadcasting, Government of India and others v. Cricket Association of Bengal and others.**<sup>1</sup> and **People's Union for Civil Liberties and another v. Union of India and others.**<sup>2</sup>

2. Having stated about the right to information, we would advert to the assertions made in the writ petition. It is set forth in the writ petition that India, which is a vast country having large population, has few millions of illiterate adults and certain States, as per the 2011 Census, have more illiterates.

3. Referring to Section 6(1) of the Right to Information Act, 2005 (for brevity, „the Act“), it is urged that the illiterate persons and the visually impaired persons or persons afflicted by other kinds of disabilities are not in a position to get the information. It is contended that the provision contained in

---

<sup>1</sup> (1995) 2 SCC 161

<sup>2</sup> (2004) 2 SCC 476

Section 6 suffers from unreasonable classification between visually impaired and visually abled persons and thereby invites the frown of Article 14 of the Constitution. It is further contended that certain provisions of the Act are not accessible to orthopaedically impaired persons, persons below the poverty line and persons who do not have any access to the internet. Though in the petition, it has been asseverated as regards the violation of Article 14 of the Constitution, yet the prayer is couched in a different manner and we are obliged to say so because we feel that there is no need or necessity to deal with the constitutional validity of Section 6 of the Act. In fact, it is further necessary to mention that in the course of hearing, the prayer was centered on getting the reliefs, namely, to direct the Union of India, the States and the Union Territories to provide an effective machinery for the enforcement of the fundamental right to have access to information of illiterate citizens and to provide effective machinery to visually impaired persons and such impaired persons who are unable to have access to the internet. That

being the fact situation, we sought the assistance of Mr. K.K.

Venugopal, learned Attorney General for India in the matter.

4. We have heard Mr. Aseer Jamal, the petitioner, who has appeared in-person and Mr. K.K. Venugopal, learned Attorney General for India. Though the chart prepared by Mr. Venugopal indicates the objections and the response, yet we intend to deal with it in a holistic manner.

5. The Statement of Objects and Reasons of the Act reads as follows:-

"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information

Commission and State Information Commissions and for matters connected therewith or incidental thereto.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold

Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

Now THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

6. Section 2(j) of the Act deals with "right to information", which reads thus:-

"(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device”

7. Section 6 of the Act that deals with „request for obtaining information” stipulates as under :-

**“6. Request for obtaining information.—**(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal

details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made. shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the tiansfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

8. Mr. Venugopal, learned Attorney General, has emphasized the proviso to Section 6(1) to highlight that it is obligatory on the part of the Central Public Information Officer or State Public Information Officer to render all reasonable assistance to the persons making the request orally to reduce the same in writing. As we understand from the said proviso,

it will be the duty of the officer to listen to the persons and to reduce it in writing and process the same.

9. Section 6(3) of the Act takes care of the apprehension of the persons for whose cause the petitioner espouses, by making the provision pertaining to appropriate competent public authority. On a careful reading of the same, we do not find that there can be any difficulty for any person to find out the public authority as there is a provision for transfer.

10. As far as the grievance relating to visually impaired persons is concerned, as stated earlier, assistance has to be rendered under Section 6(1) of the Act to the persons who are unable to write or have difficulty in writing. Mr. K.K. Venugopal has brought to our notice that several States provide information in Braille since the year 2012. Every time the authority receives an RTI application seeking information in Braille, it prepares a reply in the printed format and forwards it to the National Institute for the Visually Handicapped where it is converted to Braille. The visually impaired citizens of Bihar were the first in the country to get

copies under the Right to Information (RTI) Act and the Rules made by the State Government for its implementation in Braille script. Audio files are also being prepared.

11. From the chart filed by Mr. Venugopal, it is vivid that several hotline numbers providing toll free access to information are available on the RTI website. Furthermore, a help desk is also available for any query or feedback related to the portal. The contact number is 011-24622461.

12. The next thing that requires to be emphasized upon is the plight of the people who are below the poverty line. It is useful to mention that in exercise of the powers conferred by Section 27 of the Act, the Central Government has framed a set of rules, namely, the Right to Information Rules, 2012. Rules 3, 4, 5 and 6 of the said Rules read as follows:-

**“3. Application Fee.—**An application under sub-section (1) of Section 6 of the Act shall be accompanied by a fee of rupees ten and shall ordinarily not contain more than five hundred words, excluding annexures, containing address of the Central Public Information Officer and that of the applicant:

Provided that no application shall be rejected only on the ground that it contains more than five hundred words.

**4. Fees for providing information.**— Fee for providing information under sub-section (4) of Section 4 and sub-sections (1) and (5) of Section 7 of the Act shall be charged at the following rates, namely :—

- (a) rupees two for each page in A-3 or smaller size paper;
- (b) actual cost or price of a photocopy in large size paper;
- (c) actual cost or price for samples or models;
- (d) rupees fifty per diskette or floppy;
- (e) price fixed for a publication or rupees two per page of photocopy for extracts from the publication;
- (f) no fee for inspection of records for the first hour of inspection and a fee of rupees 5 for each subsequent hour or fraction thereof; and
- (g) so much of postal charge involved in supply of information that exceeds fifty rupees.

**5. Exemption from Payment of Fee.**— No fee under rule 3 and rule 4 shall be charged from any person who, is below poverty line provided a copy of the certificate issued by the appropriate

Government in this regard is submitted alongwith the application.

**6. Mode of Payment of fee.**— Fees under these rules may be paid in any of the following manner, namely:—

- (a) in cash, to the public authority or to the Central Assistant Public Information Officer of the public authority, as the case may be, against a proper receipt; or
- (b) by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the public authority; or
- (c) by electronic means to the Accounts Officer of the public authority, if facility for receiving fees through electronic means is available with the public authority.”

13. Rule 5 takes care of the situation that has been highlighted by the petitioner. If an applicant belongs to below poverty line (BPL) category, he/she has to submit a proof in support of his/her claim that he/she belongs to the said category and as far as the mode of payment is concerned, various modes are provided and the criticism that it is restricted is unacceptable.

14. In view of the obtaining situation, as has been brought out by the learned Attorney General for India, as presently advised, we are disposed to think that no further direction needs to be issued except granting liberty to the petitioner to submit a representation to the competent authority pointing out any other mode(s) available for getting information under the Act. If such a representation is submitted, the same shall be dealt not only with sympathy but also with concern and empathy. We say so as differently abled persons, which include visually impaired persons, should have the functional facility to receive such information as permissible under the Act. They should not be deprived of the benefit of such a utility. As indicated in the beginning, the information makes one empowered. Additionally, we think it appropriate to ask the authorities to explore any kind of advanced technology that has developed in the meantime so that other methods can be introduced. We are absolutely sure that if the petitioner would point out, the cognizance of the same shall be taken. We are also certain that the authority shall, with all sincerity

and concern, explore further possibilities with the available on-line application/mechanism.

15. The writ petition is, accordingly, disposed of. There shall be no order as to costs.

.....CJI.  
**(Dipak Misra)**

.....J.  
**(A.M. Khanwilkar)**

.....J.  
**(Dr. D.Y. Chandrachud)**

New Delhi;  
September 27, 2018

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.9064-9065 of 2018  
[Arising out of SLP(C) Nos.32073-32074/2015]

FERANI HOTELS PVT. LTD. ....APPELLANT

*versus*

THE STATE INFORMATION COMMISSIONER  
GREATER MUMBAI & ORS. ....RESPONDENTS

JUDGMENT

SANJAY KISHAN KAUL, J.

1. The present appeal raises the issue of disclosure under the Right to Information Act, 2005 (hereinafter referred to as the 'said Act'), seeking information regarding the plans submitted to public authorities by a developer of a project.

2. Late Shri E.F. Dinshaw was the owner of three plots in Malad (West), Mumbai and Mr. Nusli Neville Wadia/respondent No.3 is the sole administrator of the estate and effects of late Shri E.F. Dinshaw. It may be noted that there is litigation pending *qua* the functioning of respondent No.3 as an administrator, but it is not in doubt that at present, there is no interdict against him in performing his role as the sole administrator. A Development Agreement dated 2.1.1995 was executed *inter se* respondent No.3 and Ferani Hotels Private Limited /appellant for carrying out the development on the said three plots. This Agreement was coupled with an irrevocable Power of Attorney executed by respondent No.3 in favour of the appellant. However, disputes are stated to have arisen between the parties some time in the year 2008.

3. As a consequence of the disputes having arisen, respondent No.3 is stated to have terminated the Power of Attorney and the Development Agreement on 12.5.2008 and, on the very next day, Suit No.1628/2008 was filed by respondent No.3 for *inter alia* declaration that the said Power of Attorney and the Development Agreement had been validly terminated. Interim relief, pending consideration of the suit, *qua* further construction and demolition was also sought.

4. The question of grant of interim relief has also had a chequered history. The interim relief was originally granted by learned Single Judge of the Bombay High Court vide order dated 19.7.2010, limited to the extent of restraining the appellant from putting any party in possession of any constructed premises, except with the approval of respondent No.3, during the pendency of the suit. This order was assailed before the Division Bench, which initially stayed the interim order on 26.7.2010, and finally vacated it on 19.7.2012, calling upon the learned Single Judge to first consider the issue as to whether the suit was within time. The order of the Division Bench was assailed before this Court, in ***Nusli Neville Wadia vs. Ferani Hotels (Pvt.) Ltd. & Ors.***,<sup>1</sup> where the legal issue raised related to the local amendment in Maharashtra, to the Code of Civil Procedure, 1908 (hereinafter referred to as the ‘said Code’), whereby Section 9A was inserted. Section 9 of the said Code mandates trial of suits of civil nature excepting suits in which their cognizance is either expressly or impliedly barred. In terms of Section 9A, notwithstanding anything contained in the said Code, or any other law for the time being in force, in case of an objection being raised as to the jurisdiction of the Court to entertain a suit, the Court is mandated to proceed to determine the same as a preliminary

---

<sup>1</sup> Order dated 8.4.2015 in CA No.3396/2015.

issue, before proceeding with the question of granting or setting aside of an interim order. It is the interpretation of this provision, which received the attention of the Supreme Court in the Special Leave Petition filed in this Court, against the order of the Division Bench. In terms of the order dated 8.4.2015, it was held that Section 9A, introduced as the Maharashtra Amendment, was mandatory in nature.

5. The aforesaid proceedings are relevant for the present case only for limited purposes, since we are only concerned, herein, with an application under the provisions of the said Act. In the application for interim relief filed before the learned Single Judge, one of the prayers made was for disclosure of a set of documents, as sought for by the counsel for respondent No.3 vide letter dated 29.3.2012, which the counsel for the appellant had refused to disclose. However, neither in the adjudication before the learned Single Judge, nor before the Division Bench, nor before this Court, was this aspect discussed at all, even though this relief had been claimed throughout. The adjudication, instead, rested on the issue of the provisions of Section 9A, inserted by way of a Maharashtra Amendment in the said Code, coupled with the plea of limitation. We may add here, that as per learned counsel for respondent No.3, these set of documents are not identical to what forms the

subject matter of information sought, now, under the said Act.

6. We may now turn to the direct controversy in question, which emanates from an application filed by respondent No.3 under Section 6(1) of the said Act before the Public Information Officer (for short 'PIO'), Municipal Corporation of Greater Mumbai. Vide application dated 10.12.2012, the following information in respect of the plots in question was sought:

"(a) Certified copies of all PR cards submitted.

(b) Certified copies of all plans and amendments therein from time to time submitted by the Ferani Hotels Ltd. and/or by its any divisions and/or its Architect.

(c) Certified copies of all Layouts, Sub-Division Plans and amendments therein form(sic.)<sup>2</sup> time to time submitted by the Ferani Hotels Ltd. and/or by its any divisions and/or its Architect.

(d) Certified copies of all development plans and any amendments therein from time to time submitted by the Ferani Hotels Ltd. and/or its any divisions and/or its Architect.

(e) Certified copies of all Reports submitted to the Municipal Commissioner and his approvals to the same."

7. The Advocates for the appellant, however, objected to the disclosure of the information on the grounds, as per Section 11(1) of the said Act:

(a) That it did not serve any social or public interest but was for the

---

<sup>2</sup> To be read as 'from'.

private interest of respondent No.3 in the suit filed before the Bombay High Court.

(b) That the information sought in the suit proceedings had not been granted by the High Court of Bombay, and an appeal against the said findings were pending before this Court, thereby making the information sought, *sub-judice*.

(c) That respondent No.3 was a competitor in business and, thus, disclosure would cause harm and injury to the appellant's competitive position, as well as to their valuable intellectual property rights. The information sought for was stated to involve commercial and trade secrets, disclosure of which would be detrimental to the interest of the appellant.

(d) That the architect of the appellant informed that all rights in respect of the plans, clarifications, designs, drawings, etc. and the work comprised therein, including intellectual property rights and in particular copyright, were reserved and vested exclusively in the appellant.

The PIO, vide its letter dated 8.1.2013, declined to give information in view of the objections filed by the counsel for the appellant. This

communication stated that the information could not be given as per Sections 8(1)(d), 8(1)(g), 8(1)(j) as well as Sections 9 and 11(1) of the said Act, since there was no public interest, as also on account of the claim of copyright.

8. Respondent No.3 filed an appeal under Section 19(1) of the said Act on 12.2.2013, which was disposed of by the First Appellate Authority, vide order dated 1.4.2013, permitting the information sought under the first head to be given, while declining the information under heads 2 to 4 for the same reasons as set out by the PIO. The 5<sup>th</sup> information sought was stated to be too detailed and hence was not possible to be given out. This resulted in a second appeal before the State Chief Information Commissioner (for short 'SCIC') under Section 19(3) of the said Act on 28.6.2013. Respondent No.3 succeeded in the second appeal in terms of order dated 31.1.2015, the order being predicated on the reasoning that the development of the property has connection with public interest, as flats erected thereon would be purchased by the citizens at large.

9. It was now the turn of the appellant to assail this order, before the High Court, by filing a writ petition, being Writ Petition (L) No.1806/2015, which was dismissed vide impugned order dated 30.10.2015. The reasoning

was based on the very object of the said Act being incorporated, which was to secure access to information, under the control of public authorities, to citizens, in order to promote transparency and accountability. The documents sought, being for the development of land and being copies of plans, layouts, sub-division plans, etc., which had in turn received the attention and approval of the Commissioner of the Corporation (a public authority), and were under his control, the same were to be supplied to anyone seeking the same. The Division Bench then proceeded to refer to the exceptions carved out under Sections 8 & 9 of the said Act to ultimately hold that the information sought for was part of public record and had to be revealed in public interest, and could not be said to be in the nature of trade secrets or of commercial confidence, or of a nature which would harm the competitive position of the appellant. It also dealt with the objection of the appellant *qua* the endeavour of respondent No.3 to seek the information in the suit proceedings to hold that the said Act was a legislation which confers independent legal right *de hors inter se* rights between the parties.

10. The aforesaid order has, thus, given rise to the present appeal filed by the appellant. We heard Dr. A.M. Singhvi, learned senior counsel for the appellant and Mr. Gourab Banerji, learned senior counsel for respondent

No.3, both seeking to forcefully put forth their stand. We may note that the private disputes *inter se* the appellant and respondent No.3 have given rise to this contentious proceeding, where the issue in question was, in our opinion, really innocuous. We have considered the submissions advanced by learned counsel.

11. We may note, at the inception itself, that Mr. Gourab Banerji, learned senior counsel for respondent No.3 did not even press the last set of documents sought, which was earlier held to be rather expansive in nature. The first set of information sought is stated to have already been disclosed. The controversy, thus, related to the 2<sup>nd</sup> to 4<sup>th</sup> set of information sought, which consists of the plans with amendments, layouts, sub-division plans with amendments and all other development plans with amendments. At the inception of the hearing, we had, in fact, put to learned senior counsel for the appellant, as to what serious objection could they have to the disclosure of these documents, which were really public documents, having been submitted to the concerned authority and forming part of the sanction process. The persistence over this issue, as noticed above, is clearly the result of the private dispute, rather than any objective consideration *qua* the issue of disclosure of information.

12. The first objection raised by learned senior counsel for the appellant flowed from the endeavour of respondent No.3 to seek information in the suit proceedings, which endeavour had not been successful. Learned senior counsel contended that no leave had been taken *qua* that aspect of the matter and, thus, applying any of the principles whether of issue estoppel, constructive *res judicata*, or election of remedy, respondent No.3 could not be permitted to agitate the issue twice over. Learned counsel sought to refer to the result of the endeavour to obtain interim reliefs in general by respondent No.3, but that, to our mind, would be completely irrelevant. In this behalf, the information sought for, arising from the letter of the counsel for respondent No.3, dated 29.3.2012, has to be examined. We have perused that letter. In substance what has been sought is communications *inter se* the appellant and public authorities, approvals granted by the Corporation, compliances, occupation certificate, application submitted to authorities, revenue records, documents pertaining to stamp duty, agreement with prospective flat buyers, etc. If we compare this information sought with what has been sought under the said Act, there is little doubt that the information sought under the said Act is different and specific, i.e., dealing with the approved plans and their modifications, which is part of the record

of the public authority's sanction. Not only that, even if we look at the aspect of the relief prayed for, arising from the letter; that has not really formed the subject matter of adjudication, before any of the three judicial forums; what received the attention of the Court was quite different, and related to preliminary determination arising from the provision introduced in the Maharashtra Amendment by way of inserting Section 9A in the said Code. This is apart from the aspect, which we will discuss a little later, of the scope and operation of the said Act, in respect of information being sought by any person, even a third party. We have, thus, no hesitation in rejecting this objection that the plea for disclosure of information arose in previous civil proceeding, *inter se* the parties, and had been denied.

13. The second defence against public disclosure of this information, raised by learned senior counsel for the appellant, is that respondent No.3 has failed to disclose any 'larger public interest', as mandated under the said Act, and that the third respondent has no *locus standi* to seek such information especially when the information falls under Sections 8(1)(d) & 8(1)(j) of the said Act. To buttress the plea, a reference has been made to the judgment of this Court in ***Thalappalam Service Cooperative Bank Ltd. & Ors. vs. State of Kerala & Ors.***<sup>3</sup> opining that if the information falls under

---

3 (2013) 16 SCC 82.

clause (j) of sub-section (1) of Section 8 of the said Act, in the absence of *bona fide* public interest, such information is not to be disclosed. It may be noted, at this stage, that even clause (d) of sub-section 1 of Section 8 of the said Act allows for disclosure of exempted information in larger public interest, and hence a similar test would apply.

14. To appreciate this submission, one would have to turn to the very Statement of Objects & Reasons of the said Act, which has also been discussed in the impugned order. The said Act was a milestone in the endeavour to make government authorities more accountable to public at large by facilitating greater and more effective access to information. The Preamble, thus, itself states that “the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority” was being established. Section 2(f) of the said Act defines ‘Information’ and reads as under:

**“2. Definitions. –** In this Act, unless the context otherwise requires, -

XXXX                  XXXX                  XXXX                  XXXX

(f) “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and

information relating to any private body which can be accessed by a public authority under any other law for the time being in force;”

The ‘Right to Information’ is defined under Section 2(j) of the said Act, which reads as under:

**“2. Definitions. –** In this Act, unless the context otherwise requires, -

xxxx                    xxxx                    xxxx                    xxxx

(j) “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

(i) inspection of work, documents, records;

(ii) taking notes, extracts, or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;”

We may note that there is no dispute that the Corporation is a public authority within the definition of Section 2(h) of the said Act.

We may also note the definition of a ‘third party’ in Section 2(n) of the said Act, which provides as follows:

**“2. Definitions. –** In this Act, unless the context otherwise requires, -

XXXX

XXXX

XXXX

XXXX

(n) “third party” means a person other than the citizen making a request for information and includes a public authority.”

15. The purport of the said Act is apparent from Section 6 of the said Act, which provides for the manner of making a request for obtaining information. In terms of sub-section (2) of Section 6 of the said Act, there is no mandate on an applicant to give any reason for requesting the information, i.e., anybody should be able to obtain the information as long as it is part of the public record of a public authority. Thus, even private documents submitted to public authorities may, under certain situations, form part of public record. In this behalf, we may usefully refer to Section 74 of the Indian Evidence Act, 1872, defining ‘public documents’ as under: **“74. Public documents. —** The following documents are public documents:—

(1) Documents forming the acts, or records of the acts—

(i) of the sovereign authority,

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, [of any part of India or of the Commonwealth], or of a foreign country;

(2) Public records kept [in any State] of private documents.”

16. The only exemption from disclosure of information, of whatever nature, with the public authority is as per Sections 8 & 9 of the said Act. Thus, unless the information sought for falls under these provisions, it would be mandatory for the public authorities to disclose the information to an applicant.

17. The endeavour of the appellant is to bring the information sought for by respondent No.3, under the exemption of Section 8, more specifically clauses (d) and (j) of sub-section (1), as also Section 9 of the said Act. The provisions read as under:

**“8. Exemption from disclosure of information.—**

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,

xxxx                    xxxx                    xxxx                    xxxx

(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;

xxxx                    xxxx                    xxxx                    xxxx

(j) information which relates to personal information the disclosure of which has not 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: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

.... .... .... ....

**“9. Grounds for rejection to access in certain cases.—**Without prejudice to the provisions of section 8, a Central Public Information Officer or State Public Information Officer, as the case may be may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.”

18. The issue of the test of larger public interest would, thus, arise if it falls within those exceptions.
19. Now turning to the information sought for, as enunciated above, they are really, plans relating to the property in question. These plans are required to be submitted by the person proposing to construct on the property, to the Commissioner of the Corporation. The appellant has submitted these plans to the Corporation, in pursuance of the Development Agreement and the Power of Attorney executed by respondent No.3. As to how these plans are processed, is referred to in the order of the State

Information Commissioner dated 31.1.2015, in para 7, which reads as under:  
“(7) On inquiry, the Public Information Officer in the Building Proposal Department of the Municipal Corporation of Greater Mumbai, clarified that there is prevailing procedure under Right to

Information Act, for giving copy of map and proposal received from developer. The proposals received from developer, are being sent to the Tax Assessment Department, Water Engineer Department, as well as to the office of concerned Administrative Ward. Besides, also to the Rain Water Drainage Department, Road Department & Fire Brigade etc., of which department no objection or specific approval is required. Besides this, if it is necessary as per local circumstance the reference is also made to Railway Department, Airport Authority and to other Committees. In the Building Proposals received, it includes the particulars of plot, the information related to F.S.I. of open space, sectional plan and drawing."

The aforesaid, thus, shows that considerable processing is required before the plans reach the stage of sanction level.

20. The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as the 'Maharashtra Act') in Section 3 provides for the General Liabilities of Promoters. In terms of sub-section (2) of Section 3, a promoter, who constructs or intends to construct a block or building of flats was required to comply with many disclosure requirements, *inter alia* clause

(l), which reads as under:

"(l) display or keep all the documents, plans or specifications (or copies thereof) referred to in clauses (a), (b) and (c), at the site and permit inspection thereof to persons intending to take or taking one or more flats;"

21. The object of the aforesaid was that the purchaser should be able

to get full information of the sanction plan. It can hardly be said that while a purchaser can get the information, the person who administers the land as owner and grants the authority through a Power of Attorney to develop the land, would not have such a right.

22. We may note that this Act was, however, repealed specifically by Section 92 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'RERA'), which now, under Section 11 of the RERA, provides the functions and duties of promoters. The duties are more elaborate, as under Section 11(1) of the RERA the promoter has to create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing. The promoter, in terms of sub-section (3) of Section 11 of the RERA is required to make available to the allottee information about sanctioned plans, layout plans along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the Regulations made by the Authority. The object is clearly to bring greater transparency.

23. The fate of purchase of land development and investments is a matter of public knowledge and debate. Any judicial pronouncement must

squarely weigh in favour of the fullest disclosure, in this behalf. In fact, the Division Bench of the Madras High Court in ***Dr. V.I. Mathan & Ors. vs. Corporation of Chennai & Ors.***<sup>4</sup> (to which one of us, Sanjay Kishan Kaul, J. was a party) opined that though the Chennai Metropolitan Development Authority mandated plans to be displayed at the site and also be made available on the website, the same principle should apply to the Corporation for all other sanctioned plans and, thus, issued directions for display of the plans on the website of the Corporation, and at the site, with clear visibility. This was just prior to the RERA coming into force.

24. In the aforesaid circumstances, even by a test of public interest, it can hardly be said that the same would not apply in matters of full disclosure of information of development plans to all and everyone. If we turn to the provisions of Section 8 of the said Act and the clauses under which the exception is sought, clause (d) deals with information relating to commercial confidence, trade secrets or intellectual property, which has the potentiality to harm the competitive position of a third party. Firstly, as observed aforesaid, the definition of a third party under Section 2(n) of the said Act means a person other than a citizen requesting for information to a public authority. Under Section 11 of the said Act, the third party has a right to be

---

<sup>4</sup> Order dated 22.3.2016 in WP No.4057/2016.

heard and to object to the disclosure of information. The disclosure of plans, which are required to be in public domain, whether under the repealed Act or RERA, can hardly be said to be matters of commercial confidence or trade secrets. In fact, *ex facie*, these terms would not apply to the matter at hand. Similarly, insofar as the intellectual property is concerned, the preparation of the plan and its designs may give rise to the copyright in favour of a particular person, but the disclosure of that work would not amount to an infringement and, in fact, Section 52(1)(f) of the Copyright Act, 1957 specifically provides that there would be no such infringement if there is reproduction of any work in a certified copy made or supplied in accordance with any law for the time being in force. This is what is exactly sought for by respondent No.3 – certified copies of the approved plans and its modifications, from the public authority, being the Corporation. We may also note that Section 22 of the said Act provides for an overriding effect with a notwithstanding clause *qua* any inconsistency with any other Act, which reads as under:

**“22. Act to have overriding effect.—**The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

25. The aforesaid provision would not imply that a disclosure

permissible under the Copyright Act, 1957 is taken away under the provisions of the said Act, but rather, if a disclosure is prescribed under any other Act, the provisions of the said Act would have an overriding effect.

26. Similarly, clause (j) of sub-section (1) of Section 8 of the said Act *ex facie* would have no relevance. There is no ‘personal information’ of which disclosure is sought. Further it cannot be said that it has no relation to public activity or interest, or that it is unwarranted, or there is an invasion of privacy. These are documents filed before public authorities, required to be put in public domain, by the provisions of the Maharashtra Act and the RERA, and involves a public element of making builders accountable to one and all. That respondent No.3, in fact, happens to be the administrator of the property in question, which will certainly not reduce his rights as opposed to anyone else, including a flat buyer.

27. We, thus, reject the submission based on clauses of sub-section (1) of Section 8 read with Section 9 of the said Act.

28. We also fail to appreciate the submissions of the learned senior counsel for the appellant of “vendetta”. What is the vendetta involved in seeking disclosure of plans approved by a builder? To say the least, this is really carrying things too far, just for the sake of creating an obstruction in

disclosure. Thus, the reference to the judgment in ***Reliance Industries Ltd.***

***vs. Gujarat State Information Commission & Ors.,<sup>5</sup>*** would be of no avail.

29. Another limb of the submission of learned senior counsel for the appellant was that the provisions of Sections 10 & 11 of the said Act have been rendered nugatory. The underlying documents of the development plans, drawings, etc. ought not to have been directed to be disclosed and only the grant of permission and approval by the Corporation, i.e., commencement certificate and occupation certificate could have been so directed at best.

30. Section 10 of the said Act refers to severability, i.e., information, which ought to be disclosed and not to be disclosed can be severed. This in turn would require a pre-requisite that the information sought contains some element which has been protected under Section 8 of the said Act. Having held that Section 8 of the said Act has no application, this plea is only stated to be rejected.

31. Insofar as Section 11 of the said Act is concerned, dealing with third party information, and the right to make submissions regarding disclosure of information, that provision has been complied with by permitting the appellant and even the architect to raise objections, and has

---

5 AIR 2007 Gujarat 203.

been dealt with by the PIO, and even by the State Information Commission, on appeal.

32. Lastly, the irony of the situation. The Development Agreement and the Power of Attorney is sought to be relied upon, by the appellant, to contend that it was the responsibility and authority of the attorney holder to obtain necessary permissions, sanctions and approvals, and that respondent No.3 is not entitled to deal with, nor liable to any authority in respect of the same, but is entitled to only 12 per cent of the monetary shares from sale proceeds of the constructed premises. Thus, no information should be disclosed under the said Act!

33. If we put this in the correct perspective, it means that the owner of the property, who has given authority to a developer under an agreement to develop the property and obtain sanctions, is precluded from obtaining any information about the sanctions, because ultimately he would be entitled to only a percentage of the monetary share of sale proceeds of what is constructed on the premises. Such a proposition is only stated to be rejected, and in a sense seeks to put the developer and holder of the Power of Attorney on a pedestal. This is, of course, *de hors* any private *lis* pending between the parties.

34. In the end, we would like to say that keeping in mind the provisions of RERA and their objective, the developer should mandatorily display at the site the sanction plan. The provision of subsection (3) of Section 11 of the RERA require the sanction plan/layout plans along with specifications, approved by the competent authority, to be displayed at the site or such other places, as may be specified by the Regulations made by the Authority. In our view, keeping in mind the ground reality of rampant violations and the consequences thereof, it is advisable to issue directions for display of such sanction plan/layout plans at the site, apart from any other manner provided by the Regulations made by the Authority. This aspect should be given appropriate publicity as part of enforcement of RERA.

35. The result of the aforesaid is that we find no merit in the appeal and consider it a legal misadventure. The dispute, though in respect of information to be obtained, derives its colour from a private commercial dispute. We note this because, if judicial time is taken, and legal expenses incurred by one side on account of such a misadventure, appropriate costs should be the remedy.

36. We, thus, dismiss the appeals with costs quantified at Rs.2.50 lakhs (Rupees two lakhs & fifty thousand), payable by the appellant to respondent No.3 (though hardly the actual expenses!).

.....J.  
[Kurian Joseph]

.....J.  
[Sanjay Kishan Kaul]

**New Delhi.**  
**September 27, 2018.**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No. 5665/2014**

**INSTITUTE OF COMPANIES  
SECRETARIES OF INDIA**

**...Appellant**

**VERSUS**

**PARAS JAIN**

**...Respondent**

**O R D E R**

1. This appeal is directed against the order dated 22.04.2014 of the Delhi High Court wherein, while allowing the Letters Patent Appeal, filed by the respondent herein, it set aside Guideline No.3 notified by the statutory council of appellant—Institute of Companies Secretaries of India and directed it to charge fee prescribed as per Rule 4 of the Right to Information (Regulation of Fee and Cost) Rules, 2005.

Signature Not Verified  
Digitally signed by  
VISHAL ANAND  
Date: 2019.04.20  
12:33:44 IST  
Reason:

2. The factual matrix of the case is that the respondent appeared in the final examination for Company Secretary conducted by the Appellant in December, 2012. On being unsuccessful in qualifying the examination, the respondent made an application under the Right to Information Act for

inspection of his answer sheets and subsequently, sought certified copies of the same from the appellant. The appellant thereafter has demanded Rs.500/- per answer sheet payable for supply of certified copy(ies) of answer book(s) and Rs.450/- per answer book for providing inspection thereof respectively as per Guideline No.3 notified by the statutory council of the appellant. It is to be noted that the respondent obtained the said information under the Right to Information Act, 2005.

**3.** Being aggrieved by the demand made by the appellant, the respondent preferred a Writ Petition before the Delhi High Court wherein the Learned Single Judge dismissed the petition. A Letters Patent Appeal was thereafter preferred by the respondent wherein, the Division Bench quashed Guideline No.3 notified by the appellant and held that the appellant can charge only the prescribed fee under Rule 4, The Right to Information

(Regulation of Fees and Cost) Rules, 2005.

**4.** The short issue before us is when the answer scripts of appellant's examination is sought whether the fee prescribed under Rule 4 of the Right to Information (Regulation of Fee and Cost) Rules, 2005 payable or that

under Guideline No. 3 of the Guideline, Rules and Procedures for Providing Inspection and/or Supply of Certified Copy(ies) of Answer Book(s) to Students, framed by the Examination Committee of appellant's statutory Council at its 148<sup>th</sup> Meeting held on 14.08.2013.

5. The learned counsel appearing on behalf of the appellant argued that it is undisputed that the Right to Information Act, 2005 is applicable to the appellant. However, in light of specific guidelines formulated under the Company Secretaries Act, 1980, the same should be applicable and not that which is provided under the Right to Information Act. He further contends that owing to quashing of Guideline No. 3 by the Division Bench of Delhi High Court, the appellant cannot collect any amount of fee except the one prescribed under Rule 4, The Right to Information (Regulation of Fees and Cost) Rules, 2005

which adds to financial strain on the appellant.

6. On the other hand, the learned counsel appearing on behalf of the respondent submitted that any candidate who seeks his answer scripts under Right to Information Act, 2005 can only be charged under Rule 4, The Right to Information (Regulation of Fees and Cost) Rules, 2005.

Further, the learned counsel submits that the candidates must have a choice to seek the answer scripts either by the avenue under Right to Information Act or under the Guidelines of the appellant framed by the examination committee of statutory Council under the Company Secretaries Act, 1980.

7. Having heard the learned counsels appearing for the parties and we have also meticulously perused the record.
8. The appellant is governed by the provisions of Company Secretaries Act, 1980 and under Sections 15, 15A and 17, the Examination Committee of the statutory Council has framed Guideline No. 3 providing an avenue to the candidates to either inspect their answer scripts or seek certified copies of the same on payment of the stipulated fees. Guideline no.3 stipulates payment of Rs. 500 for obtaining certified copies and Rs. 450 for seeking inspection of the same.

“3. Fee of ₹500 per subject/answer books payable for supply of certified copy(ies) of answer book(s) and ₹450 per answer book for providing inspection thereof respectively. The fee shall be paid through Demand Draft drawn in favour of “The Institute of Company Secretaries of India”, payable at New Delhi.”

**9.** On the contrary, Rule 4, The Right to Information

(Regulation of Fees and Cost) Rules, 2005 stipulates,

“4. For providing the information under sub-section

(1) of section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the public authority at the following rates:—

(a) rupees two for each page (in A4 or A3 size paper) created or copied;

(b) actual charge or cost price of a copy in larger size paper;

(c) actual cost or price for samples or models; and

(d) for inspection of records, no fee for the first hour; and a fee of rupees five for each subsequent hour (or fraction thereof).”

**(emphasis supplied)**

**10.** Thus it is clear that the avenue for seeking certified copies as well as inspection is provided both in the Right to Information Act as well as the statutory guidelines of the appellant.

**11.** We are cognizant of the fact that guidelines of the appellant, framed by its statutory council, are to govern the modalities of its day-to-day concerns and to effectuate smooth functioning of its responsibilities under the Company Secretaries Act, 1980. The guidelines of the

appellant may provide for much more than what is provided under the Right to Information Act, such as re-evaluation, re-totaling of answer scripts.

**12.** Be that as it may, Guideline no.3 of the appellant does not take away from Rule 4, The Right to Information (Regulation of Fees and Cost) Rules, 2005 which also entitles the candidates to seek inspection and certified copies of their answer scripts. In our opinion, the existence of these two avenues is not mutually exclusive and it is up to the candidate to choose either of the routes. Thus, if a candidate seeks information under the provisions of the Right to Information, then payment has to be sought under the Rules therein, however, if the information is sought under the Guidelines of the appellant, then the appellant is

at liberty to charge the candidates as per its guidelines.

**13.** The appellant has submitted that the Division Bench of Delhi High Court erred in quashing Guideline no.3 which is affecting not only the appellant but also the candidates. Taking into consideration the fact that such quashing was done despite no prayer being made to that effect on behest of the respondent, we hold that quashing of Guideline No.3 was unwarranted. It is to this limited extent that we allow

the appeal and set aside the impugned order of Division Bench of Delhi High Court whereby it quashed Guideline No.3.

**14.** Learned counsel appearing for the appellant further submitted that owing to nominal fee fixed under the Right to Information Act, the dissemination of information by the appellant has become financially burdensome and he wants to make a representation to the Government for enhancing the fee prescribed under the Right to Information Act. It is left open to him to make such a representation.

**15.** The appeal is disposed of in the afore-stated terms and pending applications, if any, shall also stand disposed of.

.....J.  
**(N.V.RAMANA)**

.....J.  
**(S. ABDUL NAZEER)**

NEW DELHI;  
APRIL 11, 2019.

ITEM NO.102(PH)

COURT NO.3

SECTION XIV

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**Civil Appeal No(s). 5665/2014**

INST. OF COMPANIES SECRETARIES OF INDIA

**Appellant(s)****VERSUS**

PARAS JAIN

**Respondent(s)**

(IA 2/2014-VACATING STAY)

Date : 11-04-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA  
 HON'BLE MR. JUSTICE S. ABDUL NAZEEF

For Appellant(s)

Mr. Vikas Mehta, AOR  
 Mr. Adith, Adv.  
 Mr. Vasanth Bharani, Adv.  
 Mr. R.D. Makheja, Adv.

For Respondent(s)

Mr. Prashant Bhushan, AOR (N.P.)  
 Mr. Pranav Sachdeva, Adv.  
 Ms. Neha Rathi, Adv.

UPON hearing the counsel the Court made the following  
 O R D E R

The appeal is disposed of in terms of the signed order.

Pending applications, if any, shall also stand disposed of.

(VISHAL ANAND)  
 COURT MASTER (SH)

(RAJ RANI NEGI)  
 ASSISTANT REGISTRAR

(Signed Order is placed on the file)

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S).1966-1967 OF 2020**  
**(Arising out of SLP(C) No.5840 of 2015)**

**CHIEF INFORMATION COMMISSIONER** .....Appellant

**VERSUS**

**HIGH COURT OF GUJARAT AND  
ANOTHER** .....Respondents

**JUDGMENT**

**R. BANUMATHI, J.**

Leave granted.

2. The point falling for determination in this appeal is as regards the right of a third party to apply for certified copies to be obtained from the High Court by invoking the provisions of Right to Information Act without resorting to Gujarat High Court Rules prescribed by the High Court.

3. Brief facts which led to filing of this appeal are as follows:-

An RTI application dated 05.04.2010 was filed by respondent No.2 seeking information pertaining to the following cases – Civil Application No.5517 of 2003 and Civil Application No.8072 of 1989

Signature Not Verified  
Digitally signed by  
MAHABIR SINGH  
Date: 2020.03.04  
15:52:01 IST  
Reason:

along with all relevant documents and certified copies. In reply, by letter dated 29.04.2010, Public Information Officer, Gujarat High Court informed respondent No.2 that for obtaining required copies, he should make an application personally or through his advocate on affixing court fees stamp of Rs.3/- with requisite fee to the "Deputy Registrar". It was further stated that as respondent No.2 is not a party to the said proceedings, as per Rule 151 of the Gujarat High Court Rules, 1993, his application should be accompanied by an affidavit stating the grounds for which the certified copies are required and on making such application, he will be supplied the certified copies of the documents as per Rules 149 to 154 of the Gujarat High Court Rules, 1993.

4. Being aggrieved, respondent No.2 preferred Appeal No.84 of 2010 before the Appellate Authority-Registrar Administration under Section 19 of the Right to Information Act, 2005 (for short "RTI Act"). The appeal was dismissed vide order dated 04.08.2010 on the ground that for obtaining certified copies, the alternative efficacious remedy is already available under the Gujarat High Court Rules, 1993 and that under the provisions of RTI Act, no certified copies can be provided.

5. Respondent No.2 then filed Second Appeal No.1437 of 2010-11 before the Appellant-Chief Information Commissioner and notice

was sent to respondent No.1. Respondent No.1-High Court filed its response reiterating the position that there are provisions under Rules 149 to 154 of the Gujarat High Court Rules for anybody who wants to obtain the certified copies as per which, application/affidavit should be filed stating the grounds for which the documents are required and with requisite court fee stamps. Respondent No.1 stated that despite the letter dated 02.07.2010 by the Deputy Registrar (CC Section), Decree Department, Gujarat High Court to respondent No.2 informing him of the procedure for getting certified copies, respondent No.2 has not made application as per the rules of the High Court and that the Public Information Officer cannot be compelled to breach the High Court Rules and hence, the appeal filed before the Chief Information Commissioner (CIC) is liable to be dismissed. Relying upon Sections 6(2) and 22 of the RTI Act, the appellant-Chief Information Commissioner vide its order dated 04.04.2013 directed Public Information Officer of the Gujarat High Court to provide the information sought by respondent No.2 within twenty days.

6. Challenging the order of Chief Information Commissioner, respondent No.1 filed Special Civil Application No.7880 of 2013 before the High Court. The learned Single Judge, while admitting

the petition, passed an interim order dated 11.10.2013 directing respondent No.1 to provide the information sought by respondent No.2 within four weeks. The learned Single Judge held that the legality and validity of the direction given by the appellant and the right of respondent No.2 to receive the copies under RTI Act will be considered at the stage of final hearing. It was however clarified that supply of information by respondent No.1 shall not be construed as acceptance of applicability of RTI Act to the High Court.

7. Being aggrieved by the interim order, respondent No.1-High Court preferred Letters Patent Appeal No.1348 of 2013 before the Division Bench contending that the party who seeks certified copies has to make an application along with the copying charges and requisite court fees stamp as per Rules 149 to 154 of the Gujarat High Court Rules. As per the Rules, if the certified copy is sought by a person who is not a party to the litigation, his application has to be accompanied by an affidavit stating therein the purpose for which he requires the certified copies. Vide impugned order, the High Court allowed the Letters Patent Appeal holding that when a particular field is governed by the rules which are not declared ultra-vires, then there is no question of applying the fresh rules and make the situation confusing. The High Court held that in the light of the High

Court Rules, certified copies may be given on payment of charges as per the Rules and also the applicant (respondent No.2) has to file an affidavit disclosing the purpose for which the certified copies are required and there is no question of making an application under the RTI Act. The Division Bench set aside the order of the Chief Information Commissioner by observing that when a copy is demanded by any person, the same has to be in accordance with the Rules of the High Court on the subject.

8. As the question involved is concerned with all the High Courts and having regard to the importance of the matter, we have requested Mr. Atmaram N.S. Nadkarni, learned Additional Solicitor General (ASG) to appear as *amicus curiae* to assist the Court which the learned ASG readily agreed. Mr. Nadkarni collected information from all the High Courts and filed a compilation of the information obtained by him about the Rules framed by various High Courts in exercise of their power under Article 225 of the Constitution of India and under Section 28 of the Right to Information Act, 2005.

9. Mr. Preetesh Kapoor, learned Senior counsel for the appellant has contended that Section 6(2) of the RTI Act specifically provides that an applicant making a request for information shall not be required to give reasons for requesting the information sought and

whereas under the Gujarat High Court Rules, applications made by third parties seeking copies of the documents shall be accompanied by an affidavit stating the grounds on which they are required and there is direct inconsistency between the provisions of the RTI Act and the Gujarat High Court Rules, 1993. It was submitted that in view of the inconsistency between the provisions of the RTI Act and the Gujarat High Court Rules, harmonious construction between the two is not possible and in the event of conflict between the provisions of RTI Act and any other law made by the Parliament or State Legislature or any other authority, the former must prevail. It was submitted that Section 22 of the RTI Act specifically provides that the provisions of the RTI Act will have an overriding effect over any other laws for the time being in force. The learned Senior counsel submitted that the High Court Rules have been framed in exercise of the powers under Article 225 of the Constitution of India which would be subject to any other law and the *non-obstante* clause in Section 22 of the RTI Act shows that the provisions of the RTI Act would override the High Court Rules. The learned Senior counsel *inter alia* relied upon the recent judgment of the Constitution Bench in *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agrawal* 2019 (16) SCALE 40.

10. Mr. Prashant Bhushan, learned counsel appearing for the intervenors submitted that there can be no apprehension that allowing an applicant to seek information from the High Court under RTI Act can prejudicially affect the privacy/rights of other parties or the administration of justice. Reiterating the submission of Senior counsel, Mr. Preetesh Kapoor, Mr. Prashant Bhushan submitted that Rule 151 of the Gujarat High Court Rules is not in consonance with Section 6(2) of the RTI Act and the provisions of RTI Act prevails over the relevant Rules of Public Authorities/Gujarat High Court Rules. Taking us through Section 22 of the RTI Act, learned counsel submitted that RTI Act is a general law made by the Parliament with the avowed object of dissemination of information and ensuring transparency in the functioning of the Public Authorities and in view of *non obstante* clause of Section 22 of the RTI Act, in case of any conflict regarding “access to information from public authorities”, the provisions of RTI Act will prevail over any other law. In support of his contention, the learned counsel placed reliance upon *Institute of Companies Secretaries of India v. Paras Jain 2019 SCC Online SC 764* and the Constitution Bench judgment in *Subhash Chandra Agrawal*.

11. Mr. Aniruddha P. Mayee, learned counsel appearing for respondent No.1-High Court of Gujarat submitted that the Gujarat High Court Rules 149 to 154 do not stipulate anything contra to Section 22 of the RTI Act and the Gujarat High Court Rule 151 is in consonance with the RTI Act. The learned counsel submitted that respondent No.2 was only informed to make an application as per the procedure stipulated under the Gujarat High Court Rules, 1993 and since respondent No.2 was not a party to the proceedings, he was informed that his application shall be accompanied with an affidavit stating the grounds for which the certified copies are required. The learned counsel submitted that when an efficacious remedy is available under Rule 151 of the Gujarat High Court Rules which is in consonance with the provisions of RTI Act, the provisions of the RTI Act cannot be invoked and the High Court rightly held that there is no question of making an application under the RTI Act and rightly quashed the order of the appellant-Chief Information Commissioner.

12. Mr. Nadkarni, learned *amicus* has taken us through the information received from the various High Courts and submitted that in exercise of power under Article 225 of the Constitution of India, the High Court Rules are framed and the Rules provide for a

mode for furnishing of information by way of certified copies to persons who are party to the litigation after making payment of requisite fees. It was submitted that insofar as third parties i.e. persons who are not party to the litigation are concerned, the same is also provided under the Rules, if the third party files an affidavit stating the reasonable grounds to receive such information/certified copies. The learned *amicus* submitted that there is no inconsistency between the RTI Act and the Rules framed by the High Court so as to furnish information. It was also submitted that although Section 22 of the RTI Act has an overriding effect over any other laws, in case there are inconsistencies, Section 22 of the RTI Act does not contemplate to override those legislations which also aim to ensure access to information. The learned *amicus* submitted that so far as the information on the judicial side of the High Court, the Rules framed by the High Court provide for dissemination of information to third party as per the High Court Rules by filing an application with requisite fee and filing an affidavit stating the grounds. Insofar as the information on the administrative side of the High Court, the learned *amicus* submitted that access to such information could be had through the Rules framed by the various High Courts and the Rules framed under the RTI Act by the High Courts. Drawing our attention to the judgment of the Delhi High Court in *The Registrar*,

*Supreme Court of India v. RS Misra (2017) 244 DLT 179* and judgment of the Karnataka High Court in *Karnataka Information Commissioner v. State Public Information Officer and another WP(C) No.9418 of 2008*, the learned *amicus* submitted that the High Courts have taken a consistent view that the information can be accessed through the mechanism provided under the Supreme Court Rules, 2013 and the High Court Rules and once any information can be accessed through the mechanism provided under the Statute or the Rules framed, the provisions of the RTI Act cannot be resorted to.

13. We have carefully considered the contentions and perused the impugned judgment and materials on record. The following points arise for consideration in this appeal:-

- (i) Whether Rule 151 of the Gujarat High Court Rules, 1993 stipulating that for providing copy of documents to the third parties, they are required to file an affidavit stating the reasons for seeking certified copies, suffers from any inconsistency with the provisions of RTI Act?
- (ii) When there are two machineries to provide information/certified copies – one under the High Court Rules and another under the RTI Act, in the absence of any inconsistency in the High Court Rules, whether the provisions of RTI Act can be resorted to for obtaining certified copy/information?

14. Section 2(f) of the Right to Information Act, 2005 explains the meaning of the term "**information**" which reads as under:-

**2. Definitions.** – In this Act, unless, the context otherwise requires,-

.....

(f) "**information**" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

15. Section 2(h) of the RTI Act defines "**public authority**". The term "**public authority**" has been given very wide meaning in the RTI Act. Section 2(h) of the RTI Act reads as under:-

**2. Definitions.** – In this Act, unless, the context otherwise requires,-

.....

(h) "**public authority**" means any authority or body or institution of self-government established or constituted,—  
(a) by or under the Constitution;  
(b) by any other law made by Parliament;  
(c) by any other law made by State Legislature;  
(d) by notification issued or order made by the appropriate Government, and includes any—  
(i) body owned, controlled or substantially financed;  
(ii) non-Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

16. Section 2(i) of the RTI Act defines "**record**" which is an inclusive definition. Section 2(j) explains "**right to information**". Sections 2(i) and 2(j) of the RTI Act read as under:-

**2. Definitions.** – In this Act, unless, the context otherwise requires,-

.....

- (i) "record" includes—
  - (i) any document, manuscript and file;
  - (ii) any microfilm, microfiche and facsimile copy of a document;
  - (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
  - (iv) any other material produced by a computer or any other device;
- (j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—
  - (i) inspection of work, documents, records;
  - (ii) taking notes, extracts or certified copies of documents or records;
  - (iii) taking certified samples of material;
  - (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

17. Section 8(1) of the RTI Act provides for exemption from disclosure of information. Right to information is subject to exceptions or exemptions stated in Section 8(1)(a) to 8(1)(j) of the RTI Act. There are ten clauses of Section 8(1) of the RTI Act. Clause (a) of sub-section (1) of Section 8 deals with information that would compromise the sovereignty or integrity of the country and like matter; clause (b) covers any information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court; clause (c) covers such matters which would cause a breach of privilege of the Parliament or the State Legislatures; clause (d) protects information of commercial nature and trade secrets and intellectual

property; clause (e) exempts the disclosure of any 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; clause (f) prevents information being disseminated, if it is received in confidence from any foreign Government; clause (g) exempts the disclosure of any information which endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes; clause (h) bars access to such information which would impede the process of investigation or apprehension or prosecution of offenders; clause (i) forbids records and papers relating to deliberations of ministers and officers of the executive being made available, subject to a proviso; and, clause (j) prohibits disclosure of personal information unless there is an element of public interest involved.

18. In *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agrawal* **2019 (16) SCALE 40**, the Supreme Court upheld the order passed by the Central Information Commissioner directing the CPIO, Supreme Court of India to furnish information as to the assets declared by the Hon'ble Judges of the Supreme Court. The Constitution Bench held that such disclosure would not, in any way, impinge upon the personal information and

right to privacy of the Judges. The fiduciary relationship rule in terms of Section 8(1)(e) of the RTI Act was held inapplicable. Learned counsel appearing for the parties extensively relied upon the observations of the Supreme Court in *Subhash Chandra Agarwal*. Since the issue before us is the High Court Rules vis-a-vis., the RTI Act, we do not propose to refer the various observations copiously relied upon by the learned counsel appearing for the parties.

19. Article 124 relates to the establishment and constitution of the Supreme Court. Article 124 states that the Supreme Court of India consist of Chief Justice of India and other Judges. Under Article 145 of the Constitution, the Supreme Court may, from time to time, with the approval of the President, make Rules for regulating generally the Practice and Procedure of the Court. In exercise of the powers under Article 145 of the Constitution, the Supreme Court has framed "Supreme Court Rules". Order XIII of the Supreme Court Rules lays down the procedure in respect of grant of certified copies of pleadings, judgments, documents, decrees or orders, deposition of the witnesses, etc. to the parties to the litigation and also to the third parties. The parties to a proceeding in the Supreme Court shall be entitled to obtain certified copies by making appropriate application

and the court fees payable as per the “Supreme Court Rules”. So far as the third parties are concerned, as per Order XIII Rule 2 of the Supreme Court Rules, the court on the application of a person who is not a party to the case, appeal or matter, pending or disposed of, may on good cause shown, allow such person to receive such copies as is or are mentioned in the Order XIII Rule 1 of the Supreme Court Rules. Thus, as per the Supreme Court Rules also, the third party is required to show good cause for obtaining certified copies of the documents or orders.

20. Article 216 relates to the constitution of High Courts. Every High Court consists of a Chief Justice and other Judges as the President of India may from time to time appoint. The High Court Rules are framed under Article 225 of the Constitution of India. The procedure followed for furnishing of copies/certified copies of orders/documents etc., being information on the judicial side, are governed by the Rules framed by the High Court under Article 225 of the Constitution of India. Insofar as the RTI Act is concerned, in exercise of the powers under Section 28 of the RTI Act, various High Courts have framed the Rules under RTI Act and the information on the administrative side of the High Court can be

accessed as per the Rules framed by the High Courts under RTI Act.

21. In the present case, we are concerned with Gujarat High Court Rules. Grant of certified copies to parties to the litigation and third parties are governed by Rules 149 to 154 of Gujarat High Court Rules. As per the Rules, on filing of application with prescribed court fees stamp, litigants/parties to the proceedings are entitled to receive the copies of documents/orders/judgments etc. The third parties who are not parties in any of the proceedings, shall not be given the copies of judgments and other documents without the order of the Assistant Registrar. As per Rule 151 of the Gujarat High Court Rules, the applications requesting for copies of documents/judgments made by third parties, shall be accompanied by an affidavit stating the grounds for which they are required. Rule 151 reads as under:-

“151. Parties to proceedings entitled to copies; application by third parties to be accompanied by affidavits. Copies of documents in any Civil or Criminal Proceedings and copies of judgment of the High Court shall not be given to persons other than the parties thereto without the order of the Assistant Registrar. Applications for copies of documents or judgment made by third parties shall be accompanied by an affidavit stating the grounds on which they are required, provided that such affidavit shall be dispensed with in case of applications made by or on behalf of the Government of the Union, the Government of any State or the Government of any foreign State.”

22. The learned *amicus* has obtained information from various High Courts as to the procedure followed by the High Courts for furnishing certified copies of orders/judgments/documents. As per the Rules framed by various High Courts, parties to the proceedings are entitled to obtain certified copies of orders/judgments/documents on filing of application along with prescribed court fees stamp. Insofar as furnishing of certified copies to third parties, the Rules framed by the High Courts stipulate that the certified copies of documents/orders or judgments or copies of proceedings would be furnished to the third parties only on the orders passed by the court or the Registrar, on being satisfied about the reasonable cause and *bona fide* of the reasons seeking the information/certified copies of the documents. We may refer to the Rules framed by the High Courts of Bombay, Gujarat, Himachal Pradesh, Karnataka, Madras and various other High Courts which stipulate similar provisions for furnishing information/certified copies to third parties. The Rules stipulate that for the third parties to have access to the information on the judicial side or obtaining certified copies of documents/judgments/orders, the third parties will have to make an application stating the reasons for which they are required and on payment of necessary court fees stamp. As pointed out earlier, Supreme Court Rules also stipulate that certified copies of

documents or orders could be supplied to the third parties only on being satisfied about the reasonable cause. Be it noted, the access to the information or certified copies of the documents/judgments/orders/court proceedings are not denied to the third parties. The Rules of the High Court only stipulate that the third parties will have to file an application/affidavit stating the reasons for which the information/certified copies are required. The Rules framed by the Gujarat High Court are in consonance with the provisions of the RTI Act. There is no inconsistency between the provisions of the RTI Act with the Rules framed by the High Court in exercise of the powers under Article 225 of the Constitution of India.

23. Mr. Preetesh Kapoor, learned Senior counsel for the appellant has submitted that Section 6(2) of the RTI Act grants a substantive right and the person who is seeking information/copies is not required to give any reason and this right cannot be curtailed or whittled down by procedural laws framed by the High Court under Article 225 of the Constitution of India. In support of his contention that the rules framed by the High Court in exercise of powers under Article 225 cannot make or curtail any substantive law, reliance was placed upon *Raj Kumar Yadav v. Samir Kumar Mahaseth and Others (2005) 3 SCC 601*. Learned Senior counsel further

submitted that Section 22 of the RTI Act specifically provides that the provisions of the RTI Act will have an overriding effect over other laws for the time being in force. It was therefore, submitted that in the event of any conflict between the provisions of the RTI Act and any other laws made by the Parliament or a State Legislature or any other authority, the provisions of the RTI Act must prevail and therefore, the RTI Act would prevail over the rules framed by the High Court. Mr. Prashant Bhushan, learned counsel for the intervention applicants also reiterated the same submission.

24. In order to consider the contentions urged by the learned Senior counsel for the appellant and Mr. Prashant Bhushan, let us briefly refer to the various categories of information held by the High Court, which are broadly as under:-

- (a) information held by the High Court relating to the parties to the litigation/proceedings – pleadings, documents and other materials and memo of grounds raised by the parties;
- (b) orders and judgments passed by the High Court, notes of proceedings, etc.;
- (c) In exercise of power of superintendence over the other courts and tribunals, information received in the records submitted/called for by those courts and tribunals like subordinate judiciary, various tribunals like Income Tax Appellate Tribunal, Customs Excise

and Service Tax Appellate Tribunal and other tribunals;

- (d) information on the administrative side of the High Court viz. appointments, transfers and postings of the judicial officers, staff members of the High Court and the district judiciary, disciplinary action taken against the judicial officers and the staff members and such other information relating to the administrative work.
- (e) Correspondence by the High Court with the Supreme Court, Government and with the district judiciary, etc.;  
and
- (f) information on the administrative side as to the decision taken by the collegium of the High Court in making recommendations of the Judges to be appointed to the High Court; information as to the assets of the sitting Judges held by the Chief Justice of the High Court.

25. Information under the categories (a), (b) and (c) and other information on the judicial side can be accessed/certified copies of documents and orders could be obtained by the parties to the proceedings in terms of the High Court Rules and the parties to the proceedings are entitled to the same. So far as the third parties are concerned, as of right, they are not entitled to access the information/obtain the certified copies of documents, orders and other proceedings. As per rules framed by the High Court, a third

party can obtain the certified copies of the documents, orders or judgments or can have access to the information only by filing an application/affidavit and by stating the reason for which the information/copies of documents or orders are required. Insofar as on the administrative side i.e. categories (d), (e) and (f), one can have access to the information or copies of the documents could be obtained under the rules framed by the various High Courts or under the rules framed by the High Court under the RTI Act. Insofar as the disclosure of information as to the assets of the Judges held by the Chief Justice of the High Court, the same is now covered by the judgment of the Constitution Bench reported in *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agrawal* 2019 (16) SCALE 40.

26. The preamble to the RTI Act suggests that the Act was enacted “*to promote transparency and accountability in the working of every public authority.....*”. The Act was enacted by keeping in view the right of “*an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.....*”. The preamble opens with a reference to the Constitution having established a democratic

republic and the need therefore, for an informed citizenry. The preamble reveals that legislature was conscious of the likely conflict with other public interest including efficient operations of the Governments and optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and the necessity to harmonise these conflicting interests. A citizen of India has every right to ask for any information subject to the limitation prescribed under the Act. The right to seek information is only to fulfill the objectives of the Act laid down in the preamble, that is, to promote transparency of information.

27. Rule 151 of the Gujarat High Court Rules, 1993 requires a third party applicant seeking copies of documents in any civil or criminal proceedings to file an application/affidavit stating the reasons for which those documents are required. As such, the High Court Rules do not obstruct a third party from obtaining copies of documents in any court proceedings or any document on the judicial side. It is not as if the information is denied or refused to the applicant. All that is required to be done is to apply for the certified copies with application/affidavit stating the reasons for seeking the information. The reason insisting upon the third party for stating the grounds for obtaining certified copies is to satisfy the court that the

information is sought for *bona fide* reasons or to effectuate public interest. The information is held by the High Court as a trustee for the litigants in order to adjudicate upon the matter and administer justice. The same cannot be permitted by the third party to have access to such personal information of the parties or information given by the Government in the proceedings. Lest, there would be misuse of process of court and the information and it would reach unmanageable levels. If the High Court Rules framed under Article 225 provide a mechanism for invoking the said right in a particular manner, the said mechanism should be preserved and followed. The said mechanism cannot be abandoned or discontinued merely because the general law – RTI Act has been enacted.

28. As discussed earlier, the object of the RTI Act itself recognizes the need to protect the institutional interest and also to make optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The procedure to obtain certified copies under the High Court Rules is not cumbersome and the procedure is very simple – filing of an application/affidavit along with the requisite court fee stating the reasons for seeking the information. The information held by the High Court on the judicial

side are the “personal information” of the litigants like title cases and family court matters, etc. Under the guise of seeking information under the RTI Act, the process of the court is not to be abused and information not to be misused.

29. In exercise of supervisory jurisdiction under Article 227 of the Constitution of India, if the records are received by the High Court from tribunals like Income Tax Appellate Tribunal, it may contain the details disclosed by an assessee in his Income Tax Return. As held in *Girish Ramchandra Deshpande v. Central Information Commissioner and Others (2013) 1 SSC 212*, the details disclosed by a person in his Income Tax Return are personal information which stands exempted from disclosure unless it involves a larger public interest and the larger public interest justifies the disclosure of such information. While seeking information or certified copies of the documents, the High Court Rules which require the third party to a proceeding to file an affidavit stating the reasons for seeking the information, the same cannot be said to be inconsistent with the provisions of the RTI Act in as much as the rejection if any, made thereafter will be for the very reasons as stipulated in Section 8 of the RTI Act.

30. Considering the implementation of RTI Act and observing that the existing mechanism for invoking the said right should be preserved and operated, in *Institute of Chartered Accountants of India v. Shaunak H. Satya and Others (2011) 8 SCC 781*, the Supreme Court held as under:-

**“24.** One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of the RTI Act is to harmonise the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective.

**25.** 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 fulfilment and preservation of democratic ideals. Therefore, in dealing with information not falling under Sections 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in Section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests.”

31. While examining the issue of where two mechanisms exist for obtaining the information i.e. the Supreme Court Rules and the RTI

Act, in *The Registrar Supreme Court of India v. R S Misra (2017)*

**244 DLT 179**, the Delhi High Court held that “*once any information can be accessed through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to.*” In **(2017) 244 DLT 179**, the Delhi High Court held as under:-

“53. The preamble shows that the RTI Act has been enacted only to make accessible to the citizens the information with the public authorities which W.P.(C) 3530/2011 Page 22 of 36 hitherto was not available. Neither the Preamble of the RTI Act nor does any other provision of the Act disclose the purport of the RTI Act to provide additional mode for accessing information with the public authorities which has already formulated rules and schemes for making the said information available. Certainly if the said rules, regulations and schemes do not provide for accessing information which has been made accessible under the RTI Act, resort can be had to the provision of the RTI Act but not to duplicate or to multiply the modes of accessing information.

54. This Court is further of the opinion that if any information can be accessed through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to as there is absence of the very basis for invoking the provisions of RTI Act, namely, lack of transparency. In other words, the provisions of RTI Act are not to be resorted to if the same are not actuated to achieve transparency.

55. Section 2(j) of the RTI Act reveals that the said Act is concerned only with that information, which is under the exclusive control of the 'public authority'. Providing copies/certified copies is not separate from providing information. The SCR not only deal with providing 'certified copies' of judicial records but also deal with providing 'not a certified copy' or simply a 'copy' of the document.

The certification of the records is done by the Assistant Registrar/Branch Officer or any officer on behalf of the Registrar. In the opinion of this Court, in case of a statute which contemplates dissemination of information as provided for by the Explanation to Section 4 of the RTI Act then in such situation, public will have minimum resort to the use of the RTI Act to obtain such information.

56. There are other provisions of the RTI Act which support the said position, namely, Sections 4(2), (3) and (4) which contemplate that if an information is disseminated then the public will have minimum resort to the use of the RTI Act to obtain information. In the present case, the dissemination of information under the provisions of the SCR squarely fits into the definition of "disseminated" as provided in the aforesaid Explanation to Section 7(9) and the Preamble contemplate a bar for providing information if it „disproportionally diverts the resources of the public authority".

57. Section 4(2) also provides that it shall be constant endeavour of every public authority to take steps in accordance with the requirements of subSection (1) thereof and to provide as much information suo-motu to the public at regular intervals through various means of communications including intervals so that the public has minimum resort to the use of the RTI Act to obtain information." [Underlining added]

The same view was taken up by the Karnataka High Court in *State Public Information Officer and Deputy Registrar (Establishment) v. Karnataka Information Commission and Another WP No.26763 of 2013* dated 09.01.2019.

32. We fully endorse above views of the Delhi High Court. When the High Court Rules provide for a mechanism that the information/certified copies can be obtained by filing an

application/affidavit, the provisions of the RTI Act are not to be resorted.

33. Sub-section (2) of Section 4 of the RTI Act provides that every public authority to take steps to provide as much information *suo motu* to the public at regular intervals through various means of communications including internet, so that the public have minimum resort to the use of the RTI Act to obtain information. *Suo motu* disclosure of information on important aspects of working of a public authority is therefore, an essential component of information regime. The judgments and orders passed by the High Courts are all available in the website of the respective High Courts and any person can have access to these judgments and orders. Likewise, the status of the pending cases and the orders passed by the High Courts in exercise of its power under Section 235 of the Constitution of India i.e. control over the subordinate courts like transfers, postings and promotions are also made available in the website. In order to maintain the confidentiality of the documents and other information pertaining to the litigants to the proceedings and to maintain proper balance, Rules of the High Court insist upon the third party to file an application/affidavit to obtain information/certified copies of the documents, lest such application

would reach unmanageable proportions apart from the misuse of such information.

34. Section 22 of the RTI Act lays down that the provisions of the RTI Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than RTI Act. Learned Senior counsel for the appellant has submitted that since the requirement under Rule 151 of the Gujarat High Court Rules of filing an affidavit stating the grounds for seeking the information is directly contrary to Section 6(2) of the RTI Act and there is direct inconsistency between the provisions of the RTI Act and the Gujarat High Court Rules and in the event of conflict between the provisions of the RTI Act and any other law made by the Parliament or a State Legislature or any other authority, the RTI Act must prevail.

35. In the *non obstante* clause of Section 22 of the RTI Act, three categories have been mentioned:- (i) the Official Secrets Act, 1923; and (ii) any other law for the time being in force; or (iii) any instrument having effect by virtue of any law other than this Act. In case of inconsistency of any law with the provisions of the Right to Information Act, overriding effect has been given to the provisions of

the Right to Information Act. Section 31 of the RTI Act which is a repealing clause repeals only the Freedom of Information Act, 2002 and not other laws. The Right to Information Act has not repealed the Official Secrets Act or any of the laws providing confidentiality which prohibits the authorities to disclose information. Therefore, all those enactments including Official Secrets Act, 1923 continue to be in force. This Act however, has an overriding effect to the extent they are inconsistent.

36. The *non-obstante* clause of the RTI Act does not mean an implied repeal of the High Court Rules and Orders framed under Article 225 of the Constitution of India; but only has an overriding effect in case of inconsistency. A special enactment or rule cannot be held to be overridden by a later general enactment simply because the latter opens up with a *non-obstante* clause, unless there is clear inconsistency between the two legislations. In this regard, we may usefully refer to the judgment of the Supreme Court in *R.S. Raghunath v. State of Karnataka (1992) 1 SCC 335* wherein, the Supreme Court held as under:-

**“38. In Ajoy Kumar Banerjee v. Union of India (1984) 3 SCC 127, Sabyasachi Mukharji, J. (as His Lordship then was) observed thus :**

“As mentioned hereinbefore if the scheme was held to be valid, then the question what is the general law and what is the special law and which law in case of conflict would prevail would have arisen and that would have necessitated the application of the principle “*generalia specialibus non*

*derogant*". The general rule to be followed in case of conflict between the two statutes is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied:

- (i) The two are inconsistent with each other.
- (ii) There is some express reference in the later to the earlier enactment.

If either of these two conditions is fulfilled, the later law, even though general, would prevail."

37. As pointed out earlier, Section 31 of the RTI Act repeals only the Freedom of Information Act, 2002 and not other laws. If the intention of the legislature was to repeal any other Acts or laws which deal with the dissemination of information to an applicant, then the RTI Act would have clearly specified so. In the absence of any provision to this effect, the provisions of the RTI Act cannot be interpreted so as to attribute a meaning to them which was not intended by the legislature. In the RTI Act, there is no specific reference to the rules framed by the various High Courts or any other special law excepting the Freedom of Information Act, 2002.

38. As discussed earlier, Rule 151 of the Gujarat High Court Rules requires a third party to the proceedings to file an affidavit and state the reasons for seeking access to the information or grant of certified copies of records and there is no inconsistency of the High Court Rules with the provisions of the RTI Act. The Gujarat High Court Rules neither prohibit nor forbid dissemination of information

or grant of certified copies of records. The difference is only insofar as the stipulation of filing an application/affidavit or payment of fees, etc. is concerned, there is no inconsistency between the two provisions and therefore, the RTI Act has no overriding effect over Rule 151 of the Gujarat High Court Rules.

39. Ten categories of information are exempted from disclosure under Section 8(1)(a) to (j) of the RTI Act. Section 8(1)(j) excludes disclosure of personal information, the disclosure of which:- (i) has no relationship to any public activity or interest; or (ii) would cause unwarranted invasion of the privacy of the individual. However, in both the cases, the Central Public Information Officer or the appellate authority may order disclosure of such information, if they are satisfied that larger public interest justifies disclosure. This would imply that personal information which has some relationship to any public activity or interest may be liable to be disclosed. An invasion of privacy may be held to be justified if the larger public interest so warrants.

40. The information held by the High Court on the judicial side are the personal information of the parties to the litigation or information furnished by the Government in relation to a particular case. There may be information held by the High Court relating to the cases

which have been obtained from the various tribunals in exercise of the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India. For instance, the matters arising out of the orders by the Income Tax Appellate Tribunal, Customs Excise and Service Tax Appellate Tribunal and other tribunals over which the High Court exercises the supervisory jurisdiction. The orders/judgments passed by the High Court though are the documents which are concerned to the rights and liabilities of the parties to the litigation. Under Section 8(1)(j) of the RTI Act, the Central Public Information Officer or the appellate authority may order disclosure of personal information if they are satisfied that the larger public interest justifies disclosure. Insofar as the High Court Rules are concerned, if the information or certified copies of the documents/record of proceedings/orders on the judicial side of the Court is required, all that the third party is required to do is to file an application/affidavit stating the reasons for seeking such information. On being satisfied about the reasons for requirement of the certified copy/disclosure of information, the Court or the concerned Officer would order for grant of certified copies. As discussed earlier, Order XIII Rule 3 of the Supreme Court Rules also stipulate the same procedure insofar as the third party seeking certified copy of the documents/records.

41. Yet another contention advanced is that the information held by the High Court may be furnished to the applicant by following the procedure under Section 11 of the RTI Act. Section 11 of the Act deals with **third party information**. As per Section 11 of the Act, if the requisite information or record or part thereof has been supplied by a third party and has been treated as confidential by that third party, then the Central Public Information Officer or State Public Information Officer, as the case may be, within five days of receipt of the request give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record or part thereof and invite the third party to make a submission in writing or orally regarding whether such information should be disclosed and such submission of the third party shall be kept in view while taking a decision about the disclosure of the information.

42. We do not find any merit in the above submission and that such cumbersome procedure has to be adopted for furnishing the information/certified copies of the documents. When there is an effective machinery for having access to the information or obtaining certified copies which, in our view, is a very simple procedure i.e.

filing of an application/affidavit with requisite court fee and stating the reasons for which the certified copies are required, we do not find any justification for invoking Section 11 of the RTI Act and adopt a cumbersome procedure. This would involve wastage of both time and fiscal resources which the preamble of the RTI Act itself intends to avoid.

43. We summarise our conclusion:-

- (i) Rule 151 of the Gujarat High Court Rules stipulating a third party to have access to the information/obtaining the certified copies of the documents or orders requires to file an application/affidavit stating the reasons for seeking the information, is not inconsistent with the provisions of the RTI Act; but merely lays down a different procedure as the practice or payment of fees, etc. for obtaining information. In the absence of inherent inconsistency between the provisions of the RTI Act and other law, overriding effect of RTI Act would not apply.
- (ii) The information to be accessed/certified copies on the judicial side to be obtained through the mechanism provided under the High Court Rules, the provisions of the RTI Act shall not be resorted to.

44. In the light of aforesaid reasonings, the impugned order dated 13.03.2014 passed by the High Court of Gujarat at Ahmedabad in

Letters Patent Appeal No.1348 of 2013 is confirmed and these appeals are dismissed. We place on record the valuable assistance rendered by Mr. Atmaram N.S. Nadkarni as *amicus*.

.....J.  
[R. BANUMATHI]

.....J.  
[A.S. BOPANNA]

.....J.  
[HRISHIKESH ROY]

**New Delhi;**  
**March 04, 2020.**

[REPORTABLE]

IN THE SUPREME COURT OF INDIA  
ORIGINAL CIVIL JURISDICTION

WRIT PETITION (CIVIL) No.1126 of 2022

Saurav Das ..Petitioner

Versus

Union of India & Ors. ..Respondents

JUDGMENT

M.R. SHAH, J.

1. By way of this petition under Article 32 of the Constitution of India the petitioner has prayed for appropriate directions/orders directing the respondents - States to enable free public access to chargesheets and final reports filed as per Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') in furtherance of the rationale as established by this Court in

Signature Not Verified  
Digitally Signed by  
Neetu Sachdeva  
Date: 2023.01.20  
16:12:08 IST  
Reason:

Youth Bar Association of India v. Union of India, (2016) 9 SCC 473

on their websites.

2. Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner has heavily relied upon the decision of this Court in the case of Youth Bar Association of India (*supra*) by which this Court directed copies of FIRs to be published within 24 hours of their registration on the police websites or on the websites of the State Governments.

2.1 It is the case on behalf of the petitioner that while the direction of this Hon'ble Court directing the police to publish copies of FIRs on their websites has indeed induced transparency in the working of the criminal justice system, the logic of disclosure applies more strongly to chargesheets, for while FIRs are based on unsubstantiated allegations, chargesheets are filed after due investigation.

2.2 Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner has taken us to the Scheme of the Code of Criminal Procedure more particularly Sections 207, 173(4) and 173(5) of the Cr.P.C and relying upon the said provisions it is vehemently submitted that as per the aforesaid provisions when a duty is cast upon the Investigating Agency to furnish the copy of the challans/charge-sheets along with all other documents to the accused, the same also should be in the public domain to have the transparency in the working of the Criminal Justice System.

2.3 Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner has also vehemently submitted that the chargesheet is a public document once filed in the Court. Reliance is placed on Sections 74 and 76 of the Indian Evidence Act, 1872. It is submitted that even under Section 4(2) of the Right to Information Act, 2005

(hereinafter referred to as the ‘RTI Act’) a duty is cast upon the public officer/public authority to provide as much information *suo moto* to the public at regular intervals through various means of communications and to provide as much information as mentioned in Section 4(1)(b) of the RTI Act.

Making the above submissions, it is prayed to grant the relief as sought in the present petition.

3. We have heard Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner at length.

4. At the outset, it is required to be noted that by way of present writ petition under Article 32 of the Constitution of India, the petitioner by way of Public Interest Litigation has prayed for an appropriate direction/order directing all the States in the country to enable free public access to

chargesheets and final reports filed as per Section 173 of the Cr.P.C. on their websites.

4.1 For the aforesaid heavy reliance is placed on the decision of this Court in the case of Youth Bar Association of India (supra). On going through the decision of this Court in the case of Youth Bar Association of India (supra), the reliance placed upon the same by the counsel appearing on behalf of the petitioner for the relief sought in the present petition is thoroughly misconceived and misplaced. In the aforesaid decision this Court directed that the copies of the FIRs should be published within 24 hours of their registrations on the police websites or on the websites of the State Government. From the entire judgment it appears that this Court directed the copies of the FIRs to be published within 24 hours on the police websites or on the websites of the State Government. Looking to the interest of the accused and so that the

innocent accused are not harassed and they are able to get the relief from the competent court and they are not taken by surprise. Therefore, the directions issued by this Court are in favour of the accused, which cannot be stretch to the public at large so far as the chargesheets are concerned.

4.2 Even the relief which is sought in the present writ petition directing that all the challans/chargesheets filed under Section 173 Cr.P.C. shall be put on public domain/websites of the State Governments shall be contrary to the Scheme of the Criminal Procedure Code. As per Section 207 Cr.P.C. a duty is cast upon the Investigating Officer to supply to the accused the copy of the police report and other documents including the First Information Report recorded under Section 154 Cr.P.C. and the statements recorded under sub-Section 3 of Section 161 Cr.P.C.

4.3 As per sub-Section 173(4) Cr.P.C. a duty is cast upon the Investigating Agency to furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under sub-section (1) under Section 173. Section 173(4) reads as under:

“173(4). After forwarding a report under this section, the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under sub-section (1) and of the first information report recorded under section 154 and of all 41 other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under section 164 and the statements recorded under sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.”

4.4 As per Section 173(5) Cr.P.C. when any report is filed in respect of the case to which Section 170 Cr.P.C. applies, the police officer shall forward to the Magistrate along with the report all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation.

4.5 Therefore on conjoint reading of Section 173 Cr.P.C. and Section 207 Cr.P.C. the Investigating Agency is required to furnish the copies of the report along with the relevant documents to be relied upon by the prosecution to the accused and to none others. Therefore, if the relief as prayed in the present petition is allowed and all the chargesheets and relevant documents produced along with the chargesheets are put on the public domain or on the websites of the State Governments it will be contrary to the Scheme of the Criminal Procedure Code and it may as such violate the rights of the accused as well as the victim and/or even the investigating agency. Putting the FIR on the website cannot be equated with putting the chargesheets along with the relevant documents on the public domain and on the websites of the State Governments.

5. Now so far as the reliance placed upon on Sections 74 & 76 of the Evidence Act is concerned, the reliance placed

upon the said provisions are also absolutely misconceived and misplaced. Documents mentioned in Section 74 of the Evidence Act only can be said to be public documents, the certified copies of which are to be given by the concerned police officer having the custody of such a public document. Copy of the chargesheet along with the necessary documents cannot be said to be public documents within the definition of Public Documents as per Section 74 of the Evidence Act. As per Section 75 of the Evidence Act all other documents other than the documents mentioned in Section 74 of the Evidence Act are all private documents. Therefore, the chargesheet/documents along with the chargesheet cannot be said to be public documents under Section 74 of the Evidence Act, reliance placed upon Sections 74 & 76 of the Evidence Act is absolutely misplaced.

6. Now so far as the reliance placed upon Section 4 of the RTI Act is concerned, under Section 4(2) of the RTI Act a duty is cast upon the public authority to take steps in accordance with the requirements of clause (b) of sub-Section 1 of Section 4 of the RTI Act to provide as much information *suo moto* to the public at regular intervals through various means of communications. Copies of the chargesheet and the relevant documents along with the charge-sheet do not fall within Section 4(1)(b) of the RTI Act. Under the circumstances also the reliance placed upon Section 4(1)(2) of the RTI Act is also misconceived and misplaced.

7. In view of the above and for the reason stated above, the petitioner is not entitled to the relief as prayed in the present petition namely directing all the States to put on their websites the copies of all the chargesheets/challans filed under Section 173 of the Cr.P.C.

Present writ petition lacks merits and the same deserves to  
be dismissed and is accordingly dismissed.

.....J.  
[M.R. SHAH]

.....J.  
[C.T. RAVIKUMAR]

NEW DELHI;  
JANUARY 20, 2023.

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**Petition(s) for Special Leave to Appeal (C) No(s).1034/2023**

(Arising out of impugned final judgment and order dated 02-09-2022 in WP No. 13090/2022 passed by the High Court of M.P. Principal Seat at Jabalpur)

**ADVOCATE UNION FOR DEMOCRACY AND SOCIAL JUSTICE Petitioner(s)**

**VERSUS**

**HIGH COURT OF MADHYA PRADESH Respondent(s)**

(FOR ADMISSION and IA No.8099/2023-EXEMPTION FROM FILING O.T. and IA No.8111/2023-APPLICATION FOR PERMISSION)

**Date : 23-01-2023 This petition was called on for hearing today.**

**CORAM :**

HON'BLE THE CHIEF JUSTICE  
 HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN  
 HON'BLE MR. JUSTICE J.B. PARDIWALA

**For Petitioner(s)** Ms. Samridhi S Jain, Adv.  
 Mr. Navpal A Dingankar, Adv.  
 Mr. Riwaq R Rai, Adv.  
 Ms. Sneha S Bhonsle, Adv.  
 Mr. Aman Varma, AOR

**For Respondent(s)**

UPON hearing the counsel the Court made the following  
**O R D E R**

- 1 We are not inclined to entertain the Special Leave Petition under Article 136 of the Constitution.
- 2 The Special Leave Petition is accordingly dismissed.
- 3 Pending application, if any, stands disposed of.

Signature Not Verified  
  
 Digitally signed by  
 Sanjay Kumar  
 Date: 2023.01.23  
 17:51:22 IST  
 Reason:

**(SANJAY KUMAR-I)**

**(SAROJ KUMARI GAUR)**

**DEPUTY REGISTRAR**

**ASSISTANT REGISTRAR**

**NON-REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Petition for Special Leave to Appeal (C) No. 21019 of 2022

Anjali Bhardwaj

...Appellant(S)

Versus

CPIO, Supreme Court of India, (RTI Cell)

...Respondent(S)

**O R D E R**

**M. R. Shah, J.**

1. Feeling aggrieved and dissatisfied with impugned judgment and order dated 27.07.2022 passed by the High Court of Delhi at New Delhi in Letters Patent Appeal (LPA) No. 442/2022, by which, the Division Bench of the High Court has dismissed the said LPA and has confirmed the judgment and order passed by the learned Single Judge in Writ Petition (C) No. 4129/2022, the original writ petitioner – original applicant has preferred the present petition for Special Leave to Appeal.

Signature Not Verified  
  
Digitally signed by  
Sanjay Kumar  
Date: 2022.02.09  
15:43:23 IST  
Reason:

2. The facts leading to the present petition for Special Leave to Appeal in a nutshell are as under: -
- 2.1 That the petitioner herein preferred an RTI application before the Central Public Information Officer (CPIO), Supreme Court of India. The petitioner sought the following information: -
- (i) Please provide a copy of the agenda of the meeting of the Collegium of the Supreme Court held on December 12, 2018.
- (ii) Kindly provide a copy of the decisions taken on the meeting of the Collegium of the Supreme Court held on December 12, 2018.
- (iii) Kindly provide a copy of the resolutions of the Collegium meeting held on December 12, 2018.
- 2.2 Vide communication dated 11.03.2019 the prayer of the petitioner came to be turned down. That thereafter the petitioner preferred the first appeal before the First Appellate Authority under the RTI Act, 2005 being Appeal No. 75/2019. The First Appellate Authority rejected the said appeal by observing that as such there was no final decision(s) taken in the Collegium meeting held on

12.12.2018 and there was no final decision which culminated into the resolution and therefore, in absence of such resolution the information need not be supplied. The appellant preferred second appeal which also came to be dismissed. The learned Single Judge also dismissed Writ Petition No. 4129/2022 by reiterating that in the Collegium meeting held on 12.12.2018 there was no final decision taken and even as observed in the subsequent resolution meeting held on 10.01.2019, it was so stated that the then Collegium on 12.12.2018 took certain decisions, however, the required consultation could not be undertaken and completed. Therefore, the learned Single Judge was of the opinion that as there was no formal resolution came to be drawn up, there is no question of providing any decision taken in the meeting held on 12.12.2018. The order passed by the learned Single Judge dismissing the writ petition has been confirmed by the Division Bench of the High Court by the impugned judgment and order. Feeling aggrieved and dissatisfied with the impugned judgment and order, the petitioner preferred the present petition.

3. Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner has vehemently submitted that in fact certain decisions were taken by the Collegium in the meeting held on 12.12.2018 and therefore, the decisions which were taken, were required to be uploaded in the public domain and the decisions which were taken by the Collegium in the meeting held on 12.12.2018 were required to be informed and the particulars of which are required to be given under the RTI Act.

3.1 Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner has heavily relied upon one article published on the website of the Bar and Bench wherein it was mentioned that one of the members of the Collegium stated that he was disappointed that decision taken in the meeting on 12.12.2018 was not uploaded on Supreme Court's website. It is submitted that as per the information disclosed in the Press by one of the members of the Collegium, who was part of the meeting dated 12.12.2018, it was specifically stated that certain decisions were taken,

however, in the subsequent meeting of the Collegium on 10.01.2019 earlier decisions were changed. Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner has submitted that therefore, it may not be accepted that no decision(s) was/were taken in the Collegium meeting held on 12.12.2018. It is submitted that everybody has a right to know the decision(s) taken by the Collegium even as per the earlier Resolution of the Supreme Court dated 03.10.2017, by which, it was resolved that the decision(s) taken by the Collegium shall be uploaded on the Supreme Court's website.

4. We have heard Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner at length.
5. At the outset, it is required to be noted that the petitioner asked for the information on the decision(s) taken by the Collegium in its meeting held on 12.12.2018. Reliance is placed upon the Resolution dated 03.10.2017, by which, it was resolved to upload the decision/resolution of the Collegium on Supreme Court's website. Relying upon some article published in the media and the interview given by

one of the members of the Collegium who was part of the Collegium held on 12.12.2018, it is asserted by the petitioner that in fact some decision(s) were taken by the Collegium on the elevation of two Chief Justices of the High Courts to the Supreme Court. However, from the subsequent Resolution passed by the Collegium on 10.01.2019, it appears that as such no final decision was taken on the elevation to the Supreme Court. Some discussions might have taken place. But unless and until, a final decision is taken after due consultation and on the basis of such a final decision a final resolution is drawn, whatever discussions had taken place cannot be said to be a final decision of the Collegium. The actual resolution passed by the Collegium only can be said to be a final decision of the Collegium and till then at the most, it can be said to be a tentative decision during the consultation. It is to be noted that a final decision is taken by the Collegium only after due consultation. During the consultation if some discussion takes place but no final decision is taken and no resolution is drawn, it cannot be said that any final decision is taken by the Collegium.

Collegium is a multi-member body whose decision embodied in the resolution that may be formally drawn up and signed. When in the subsequent Resolution dated 10.01.2019, it is specifically mentioned that in the earlier meeting held on 12.12.2018 though some decisions were taken but ultimately the consultation was not completed and concluded and therefore, the matter/agenda items was/were adjourned. Therefore, as no final decision was taken which was culminated into a final resolution drawn and signed by all the members of the Collegium, the same was not required to be disclosed in the public domain and that too under the RTI Act. Whatever is discussed shall not be in the public domain. As per the Resolution dated 03.10.2017 only the final resolution and the final decision is required to be uploaded on the Supreme Court's website.

- 5.1 Now so far as the reliance placed upon some of the news item/article published in the media in which views of one of the members of the Collegium is noted, is concerned, we do not want to comment upon the same. The subsequent

Resolution dated 10.01.2019 is very clear in which it is specifically stated that in the earlier meeting held on 12.12.2018, the process for consultation was not over and remained un-concluded. At the cost of repetition, it is observed that after due deliberation and discussion and after completing the consultative process, when a final decision is taken and thereafter, the resolution is drawn and signed by the members of the Collegium can be said to be a final decision and till then it remains the tentative decision. Only after the final resolution is drawn and signed by the members of the Collegium, which is always after completing the due procedure and the process of discussion/deliberations and consultation, the same required to be published on the Supreme Court website as per Resolution dated 03.10.2017.

- 5.2 In view of the above and for the reasons stated above, no reliance can be placed on the news report and/or some article in the media. What is required to be seen is the final resolution which is ultimately drawn and signed by the members of the Collegium.

6. In view of the above and for the reasons stated above, there is no substance in the present Special Leave to Appeal and the same deserves to be dismissed and is accordingly dismissed.

.....J.  
**(M. R. SHAH)**

.....J.  
**(C.T. RAVIKUMAR)**

NEW DELHI,  
DECEMBER 09, 2022.

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL/ APPELLATE JURISDICTION  
I.A. No.68597 of 2021 AND I.A. No. 51632 of 2022  
IN &  
WRIT PETITION (CIVIL) NO.1159 OF 2019**

**HDFC BANK LTD. & ORS. ....PETITIONER (S)**

**VERSUS  
UNION OF INDIA & ORS. ....RESPONDENT (S)**

**WITH  
I.A. No.54521 of 2022  
IN &  
WRIT PETITION (CIVIL) NO.683 OF 2021**

**WRIT PETITION (CIVIL) NO. 1469 OF 2019**

**WRIT PETITION (CIVIL) NO.690 OF 2021**

**WRIT PETITION (CIVIL) NO.709 OF 2021**

**WRIT PETITION (CIVIL) NO.768 OF 2021**

**WRIT PETITION (CIVIL) NO.765 OF 2021**

**SPECIAL LEAVE PETITION (CIVIL) NO.14343 OF 2022**

**ORDER**

**B.R. GAVAI, J.**

1. For the reasons stated in I.A. No.68597 of 2021 in Writ Petition (Civil) No.1159 of 2019 for Impleadment, the same is allowed.

2. This batch of writ petitions has been filed by various Banks including private banks, inter alia, challenging the action of the respondent-Reserve Bank of India (hereinafter referred to as “RBI”) in directing disclosure of confidential and sensitive information pertaining to their affairs, their employees and their customers under the Right to Information Act, 2005 (hereinafter referred to as “the RTI Act”), which, in their submission, is otherwise exempt under Section 8 thereof.

3. We are treating Writ Petition (Civil) No. 1159 of 2019 as the lead matter.

4. Interlocutory Applications being I.A. No. 51632 of 2022 in Writ Petition (Civil) No.1159 of 2019 and I.A. No.54521 of 2022 in Writ Petition (Civil) No.683 of 2021 have been filed by the

applicant-Girish Mittal, thereby seeking dismissal of the present writ petitions.

5. It is the contention of the applicant that the present writ petitions, in effect, are challenging the final judgment and order dated 16<sup>th</sup> December 2015, passed by this Court in the case of **Reserve Bank of India vs. Jayantilal N. Mistry**<sup>1</sup> and hence the same is not maintainable and is liable to be dismissed.

6. We have heard Mr. Prashant Bhushan, learned counsel appearing on behalf of the applicant-Girish Mittal and Mr. Rakesh Dwivedi, Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, and Mr. K.V. Viswanathan, learned Senior Counsels and Mr. Divyanshu Sahay, learned counsel appearing on behalf of the writ petitioners/Banks.

7. Mr. Prashant Bhushan, learned counsel, submitted that the issue which is sought to be raised in the present writ petitions has already been put to rest by a judgment of this court in the case of **Jayantilal N. Mistry (supra)**. It is further

---

<sup>1</sup> (2016) 3 SCC 525

submitted that this Court, in the case of ***Girish Mittal vs. Parvati V. Sundaram and another***<sup>2</sup>, while holding that the RBI has committed contempt of this Court by exempting disclosure of material that was directed to be given by this Court, has also held that the RBI was duty bound to furnish all information relating to inspection reports and other materials.

8. Mr. Prashant Bhushan relies on the judgment of a Nine-Judge Bench of this Court in the case of ***Naresh Shridhar Mirajkar and others vs. State of Maharashtra and Anr.***<sup>3</sup> in support of his proposition that a judicial decision cannot be corrected by this Court in exercise of its jurisdiction under Article 32 of the Constitution of India. He also relied on the judgment of a Seven-Judge Bench of this Court in the case of

***A.R. Antulay vs. R.S. Nayak and another***<sup>4</sup> to contend that the judicial proceedings in this Court are not subject to the writ jurisdiction thereof.

---

2 (2019) 20 SCC 747 = Contempt Petition (C) No. 928 of 2016 in Transfer Case (C) No. 95 of 2015, decided on 26<sup>th</sup> April 2019

3 (1966) 3 SCR 744

4 (1988) 2 SCC 602

9. Mr. Prashant Bhushan further submitted that this Court in the case of ***Anil Kumar Barat vs. Secretary, Indian Tea Association and others***<sup>5</sup> has also held that the validity of an order passed by this Court itself cannot be subject to writ jurisdiction of this Court.

10. Mr. Bhushan also relied on the judgments of a Three-Judge Bench of this Court in the cases of ***Khoday Distilleries Ltd. and another vs. Registrar General, Supreme Court of India***<sup>6</sup>, ***Mohd. Aslam vs. Union of India and others***<sup>7</sup> and ***Union of India and others vs. Major S.P. Sharma and others***<sup>8</sup> and the judgment of a Five-Judge Bench of this Court in the case of ***Rupa Ashok Hurra vs. Ashok Hurra and another***<sup>9</sup> to buttress his submissions.

11. Mr. Bhushan further submitted that in the case of ***Jayantilal N. Mistry (supra)***, several Miscellaneous

---

5 (2001) 5 SCC 42

6 (1996) 3 SCC 114

7 (1996) 2 SCC 749

8 (2014) 6 SCC 351

9 (2002) 4 SCC 388

Applications were filed on behalf of the Banks for impleadment.

As such, the judgment delivered in the case of ***Jayantilal N.***

***Mistry (supra)*** is after consideration of rival submissions, which now cannot be reopened. He further submitted that this Court by order dated 28<sup>th</sup> April 2021, passed in M.A. No.2342 of 2019 in Transferred Case (Civil) No.91 of 2015 and other connected matters has specifically rejected the prayer filed by the Banks (writ petitioners herein) for recall of the judgment dated 16<sup>th</sup> December 2015 passed by this Court in the case of

***Jayantilal N. Mistry (supra)***, and as such, the present writ petitions are liable to be dismissed.

**12.** Per contra, the learned Senior Counsels appearing on behalf of the writ petitioners/Banks submit that though M.A. No.2342 of 2019 in Transferred Case (Civil) No.91 of 2015 and other connected matters were rejected by this Court by order dated 28<sup>th</sup> April 2021, this Court clarified that the dismissal of those applications shall not prevent the applicant-Banks therein to pursue other remedies available to them in law. It is

thus submitted that the said order would not come in the way of the present petitioners in filing the present petitions.

**13.** It is submitted that Section 11 of the RTI Act provides that when any information relating to third party has been sought, a written notice is required to be given to such third party of the request, by the Central Public Information Officer or State Public Information Officer, as the case may be, and the submissions by such third party are required to be taken into consideration while taking a decision about the disclosure of the information. Reliance in this respect has been placed on the judgment of this Court in the case of ***Chief Information Commissioner vs. High Court of Gujarat and another***<sup>10</sup>. It is submitted that this Court in the case of ***Jayantilal N. Mistry (supra)*** has not taken into consideration this aspect of the matter.

**14.** It is further submitted on behalf of the writ petitioners/Banks that the right to privacy has been said to be

---

10 (2020) 4 SCC 702

as implicit fundamental right by a Five-Judge Constitution Bench of this Court in the case of ***Supreme Court Advocates-on-Record Association and another vs. Union of India***<sup>11</sup>. It is submitted that the said view is also reiterated by a Nine-Judge Constitution Bench of this Court in the case of ***K.S. Puttaswamy and another vs Union of India and others***<sup>12</sup>, which has explicitly and categorically recognised the right to privacy as a fundamental right.

15. Mr. Rakesh Dwivedi, learned Senior Counsel, relied on the judgment of this Court in the case of ***A.R. Antulay (supra)*** in support of the proposition that no man should suffer because of the mistake of the Court. He submits that the rules of procedure are the handmaidens of justice and not the mistress of justice. He relies on the maxim “*ex debito justitiae*”. He further relies on the judgment of this Court in the case of

***Sanjay Singh and another vs. U.P. Public Service***

---

11 (2016) 5 SCC 1

12 (2017) 10 SCC 1

**Commission, Allahabad and another**<sup>13</sup> in support of the submission that the petition would be tenable.

16. Mr. Mukul Rohatgi, learned Senior Counsel, submitted that the petitioners herein are private banks and not a public authority as defined under the RTI Act. He relies on the judgment of this Court in the case of **Thalappalam Service**

**Cooperative Bank Limited and others vs. State of Kerala**

**and others**<sup>14</sup> in that regard. He submitted that RBI's Inspection Reports in respect of the inspection carried out under Section 35 of the Banking Regulation Act, 1949 are so confidential that they cannot even be provided to the Directors individually. He relies on the communication issued by the RBI to all the Banks dated 14<sup>th</sup> March 1998 in this regard.

17. Mr. Rohatgi further submitted that an earlier policy as notified by the RBI on 30<sup>th</sup> June 1992 was in tune with the provisions of Section 8 of the RTI Act, the provisions of the Reserve Bank of India Act, 1934 (hereinafter referred to as "the

---

13 (2007) 3 SCC 720

14 (2013) 16 SCC 82

RBI Act") and the Banking Regulation Act, 1949. However, in view of the judgment of this Court in the case of ***Girish Mittal (supra)***, the RBI has modified the policy into a one-line policy, providing therein that the disclosure of information was to be in accordance with the judgment and order of this Court in ***Girish Mittal (supra)***. Mr. Rohatgi, learned Senior Counsel relied on the judgment of this Court in the case of ***Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi and another***<sup>15</sup> in support of his submission that the Court will have to strike a balance between public interest and private interest. He also relies on the judgment of this Court in the case of ***Girish Ramchandra Deshpande vs. Central Information Commissioner and others***<sup>16</sup> to contend that personal information cannot be directed to be disclosed unless outweighing public interest demands it to be done.

**18.** Mr. K.V. Viswanathan, learned Senior Counsel submits that HDFC Bank, Kotak Bank and Bandhan Bank were not

---

15 (2012) 13 SCC 61

16 (2013) 1 SCC 212

parties in the case of ***Jayantilal N. Mistry (supra)***. He submits that sub-Section (5) of Section 35 of the Banking Regulation Act, 1949 provides a specific procedure as to in what manner the inspection report would be published. He submits that when a special Act provides a particular manner for disclosure of an information, it will have an overriding effect over the RTI Act. The learned Senior Counsel submits that the said provisions were not noticed in the case of ***Jayantilal N. Mistry (supra)***.

**19.** Mr. Jaideep Gupta, learned Senior Counsel submitted that this Court in the case of ***Jayantilal N. Mistry (supra)*** has not taken into consideration the provisions of the Credit Information Companies (Regulation) Act, 2005.

**20.** Mr. Dushyant Dave, learned Senior Counsel, submitted that Section 45NB of the RBI Act emphasizes on the confidentiality of certain information with regard to non-banking companies. He submits that sub-section (4) of Section 45NB of the RBI Act, which is a non-obstante clause, provides

that, notwithstanding anything contained in any law for the time being in force, no court or tribunal or other authority shall compel the Bank to produce or to give inspection of any statement or other material obtained by the Bank under any provisions of this Chapter. He submits that this provision has

not been noticed in the case of ***Jayantilal N. Mistry (supra)***.

**21.** It is submitted on behalf of all the writ petitioners/Banks that what is under challenge is the action of the RBI compelling the petitioners to disclose certain information which itself is exempted under the provisions of the RBI Act. It is submitted that various other special enactments specifically prohibit such information to be disclosed. It is submitted that since the RBI's directions are issued in pursuance to the judgments of this Court in the cases of ***Jayantilal N. Mistry (supra)*** and ***Girish Mittal (supra)***, the petitioners cannot approach the High Court and the only remedy that is available to the petitioners is by way of the present writ petitions. It is submitted by learned Senior Counsels appearing on behalf of the writ

petitioners/Banks that this Court in ***Jayantilal N. Mistry*** (*supra*) does not notice the judgment of this Court in the case of ***Supreme Court Advocates-on-Record Association and another*** (*supra*). The judgment of this Court in the case of ***Supreme Court Advocates-on-Record Association and another*** (*supra*) was rendered on 16<sup>th</sup> October 2015, whereas the judgment of this Court in the case of ***Jayantilal N. Mistry*** (*supra*) was rendered on 16<sup>th</sup> December 2015. It is further submitted that, in view of the judgment of the Constitution Bench consisting of Nine Hon'ble Judges in the case of ***K.S.***

***Puttaswamy and another*** (*supra*) clearly recognizing the right to privacy as a fundamental right, the law laid down by this Court in the case of ***Jayantilal N. Mistry*** (*supra*) to the contrary is no more a good law and, therefore, requires reconsideration by a larger Bench.

**22.** In the case of ***Naresh Shridhar Mirajkar and others*** (*supra*), a Nine-Judge Constitution Bench of this Court was considering as to whether an order passed by the High Court

on original side in the proceedings before it could be challenged under Article 32 of the Constitution for enforcement of fundamental rights guaranteed under Article 19(1)(a), (d) and (g) of the Constitution of India. It will be relevant to refer to the following observations of this Court in the said case:

“The basis of Mr Setalvad's argument is that the impugned order is not an order inter- partes, as it affects the fundamental rights of the strangers to the litigation, and that the said order is without jurisdiction. *We have already held that the impugned order cannot be said to affect the fundamental rights of the petitioners and that though it is not inter-partes in the sense that it affects strangers to the proceedings, it has been passed by the High Court in relation to a matter pending before it for its adjudication and as such, like other judicial orders passed by the High Court in proceedings pending before it, the correctness of the impugned order can be challenged only by appeal and not by writ proceedings.* We have also held that the High Court has inherent jurisdiction to pass such an order.

But apart from this aspect of the matter, we think it would be inappropriate to allow the petitioners to raise the question about the jurisdiction of the High Court to pass the impugned order in proceedings under Article

32 which seek for the issue of a writ of certiorari to correct the said order. If questions about the jurisdiction of superior courts of plenary jurisdiction to pass orders like the impugned order are allowed to be canvassed in writ proceedings under Article 32, logically, it would be difficult to make a valid distinction between the orders passed by the High Courts inter-partes, and those which are not inter-partes in the sense that they bind strangers to the proceedings. Therefore, in our opinion, having regard to the fact that the impugned order has been passed by a superior court of record in the exercise of its inherent powers, the question about the existence of the said jurisdiction as well as the validity or propriety of the order cannot be raised in writ proceedings taken out by the petitioners for the issue of a writ of certiorari under Article 32.”

[emphasis supplied]

**23.** It could thus be seen that the Nine-Judge Bench of this Court, speaking through P.B. Gajendragadkar, CJ., categorically held that the impugned orders could not affect the fundamental rights of the petitioners. It has further been held that since the order was passed in the proceedings pending before the High Court, the correctness of the impugned order could be challenged only by appeal and not by writ proceedings. It has been further held that, having regard to the

fact that the order had been passed by a superior court of record in the exercise of its inherent powers, the question about the existence of the said jurisdiction as well as the validity or propriety of the order could not be raised in writ proceedings taken out by the petitioners for the issue of a writ of certiorari under Article 32. This Court further observed thus:

“We are, therefore, satisfied that so far as the jurisdiction of this Court to issue writs of certiorari is concerned, it is impossible to accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected by exercise of the said jurisdiction. **We have no doubt that it would be unreasonable to attempt to rationalise the assumption of jurisdiction by this Court under Article 32 to correct such judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and that a remedy by way of a writ of certiorari should, therefore, be sought for and be deemed to be included within the scope of Article 32.** The words used in Article 32 are no doubt wide; but having regard to the considerations which we have set out in the course of this judgment, we are satisfied that the impugned order cannot be brought within

the scope of this Court's jurisdiction to issue a writ of certiorari under Article 32; to hold otherwise would be repugnant to the well-recognised limitations within which the jurisdiction to issue writs of certiorari can be exercised and inconsistent with the uniform trend of this Court's decisions in relation to the said point."

[emphasis supplied]

**24.** It could thus be seen that this Court held that it would be unreasonable to hold that this Court, under Article 32, could correct the judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and therefore this Court can correct the same by issuance of a writ of certiorari under Article 32. This Court held that though the words used in Article 32 are wide, the order impugned before it could not be brought within the scope of this Court's jurisdiction to issue a writ of certiorari under Article 32.

**25.** Insofar as the judgment of this Court in the case of

***Khoday Distilleries Ltd. and another (supra)***, on which Mr.

Prashant Bhushan placed reliance, is concerned, this Court in

the said case was considering therein a challenge to the correctness of the decision on merits after the appeal as well as review petition were dismissed.

**26.** In the case of ***Mohd. Aslam (supra)***, this Court held that Article 32 of the Constitution was not available to assail the correctness of a decision on merits or to claim reconsideration. It, however, considered the contention raised on behalf of the petitioners that the judgment in the case of ***Manohar Joshi vs. Nitin Bhauraao Patil and another***<sup>17</sup> was in conflict with the Constitution Bench judgement of this Court in the case of **S.R.**

***Bommai and others vs. Union of India and others***<sup>18</sup>. This Court after considering the submissions found that the opinion so expressed was misplaced.

**27.** Insofar as the judgment of this Court in the case of ***Major S.P. Sharma and others (supra)*** is concerned, in the said case, the first round of litigation arising out of termination of respondent-employee had reached finality upto this Court.

---

17 (1996) 1 SCC 169

18 (1994) 3 SCC 1

However, the same was sought to be reopened by filing another writ petition before the High Court. In this background, this Court observed thus:

**“90.** Violation of fundamental rights guaranteed under the Constitution have to be protected, but at the same time, it is the duty of the court to ensure that the decisions rendered by the court are not overturned frequently, that too, when challenged collaterally as that was directly affecting the basic structure of the Constitution incorporating the power of judicial review of this Court. There is no doubt that this Court has an extensive power to correct an error or to review its decision but that cannot be done at the cost of doctrine of finality. An issue of law can be overruled later on, but a question of fact or, as in the present case, the dispute with regard to the termination of services cannot be reopened once it has been finally sealed in proceedings inter se between the parties up to this Court way back in 1980.”

**28.** It could thus be seen that this court has held that when a question of fact has reached finality inter se between the parties, it cannot be reopened in a collateral proceeding. However, it has been observed that an issue of law can be overruled later on.

29. Mr. Prashant Bhushan strongly relied on the judgment of this Court in the case of ***Rupa Ashok Hurra (supra)***. It will be relevant to refer to the following observations of this Court in the judgment of Quadri, J.

“41. At one time adherence to the principle of *stare decisis* was so rigidly followed in the courts governed by the English jurisprudence that departing from an earlier precedent was considered heresy. With the declaration of the practice statement by the House of Lords, the highest court in England was enabled to depart from a previous decision when it appeared right to do so.

***The next step forward by the highest court to do justice was to review its judgment inter partes to correct injustice. So far as this Court is concerned, we have already pointed out above that it has been conferred the power to review its own judgments under Article 137 of the Constitution. The role of the judiciary to merely interpret and declare the law was the concept of a bygone age. It is no more open to debate as it is fairly settled that the courts can so mould and lay down the law formulating principles and guidelines as to adapt and adjust to the changing conditions of the society, the ultimate objective being to dispense justice. In the recent years there is a discernible shift***

***in the approach of the final courts in favour of rendering justice on the facts presented before them, without abrogating but bypassing the principle of finality of the judgment.*** In *Union of*

*India v. Raghubir Singh* [(1989) 2 SCC 754]

Pathak, C.J. speaking for the Constitution Bench aptly observed: (SCC pp. 766-67, para 10)

"10. But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for readjustment in a changing society, a readjustment of legal norms demanded by a changed social context. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that 'the life of the law has not been logic it has been experience' (Oliver Wendell Holmes : *The Common Law*, p. 5), and again when he declared in another study (Oliver Wendell Holmes : *Common Carriers and the Common Law*, (1943) 9 Curr LT 387, 388) that 'the law is forever adopting new principles from life at one end', and 'sloughing off' old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by the introduction of new extra-legal propositions emerging

from experience to serve as premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined (Julius Stone : *Legal Systems & Lawyers Reasoning*, pp. 58-59)."

42. *The concern of this Court for rendering justice in a cause is not less important than the principle of finality of its judgment. We are faced with competing principles — ensuring certainty and finality of a judgment of the Court of last resort and dispensing justice on reconsideration of a judgment on the ground that it is vitiated being in violation of the principles of natural justice or giving scope for apprehension of bias due to a Judge who participated in the decision-making process not disclosing his links with a party to the case, or on account of abuse of the process of the court.* Such a judgment, far from ensuring finality, will always remain under the cloud of uncertainty. Almighty alone is the dispenser of absolute justice — a concept which is not disputed but by a few. *We are of the view that though Judges of the highest court do their best, subject of course to the limitation of human fallibility, yet situations may arise, in the rarest of the rare cases, which*

**would require reconsideration of a final judgment to set right miscarriage of justice complained of. In such case it would not only be proper but also obligatory both legally and morally to rectify the error.** After giving our anxious consideration to the question, we are persuaded to hold that the duty to do justice in these rarest of rare cases shall have to prevail over the policy of certainty of judgment as though it is essentially in the public interest that a final judgment of the final court in the country should not be open to challenge, yet there may be circumstances, as mentioned above, wherein declining to reconsider the judgment would be oppressive to judicial conscience and would cause perpetuation of irremediable injustice.

xxx            xxx            xxx

49. The upshot of the discussion in our view is that this Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may reconsider its judgments in exercise of its inherent power."

[emphasis supplied]

30. This Court in the aforesaid case held that the concern of this Court for rendering justice in a cause is not less important than the principle of finality of its judgment. The Court has to balance ensuring certainty and finality of a judgment of the

Court of last resort on one hand and dispensing justice on reconsideration of a judgment on the valid grounds on the other hand. This Court has observed that though Judges of the highest court do their best, yet situations may arise, in the rarest of the rare cases, which would require reconsideration of a final judgment to set right miscarriage of justice complained of. It has been held that in such a case it would not only be proper but also obligatory both legally and morally to rectify the error. This Court further held that to prevent abuse of its process and to cure a gross miscarriage of justice, the Court may reconsider its judgments in exercise of its inherent power.

31. This Court in the case of *A.R. Antulay (supra)*, speaking through *Sabyasachi Mukharji*, J. observed thus:

“**82.** Lord Cairns in *Rodger v. Comptoir D'escompte De Paris* [(1869-71) LR 3 PC 465, 475 : 17 ER 120] observed thus:

“Now, Their Lordships are of opinion, that one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression ‘the act of

the court' is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the court.

**83.** This passage was quoted in the Gujarat High Court by D.A. Desai, J., speaking for the Gujarat High Court in *Soni Vrajlal v. Soni Jadavji* [AIR 1972 Guj 148 : (1972) 13 Guj LR 555] as mentioned before. It appears that in giving directions on 16-2-1984, this Court acted *per incuriam* inasmuch it did not bear in mind consciously the consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in *Anwar Ali Sarkar* case [AIR 1952 SC 75 : 1952 SCR 284 : 1952 Cri LJ 510] which was not adverted to by this Court. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. *Ex debito justitiae*, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of

justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."

**32.** It could thus be seen that the principle of *ex debito justitiae* has been emphasized. This Court held that no man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. It has been held that the rules of procedure are the handmaidens of justice and not the mistress of justice. It has further been held that if a man has been wronged, so long as the wrong lies within the human machinery of administration of justice, that wrong must be remedied.

**33.** Ranganath Misra, J., in his concurrent opinion, observed thus:

"**102.** This being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buckmaster in *Montreal Street Railway Co. v. Normadin* [1917 AC 170] (*sic*) stated:

All rules of court are nothing but provisions intended to secure proper administration of justice. It is,

therefore, essential that they should be made to serve and be subordinate to that purpose.

This Court in *State of Gujarat v. Ramprakash P. Puri* [(1969) 3 SCC 156 : 1970 SCC (Cri) 29 : (1970) 2 SCR 875] reiterated the position by saying [SCC p. 159 : SCC (Cri) p. 31, para 8]

Procedure has been described to be a handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause

Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the court can be corrected by the court itself without any fetters. This is on the principle as indicated in (*Alexander*) Rodger case [(1969-71) LR 3 PC 465 : 17 ER 120]. I am of the view that in the present situation, the court's inherent powers can be exercised to remedy the mistake. Mahajan., J. speaking for a Four Judge Bench

in *Keshardeo Chamria v. Radha Kissen Chamria* [1953 SCR 136 : AIR 1953 SC 23] at Page 153 stated:

The judge had jurisdiction to correct his own error without entering into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment-debtors.

**103.** The Privy Council in *Debi Bakhsh Singh v. Habib Shah* [ILR (1913) 35 All 331] pointed out that an abuse of the process of the court may be committed by the court or by a party. Where a court employed a procedure in doing something which it never intended to do and there is an abuse of the process of the court it can be corrected. Lord Shaw spoke for the Law Lords thus:

Quite apart from Section 151, any court might have rightly considered itself to possess an inherent power to rectify the mistake which had been inadvertently made.

It was pointed out by the Privy Council in *The Bolivar* [AIR 1916 PC 85] that:

Where substantial injustice would otherwise result, the Court has, in Their Lordships' opinion, an inherent power to set aside its own judgments of condemnation so as to let in bona fide claims by parties...

Indian authorities are in abundance to support the view that injustice done should be corrected by applying the principle *actus*

*curia neminem gravabit* — an act of the court should prejudice no one.

**104.** To err is human, is the oft-quoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militate against its status or authority. Perhaps it would enhance both.”

**34.** It has been held that this being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions. It has further been held that once a judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising its inherent powers. It has been held that, to err is human, and the Courts including the Apex Court are no exception.

**35.** This Court in the case of ***Sanjay Singh and another (supra)*** has observed thus:

**“10.** The contention of the Commission also overlooks the fundamental difference between challenge to the final order forming part of the judgment and challenge to the ratio decidendi of the judgment. Broadly speaking, every

judgment of superior courts has three segments, namely, (i) the facts and the point at issue; (ii) the reasons for the decision; and (iii) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the matter. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent. The term "judgment" and "decision" are used, rather loosely, to refer to the entire judgment or the final order or the ratio decidendi of a judgment. *Rupa Ashok Hurra* [(2002) 4 SCC 388] is of course, an authority for the proposition that a petition under Article 32 would not be maintainable to challenge or set aside or quash the final order contained in a judgment of this Court. ***It does not lay down a proposition that the ratio decidendi of any earlier decision cannot be examined or differed in another case. Where violation of a fundamental right of a citizen is alleged in a petition under Article 32, it cannot be dismissed, as not maintainable, merely because it seeks to distinguish or challenge the ratio decidendi of an earlier judgment, except where it is between the same parties and in respect of the same cause of action.*** Where a legal issue raised in a petition under Article 32 is covered by a

decision of this Court, the Court may dismiss the petition following the ratio decidendi of the earlier decision. Such dismissal is not on the ground of “maintainability” but on the ground that the issue raised is not tenable, in view of the law laid down in the earlier decision. ***But if the Court is satisfied that the issue raised in the later petition requires consideration and in that context the earlier decision requires re-examination, the Court can certainly proceed to examine the matter (or refer the matter to a larger Bench, if the earlier decision is not of a smaller Bench).***

When the issue is re-examined and a view is taken different from the one taken earlier, a new ratio is laid down. When the ratio decidendi of the earlier decision undergoes such change, the final order of the earlier decision as applicable to the parties to the earlier decision, is in no way altered or disturbed. Therefore, the contention that a writ petition under Article 32 is barred or not maintainable with reference to an issue which is the subject-matter of an earlier decision, is rejected.”

[emphasis supplied]

36. After referring to the judgment of this Court in the case of

***Rupa Ashok Hurra (supra)***, this Court has held that it does

not lay down a proposition that the ratio decidendi of an earlier decision cannot be examined or differed with in another case.

It has been held that if the Court is satisfied that the issue raised in the later petition requires consideration and in that context, the earlier decision requires re-examination, the Court can certainly proceed to examine the matter or refer the matter to a larger Bench, if the earlier decision is not of a smaller Bench. This Court, therefore, specifically rejected the contention that a writ petition under Article 32 of the Constitution was barred or not maintainable with reference to an issue which was the subject matter of an earlier decision.

37. In the present case, admittedly, the writ petitioners/Banks were not parties in the case of **Jayantilal N. Mistry (supra)**. Though the Miscellaneous Applications filed by HDFC Bank and others for recall of the judgment and order in the case of **Jayantilal N. Mistry (supra)** were rejected by this Court vide order dated 28<sup>th</sup> April 2021, this Court in the said order specifically observed thus:

“The dismissal of these applications shall not prevent the applicants to pursue other remedies available to them in law.”

**38.** It is thus clear that this Court did not foreclose the right of the petitioners/Banks to pursue other remedies available to them in law.

**39.** In view of the judgment of this Court in the case of ***Jayantilal N. Mistry (supra)***, the RBI is entitled to issue directions to the petitioners/Banks to disclose information even with regard to the individual customers of the Bank. In effect, it may adversely affect the individuals' fundamental right to privacy.

**40.** A Nine-Judge Constitution Bench of this Court in the case of ***K.S. Puttaswamy and another (supra)*** has held that the right to privacy is a fundamental right. No doubt that the right to information is also a fundamental right. In case of such a conflict, the Court is required to achieve a sense of balance.

**41.** A perusal of the judgments of this Court cited supra would reveal that it has been held that though the concept of finality of judgment has to be preserved, at the same time, the

principle of *ex debito justitiae* cannot be given a go-bye. If the Court finds that the earlier judgment does not lay down a correct position of law, it is always permissible for this Court to reconsider the same and if necessary, to refer it to a larger Bench.

**42.** Without expressing any final opinion, *prima facie*, we find that the judgment of this Court in the case of ***Jayantilal N.***

***Mistry (supra)*** did not take into consideration the aspect of balancing the right to information and the right to privacy. The petitioners have challenged the action of the respondent-RBI, vide which the RBI issued directions to the petitioners/Banks to disclose certain information, which according to the petitioners is not only contrary to the provisions as contained in the RTI Act, the RBI Act and the Banking Regulation Act, 1949, but also adversely affects the right to privacy of such Banks and their consumers. The RBI has issued such directions in view of the decision of this Court in the case of

***Jayantilal N. Mistry (supra)*** and ***Girish Mittal (supra)***.

As

such, the petitioners would have no other remedy than to approach this Court. As observed by Ranganath Misra, J. in the case of ***A.R. Antulay (supra)*** that, this being the Apex Court, no litigant has any opportunity of approaching any higher forum to question its decision. The only remedy available to the petitioners would be to approach this Court by way of writ petition under Article 32 of the Constitution of India for protection of the fundamental rights of their customers, who are citizens of India.

**43.** We, therefore, hold that the preliminary objection as raised is not sustainable. The same is rejected. I.A. No.51632 of 2022 in Writ Petition (Civil) No.1159 of 2019 and I.A. No.54521 of 2022 in Writ Petition (Civil) No.683 of 2021 are accordingly dismissed.

.....J.  
[**B.R. GAVAI**]

.....J.  
[**C.T. RAVIKUMAR**]

**NEW DELHI;**  
**SEPTEMBER 30, 2022.**

Reportable

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 487-488 of 2022

T. Takano

... Appellant

Versus

Securities and Exchange Board of India & Anr.

... Respondents

Signature Not Verified

Digital signature by  
Sanjay Kumar  
Date: 2022-02-18  
14:30:58 IST  
Reason:

## **JUDGMENT**

### **Dr Dhananjaya Y Chandrachud, J**

A. Factual Background .....	3
B Submissions of Counsel.....	10
C. Analysis.....	16
C.1 Regulatory Framework of PFUTP Regulations .....	16
C.2 Duty to Disclose Investigative Material .....	23
C.3. Exceptions to the Duty to Disclose.....	43
D. Conclusion .....	47

## A. Factual Background

1 By a judgment dated 29 September 2020, a Division Bench of the Bombay High Court dismissed the petition instituted by the appellant under Article 226 of the Constitution for challenging a show cause notice which was issued by the first respondent<sup>1</sup> alleging a violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2003<sup>2</sup>. A petition seeking a review of the judgment of the Division Bench was disposed of by an order dated 22 October 2020. The appellant moved a Special Leave Petition against the judgment in the writ petition and the order in review. The principal issue is whether an investigation report under Regulation 9 of the PFUTP Regulations must be disclosed to the person to whom a notice to show cause is issued.

2 The appellant was employed as the Managing Director<sup>3</sup> and Chief Executive Officer<sup>4</sup> in Ricoh India Limited<sup>5</sup>, a public listed company, for the financial years 2012-13, 2013-14 and 2014-15, till 31 March 2015. In 2016, BSR & Co. were appointed as statutory auditors of the Company. The auditors raised a suspicion regarding the veracity of the financial statements of the Company for the quarters that ended on June 30, 2015 and September 30, 2015. The Audit Committee of the Company appointed Price Water House Coopers Private Limited<sup>6</sup> to carry out a forensic audit. PWC submitted a preliminary audit report on 20 April 2016. The Company addressed a communication to the first

<sup>1</sup> “SEBI” or the “Board”

<sup>2</sup> “PFUTP Regulations”

<sup>3</sup> “MD”

<sup>4</sup> “CEO”

<sup>5</sup> “Company”

<sup>6</sup> “PWC”

respondent on the same day stating that the financial statements for those quarters did not reflect the true affairs of the Company and requested the first respondent to carry out an independent investigation on possible violations of the provisions of the PFUTP Regulations. The final report submitted by PWC was forwarded by the Company to the first respondent on 29 November 2016.

3 The first respondent initiated an investigation. During the course of the investigation, summons was issued to Manoj Kumar (then MD & CEO for the financial year of 2015-16), Arvind Singhal (then Chief Financial Officer) and Anil Saini (then Senior Vice President and Chief Operating Officer). The Company in its letter dated 8 June 2016 submitted that it suspected Manoj Kumar, Arvind Singhal and Anil Saini for their involvement in misstating the financial affairs. The first respondent in its *ex parte* interim order–cum–show cause notice *prima facie* found two others, including the appellant, responsible for facilitating the misstatements of the financial position. With regard to the role of the appellant, it was noted:

“On examination of the Organization Structure of Ricoh for past years, it is noted that T. Takano was the MD & CEO of the Company till March 31, 2015. It is also noted that the mandate for PwC investigation was restricted to the half-year ended September 30, 2015 and not extended to all the years when the misstatements occurred. If Manoj Kumar, who was MD & CEO in FY 2015-16 was held responsible for the fraud, it is only logical that T. Takano as the previous MD & CEO (during whose tenure the fraud actually started) was also responsible for the misstatements. It appears that by restricting the investigation period mandated to PwC, the Company intended to restrain PwC from examining the transactions of the previous years and thereby ring-fence the earlier MD & CEO, T. Takano.”



4 Based on the investigation, it was noted that the financial misstatements commenced from 2012-13 and the Company suffered a loss due to, *inter alia*, transfers to third parties, write-offs and a sale made to Fourth Dimension Solutions Limited<sup>7</sup> without inventory. It was further noted that the share price of the Company had gone up due to the misstatements. Hence, it was observed that the appellant, along with five others, has *prima facie* violated the provisions of Section 12A(a), 12(A)(b) and 12A(c) of the Securities and Exchange Board of India Act 1992<sup>8</sup> read with Regulations 3(b), 3(c), 3(d), 4(1), 4(2)(e), 4(2)(k) and 4(2)(r) of the PFUTP Regulations. Hence, the first respondent issued the following directions under Sections 11(1), 11(4) and 11B of the SEBI Act and Regulation 11 of the PFUTP Regulations:

- (i) The appellant and the other five key managerial persons were restrained from accessing the securities market or buying, selling or otherwise dealing in the securities market ;
- (ii) An independent audit firm was appointed for conducting a detailed forensic audit of the books of accounts of the company from the financial year 2012-13 ;
- (iii) The independent audit firm was called upon to submit a report to the first respondent within three months from the date of appointment; and
- (iv) A show cause notice for directions under Sections 11, 11(4) and 11 (B) of the SEBI Act, including directions for restraining/prohibiting him from accessing the securities market and buying, selling or otherwise dealing in securities in any manner.

---

<sup>7</sup> “FDSL”

<sup>8</sup> “SEBI Act”

5 By his letters dated 6 June 2018 and 28 June 2018, and at a personal hearing on June 11, 2018 the appellant submitted that:

- (i) He had no knowledge of the purported transactions and/or the misstatements in the books of account;
- (ii) The inclusion of his name in the interim order-cum-show cause notice was speculative, based on the premise that since the MD and CEO of financial year 2015-16 has been held *prima facie* responsible, the appellant who was the MD and CEO during the previous year must also be held responsible; and
- (iii) The financial team was solely responsible for preparing financial statements. These statements were then examined by the statutory auditors of the company. The version subsequently prepared was the final version of the financial statement. Therefore, he had no knowledge of the intricacies of the financial statements.

6 By an order dated 16 August 2018<sup>9</sup>, the first respondent confirmed the directions issued in the *ex parte* interim order dated 12 February 2018. The order notes that though the facts indicate large-scale irregularities in business transactions, the time span of the irregularities and the exact role of the noticees are not fully ascertained, and therefore, "it would be premature to give credence to the submissions of the individual noticees". It was also observed that "a clear picture regarding the financial affairs of the company and the role of various noticees in the alleged fraud is yet to emerge pending such investigation." The time for submission of the forensic report by the first respondent was extended to

---

<sup>9</sup> "Confirmatory order"

30 September 2018. SEBI appointed Pipara & Co. LLP on 20 February 2019 to conduct a forensic audit of the books of account of the Company. The report of the forensic auditors was submitted on 25 October 2019.

7 The appellant challenged the confirmatory order before the Securities Appellate Tribunal<sup>10</sup>, Mumbai. The appeals were allowed and the order against the appellant was quashed on 29 January 2020 on the grounds that:

- (i) The confirmatory order is based on a suspicion about the role of the appellant;
- (ii) The submissions of the appellant were not dealt with appropriately;
- (iii) Since the company is in liquidation, the appellant is not in a position to influence decisions; and
- (iv) The appellant cannot be prevented from dealing in the securities market when the appellant is held to be vicariously liable due to the position he held as MD/CEO.

The tribunal, however, directed that the first respondent is at liberty to issue a fresh show cause notice if the evidence against the appellant is made available through the forensic report or through the first respondent's investigation.

8 A fresh show cause notice was issued to the appellant on 19 March 2020 under the provisions of Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) and 15HA of the SEBI Act and Section 12A(2) read with Section 23H of the Securities Contracts (Regulation) Act 1956<sup>11</sup> based on the forensic audit report and

---

<sup>10</sup>“Tribunal”

<sup>11</sup>“SCRA”

investigation conducted by the first respondent. With regard to the appellant, it was alleged that :

“... Mr. T. Takano, during whose tenure the business transactions with FDSL started by virtue of his position as MD & CEO of Ricoh during FY 2012-13 to FY 2014-15, was actively involved in committing the fraud and had knowingly restricted the mandate given to PwC to six month so as to succeed in hiding his role in the commission of fraud of publishing untrue financial statements of Ricoh which resulted in misleading the investors about the financial performance of the company and thereby resulted in inducement to trades in the scrip. The said acts of the Noticee no. 2 are alleged to be in violation of regulations 3 (b), (c), (d), 4(1) and 4(2)(e), (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003 and clause 49(V) read with 41(II)(a) of the erstwhile Listing Agreement.”

9 The appellant claims that he received the show cause notice by email on 4 August 2020. The appellant responded to the show cause notice on 6 August 2020 stating that though he had received the forensic audit report submitted by Pipara & Co. LLP, he had not received the report of the investigation conducted by SEBI. The appellant sought an opportunity to inspect the following records:

“[...] including but not limited to all material on which reliance was placed Pipara & Co. LLP for the purpose of preparing the forensic audit report, all material on which reliance has been placed while issuing the Show Cause Notice, and on which reliance is intended to be placed while making any adjudication on the Show Cause Notice (“material”).”

10 By its communication dated 13 August 2020, the first respondent stated that the investigation report is an ‘internal document’ which cannot be shared. The appellant was provided time until 9 August 2020 to inspect the other documents. The first respondent enclosed soft copies of the annexures to the forensic report and called upon the appellant to submit a reply. The appellant

reiterated the demand to inspect the investigation report. By an email dated 4 September 2020, the appellant was informed that the investigation report of SEBI was not relied on to issue the show cause notice and hence, would not be provided.

11 The appellant filed a writ petition before the Bombay High Court challenging the show cause notice which was issued on 19 March 2020. In the alternative, inspection of all documents relied on to issue the show cause notice was sought. The appellant submitted before the High Court that to non-disclosure of all relevant documents relied on to issue the show cause notice violated the principles of natural justice.

12 By its judgment dated 29 September 2020, the High Court held that the investigation report prepared under Regulation 9 of PFUTP Regulations is solely for internal purposes. In concluding that the investigation report need not be furnished while issuing a show cause notice, the High Court has relied on the decision of this Court in **Natwar Singh v. Director of Enforcement**<sup>12</sup>. In sum and substance, the High court has held that the report does not form the basis of the show cause notice and therefore need not be disclosed. The review petition challenging the judgment of the Division Bench of the High Court was rejected.

---

<sup>12</sup>(2010) 13 SCC 255

**B. Submissions of Counsel**

13 Mr Ashim Sood, learned Counsel appearing for the appellant made the following submissions:

- (i) Regulation 10 has two synchronous requirements – (i) consideration of the investigation report and satisfaction on such consideration that there is a violation of the PFUTP Regulations; and (ii) a hearing. The purpose of the investigation report is to adjudicate whether there has been a contravention of the Regulations. There is no intermediate stage between the consideration of the report and the adjudication of liability. Both stages are synchronous, making the investigation report the primary material on which the adjudicator relies upon under the PFUTP Regulations;
- (ii) The High Court erred in holding that the investigation report is a preliminary report and is to be used for “internal administrative discipline”. The investigation report is not a preliminary document and is compiled at the end of a thorough and exhaustive investigation. The proviso to Regulation 9, provides for an “interim report” making it clear that the investigation report is not a preliminary document;
- (iii) The investigation report is not a document to be used for internal deliberations, which is a stage that is crossed at Regulation 5. The investigation report is to be used for adjudication of liability in terms of Regulation 10;
- (iv) The High Court erred in observing that the investigation report was not used against the appellant and does not form the basis of the show

cause notice. The show cause notice dated 19 March 2020 contains several references to the investigation carried out by the first respondent. These allegations differ from the ones listed in an earlier show cause notice, which was issued to the appellant and was set aside by SAT on 29 January 2020 in Appeal No 427 of 2018. Further, the duty to disclose is not contingent on whether the respondent relies on a document; rather the duty is invoked when a request made for a document is found to be reasonable and relevant for the defence to be mounted by the noticee;

- (v) Regulation 10 mandates that the entire investigation report be disclosed to the noticee. This mandate can only be subject to certain well-recognized exceptions. Such exceptions must be invoked with the utmost circumspection by SEBI and for reasons that are recorded in writing;
- (vi) The decision of this Court in **Natwar Singh** (supra) supports the principle that material relied upon in a quasi-judicial proceeding must be disclosed to the person to whose prejudice such material may be used for taking adverse action;
- (vii) In **Khudiram Das v. State of West Bengal**<sup>13</sup>, this Court held that once a statute prescribes reliance on certain material, such material should be disclosed to the opposite party. This principle has been followed in multiple contexts, including proceedings under the Companies Act 1956 and Special Courts Act 1979;

---

<sup>13</sup>(1975) 2 SCC 81

- (viii) If the entire investigation report is not provided, it would be difficult to come up with a metric for determining which parts of the report are relevant to the noticee;
- (ix) Permitting the respondent to selectively disclose portions of the investigation report carries with it the risk of conferring unfettered discretion upon the first respondent. The first respondent will attempt to disclose the least possible information in an adversarial proceeding, undermining the mandate of Regulation 10;
- (x) Without having access to the entirety of the investigation report, the noticee will be incapable of effectively challenging the decision of the first respondent. It will result in the adoption of an opaque process where SAT or the High Courts would receive the report in sealed covers and make *ex parte* determinations of whether the redactions made by the first respondent are justified, impacting the transparency of the judicial process;
- (xi) Regulation 9 imposes a qualitative requirement in relation to the investigation. If the investigation report is not disclosed, there is no incentive for the investigator to meet that qualitative requirement. There would be no way, therefore, to determine whether the investigation report was properly compiled and whether the investigation was conducted in a regular manner, in accordance with the standards of what a proper investigation entails;
- (xii) Redaction of the investigation report can be carried out as an exception for legitimate reasons. To reduce arbitrariness, the redactions should

- be supported by written reasons indicating the necessity of the measure. The reasons should have a certain degree of specificity;
- (xiii) The exceptional situations in which redactions can be made are known to law and include business secrets, personal data and third-party confidential information; and
  - (xiv) Laws in the United States and European Union also adopt the default position that the noticee shall have access to the file subject to certain exceptions relating to business secrets and personal data, amongst others.

14 On behalf of the respondents, Mr CU Singh, learned senior counsel, made the following submissions:

- (i) The appellant has raised the argument that the investigation has been solely conducted under the PFUTP Regulations and the failure to disclose the investigation report amounts to a violation of Regulations 9 and 10. This is incorrect. The proceedings have been initiated under the provisions of the SEBI Act and the SCRA as well for a violation of the provisions of the PFUTP Regulations and the Listing Agreement. The SEBI Act and the SCRA are wider in scope than the PFUTP Regulations. Additionally, Regulation 11 of PFUTP Regulations specifically provides that the actions or directions may be issued without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) of Sections 11 and 11B of the SEBI Act;
- (ii) SEBI conducts an investigation under Section 11C of the SEBI Act, where, based on the findings arrived at during the investigation,

allegations are levelled in the show cause notice. Together with the show cause notice all the documents that have been relied upon by the investigator are provided to the noticee. In the present, case all the relevant documents have been provided to the noticee, including the report of Pipara and Co. which formed the basis of the show cause notice. The appellant is not entitled to any other documents;

- (iii) The quasi-judicial proceedings that are initiated by SEBI proceed on the basis of the allegations that are mentioned in the show cause notice and the documents that are annexed to it. No other material, document or investigation is considered for adjudication by the competent authority. Orders are passed only after an opportunity to file a reply is given and a personal hearing is provided to comply with the principles of natural justice;
- (iv) Regulation 9 of PFUTP Regulations requires the Investigating Authority to submit the report, after completion of the investigation, to the appointing authority. However, the provision does not require the furnishing of the report to the noticee. The report is only in the nature of an inter-departmental communication between officers investigating the matter and the authority who decides if any enforcement action is to be taken against an entity based on any *prima facie* grounds. It is not a piece of evidence but is rather a culmination of documents that the investigating authority relies upon or comes across during the investigation;

- (v) This Court in several similar cases have held that internal investigation reports are not required to be shared. (**Krishna Chandra Tandon v. Union of India**<sup>14</sup> and **Chandrama Tewari v. Union of India**<sup>15</sup>);
- (vi) The investigations conducted by SEBI are highly sensitive given the volatile nature of the market. Disclosure of such information may adversely affect the market. Further, the investigation reports also contain the personal information of other stakeholders. They also include information relating to the commercial and business interests of third-parties. Sharing such information with the noticee will raise concerns regarding the privacy of third-parties and also affect their competitive position in the market;
- (vii) Clauses (d), (e) and (h) of sub-Section (1) of Section 8 of the Right to Information Act 2005<sup>16</sup> also exempt disclosure of – (i) “information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party”; (ii) “information available in fiduciary relationship”; and (iii) “information which would impede the process of investigation”; and
- (viii) The US Securities and Exchange Commission conducts its investigations on a confidential basis to maximize their effectiveness and protect the privacy of those involved. UK Financial Conduct Authority also does not share confidential information even when the same is requested under the Freedom of Information Act stating that a clear confidentiality restriction encourages free flow of information and if

---

<sup>14</sup>AIR 1974 SC 1589

<sup>15</sup>(1988) 1 SCR 1102

<sup>16</sup>“RTI Act”

confidential information were to be made public, sources would be less willing to give information. Article 54 of Directive 2004/39 of the EU Parliament provides a legal framework for securities market and mandates that information of such nature ought not to be shared. Thus, the refusal of SEBI to furnish the investigation report is in line with established global practices.

## C. Analysis

### C.1 Regulatory Framework of PFUTP Regulations

15 The PFUTP Regulations have been notified by SEBI in exercise of powers conferred by Section 30 of the SEBI Act. Regulation 2(c) defines the expression ‘fraud’ in the following terms:

“2(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;
- (4) a promise made without any intention of performing it;
- (5) a representation made in a reckless and careless manner whether it be true or false;
- (6) any such act or omission as any other law specifically declares to be fraudulent,
- (7) deceptive behaviour by a person depriving another of informed consent or full participation,
- (8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly; Nothing contained in this clause shall apply to any general comments made in good faith in regard to—

- (a) the economic policy of the government
- (b) the economic situation of the country
- (c) trends in the securities market;
- (d) any other matter of a like nature

whether such comments are made in public or in private;”

16 Chapter II of the Regulations relates to the prohibition of fraudulent and unfair trade practices relating to the securities market. This includes Regulation 3 which deals with “Prohibition of certain dealings in securities” and Regulation 4 which deals with “Prohibition of manipulative, fraudulent and unfair trade practices”. Chapter II pertains to the power of the Board to order an investigation.

Regulation 5 is extracted below:

“5. Where the Board, the Chairman, the member or the Executive Director (hereinafter referred to as “appointing authority”) has reasonable ground to believe that—

- (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market in violation of these regulations;
- (b) any intermediary or any person associated with the securities market has violated any of the provisions of the Act or the rules or the regulations, it may, at any time by order in writing, direct any officer not below the rank of Division Chief (hereinafter referred to as the “Investigating Authority”) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market or any other person and to report thereon to the Board in the manner provided in section 11C of the Act.”

Regulation 6 enunciates the powers of the investigating authority.<sup>17</sup> The powers of the investigating authority include:

- (i) Calling for information or records;
- (ii) Undertaking inspection of books, registers and documents or records of any public company;
- (iii) Requiring the disclosure of information, documents or records by any person associated with the securities market or by an intermediary;
- (iv) Reservation and custody of books, registers, documents and records for a stipulated period;
- (v) Examination of and recording the statement of directors, partners, members or employees; and
- (vi) Examination on oath.

---

<sup>17</sup>6. Without prejudice to the powers conferred under the Act, the Investigating Authority shall have the following powers for the conduct of investigation, namely :

(1) to call for information or records from any person specified in section 11(2)(i) of the Act;

(2) to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12 of the Act) which intends to get its securities listed on any recognized stock exchange where the Investigating Authority has reasonable grounds to believe that such company has been conducting in violation of these regulations;

(3) to require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of the investigation;

(4) to keep in his custody any books, registers, other documents and record produced under this regulation for a maximum period of one month which may be extended upto a period of six months by the Board :  
Provided that the Investigating Authority may call for any book, register, other document or record if the same is needed again :

Provided further that if the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, he shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced;

(5) to examine orally and to record the statement of the person concerned or any director, partner, member or employee of such person and to take notes of such oral examination to be used as an evidence against such person :  
Provided that the said notes shall be read over to, or by, and signed by, the person so examined;

(6) to examine on oath any manager, managing director, officer or other employee of any intermediary or any person associated with securities market in any manner in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

17 Under Regulation 7<sup>18</sup>, the investigating authority may exercise certain specified powers after obtaining the specific approval of the Chairman or Members of the Board. Regulation 8<sup>19</sup> imposes a duty to cooperate upon every person in respect of whom an investigation has been ordered under Regulation 7.

18 Regulation 9 upon which the controversy in the present case turns is extracted below:

"9. The Investigating Authority shall, on completion of investigation, after taking into account all relevant facts, submit a report to the appointing authority:

---

<sup>18</sup>7. The Investigating Authority may, after obtaining specific approval from the Chairman or Member also exercise all or any of the following powers, namely :

(a) to call for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation;

(b) to make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of any books, registers, other documents and record, if in the course of investigation, the Investigating Authority has reasonable ground to believe that such books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner may be destroyed, mutilated, altered, falsified or secreted;

(c) to keep in his custody the books, registers, other documents and record seized under these regulations for such period not later than the conclusion of the investigation as he considers necessary and thereafter to return the same to the person, the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized :

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof;

(d) save as otherwise provided in this regulation, every search or seizure made under this regulation shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

<sup>19</sup>8. (1) It shall be the duty of every person in respect of whom an investigation has been ordered under regulation 7—

(a) to produce to the Investigating Authority or any person authorized by him such books, accounts and other documents and record in his custody or control and to furnish such statements and information as the Investigating Authority or the person so authorized by him may reasonably require for the purposes of the investigation;

(b) to appear before the Investigating Authority personally when required to do so by him under regulation 6 or regulation 7 to answer any question which is put to him by the Investigating Authority in pursuance of the powers under the said regulations.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 of the Act or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorized by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) Without prejudice to the generality of the provisions of sub-regulations (1) and (2), such person shall—

(a) allow the Investigating Authority to have access to the premises occupied by such person at all reasonable times for the purpose of investigation;

(b) extend to the Investigating Authority reasonable facilities for examining any books, accounts and other documents in his custody or control (whether kept manually or in computer or in any other form) reasonably required for the purposes of the investigation;

(c) provide to such Investigating Authority any such books, accounts and records which, in the opinion of the Investigating Authority, are relevant to the investigation or, as the case may be, allow him to take out computer outprints thereof.

Provided that the Investigating Authority may submit an interim report pending completion of investigations if he considers necessary in the interest of investors and the securities market or as directed by the appointing authority."

Regulation 9 envisages that the investigating authority must submit a report to the appointing authority upon the completion of its investigation in the course of which all relevant facts have to be taken into account. The investigating authority may even submit an interim report, if necessary, in the interest of investors and the securities market or, if directed by the appointing authority.

19 Regulation 10 deals with the Board's power of enforcement. According to

Regulation 10:

"10. The Board may, after consideration of the report referred to in regulation 9, if satisfied that there is a violation of these regulations and after giving a reasonable opportunity of hearing to the persons concerned, issue such directions or take such action as mentioned in regulation 11 and regulation 12 :

Provided that the Board may, in the interest of investors and the securities market, pending the receipt of the report of the investigating authority referred to in regulation 9, issue directions under regulation 11:

Provided further that the Board may, in the interest of investors and securities market, dispense with the opportunity of pre-decisional hearing by recording reasons in writing and shall give an opportunity of post-decisional hearing to the persons concerned as expeditiously as possible."

20 The directions or measures which can be adopted by the Board are

specified in Regulations 11 and 12 which read as follows: -

"11. (1) The Board may, without prejudice to the provisions contained in subsections (1), (2), (2A) and (3) of section 11 and section 11B of the Act, by an order, for reasons to be recorded in writing, in the interests of investors and securities market, issue or take any of the following actions or directions, either pending investigation or enquiry or on completion of such investigation or enquiry, namely :—

- (a) suspend the trading of the security found to be or *prima facie* found to be involved in fraudulent and unfair trade practice in a recognized stock exchange;
- (b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
- (c) suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
- (d) impound and retain the proceeds or securities in respect of any transaction which is in violation or *prima facie* in violation of these regulations;
- (e) direct and intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction;
- (f) require the person concerned to call upon any of its officers, other employees or representatives to refrain from dealing in securities in any particular manner;
- (g) prohibit the person concerned from disposing of any of the securities acquired in contravention of these regulations;
- (h) direct the person concerned to dispose of any such securities acquired in contravention of these regulations, in such manner as the Board may deem fit, for restoring the *status quo ante*.

(2) The Board shall issue a press release in respect of any final order passed under sub-regulation (1) in at least two newspapers of which one shall have nationwide circulation and shall also put the order on the website of the Board.

12. (1) The Board may, without prejudice to the provisions contained in subsections (1), (2), (2A) and (3) of section 11 and section 11B of the Act, by an order, for reasons to be recorded in writing, in the interests of investors and securities market take the following action against an intermediary :

- (a) issue a warning or censure
- (b) suspend the registration of the intermediary; or
- (c) cancel of the registration of the intermediary

Provided that no final order of suspension or cancellation of an intermediary for violation of these regulations shall be passed unless the procedure specified in the regulations applicable to such intermediary under the Securities and Exchange Board of India (Procedure for

Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002 is complied with."

21 Regulation 10 empowers the Board to either issue a direction or take action as is specified in Regulations 11 and 12. Before issuing directions or taking action under Regulations 11 and 12, three steps have to be traversed by the Board. The first stage is the consideration of the report of the investigating authority which has been referred to in Regulation 9. The second is the furnishing of a reasonable opportunity of being heard. The third is the satisfaction of the Board that there is a violation of the regulations. Regulation 10 indicates in clear terms that the report which has been submitted by the investigating authority under Regulation 9 is an intrinsic component of the Board's satisfaction for determining whether there has been any violation of the regulations. Regulation 10 contains a mandate for the Board to consider the report which is referred to in Regulation 9. The submission which has been urged on behalf of SEBI is to the effect that (i) the investigation report is a part of the internal administrative deliberations of the Board; (ii) it need not be disclosed; and that (iii) only those materials which are relied on have to be disclosed misses a crucial part of Regulation 10. The language in which Regulation 10 is couched indicates that consideration of the report of the investigating authority which is submitted under Regulation 9 is one of the components guiding the Board's satisfaction on the violation of the regulations. The words of Regulation 10 indicate that the Board "after consideration of the report referred to in regulation 9, if satisfied that there is a violation of these regulations and after giving a reasonable opportunity of hearing to the persons concerned", takes action under Regulations 11 and 12. As a result of the mandate of Regulation 10, the Board has to consider the

investigation report as an intrinsic element in arriving at its satisfaction on whether there has been a violation of the regulations.

## C.2 Duty to Disclose Investigative Material

22 While the respondents have submitted that only materials that have been *relied* on by the Board need to be disclosed, the appellant has contended that all *relevant* materials need to be disclosed. While trying to answer this issue, we are faced with a multitude of other equally important issues. These issues, all paramount in shaping the jurisprudence surrounding the principles of access to justice and transparency, range from identifying the purpose and extent of disclosure required, to balancing the conflicting claims of access to justice and grounds of public interest such as privacy, confidentiality and market interest. An identification of the *purpose* of disclosure would lead us closer identifying the extent of required disclosure. There are three key purposes that disclosure of information serves:

- (i) Reliability: The possession of information by both the parties can aid the courts in determining the truth of the contentions. The role of the court is not restricted to interpreting the provisions of law but also determining the veracity and truth of the allegations made before it. The court would be able to perform this function accurately only if both parties have access to information and possess the opportunity to address arguments and counter-arguments related to the information;
- (ii) Fair Trial: Since a verdict of the Court has far reaching repercussions on the life and liberty of an individual, it is only fair that there is a

legitimate expectation that the parties are provided all the aid in order for them to effectively participate in the proceedings;

- (iii) Transparency and accountability: The investigative agencies and the judicial institution are held accountable through transparency and not opaqueness of proceedings. Opaqueness furthers a culture of prejudice, bias, and impunity – principles that are antithetical to transparency. It is of utmost importance that in a country grounded in the Rule of Law, the institutions adopt those procedures that further the democratic principles of transparency and accountability. The principles of fairness and transparency of adjudicatory proceedings are the cornerstones of the principle of open justice. This is the reason why an adjudicatory authority is required to record its reasons for every judgement or order it passes. However, the duty to be transparent in the adjudicatory process does not begin and end at providing a reasoned order. Keeping a party bereft of the information that influenced the decision of an authority undertaking an adjudicatory function also undermines the transparency of the judicial process. It denies the concerned party and the public at large the ability to effectively scrutinise the decisions of the authority since it creates an information asymmetry.

23 The purpose of disclosure of information is not merely individualistic, that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Since the purpose of disclosure of information targets both the *outcome* (reliability) and the *process* (fair trial and

transparency), it would be insufficient if only the material relied on is disclosed.

Such a rule of disclosure, only holds nexus to the outcome and not the process.

Therefore, as a default rule, all relevant material must be disclosed.

24 It would be fundamentally contrary to the principles of natural justice if the relevant part of the investigation report which pertains to the appellant is not disclosed. The appellant has to be given a reasonable opportunity of hearing. The requirement of a reasonable opportunity would postulate that such material which has been and has to be taken into account under Regulation 10 must be disclosed to the noticee. If the report of the investigation authority under Regulation 9 has to be considered by the Board before satisfaction is arrived at on a possible violation of the regulations, the principles of natural justice require due disclosure of the report.

25 The consequence of the Board arriving at a satisfaction that there has been a violation of the regulations is that the Board can take recourse to the actions specified under Regulations 11 and 12. Regulation 11 empowers the Board to:

- (i) Suspend the trading of the security found to be involved in a fraudulent and unfair trade practice in a recognized stock exchange;
- (ii) Restraining persons from accessing the securities market and prohibiting any person associated with it from dealing in securities;
- (iii) Suspending an office bearer of a recognized stock exchange;
- (iv) Impounding and retaining the proceeds or securities;

- (v) Issuing a direction not to dispose of or alienate an asset forming part of a fraudulent and unfair transaction;
- (vi) Prohibit the disposal of any of the securities acquired in contravention of these regulations; and
- (vii) Directing the disposal of any securities in accordance with the mandate of the Board.

Under Regulation 11(2), a press release has to be issued by the Board in respect of a final order which is passed under Regulation 11(1).

26 Regulation 12 empowers the Board to suspend or cancel the registration of an intermediary among other things. The provisions of Regulations 11 and 12 indicate that the consequences of the satisfaction which is arrived at by the Board under Regulation 10, if there is a violation of the Regulations, are grave.

27 The submission of Mr C U Singh, learned senior counsel is that only those materials which are relied upon should be disclosed to the first respondent. Regulation 10, as we have noted earlier, stipulates that the satisfaction of the Board whether there has been a violation of the regulations has to be arrived at:

- (i) after considering the report of the investigating authority referred to in Regulation 9; and
- (ii) after giving a reasonable opportunity of hearing to the person concerned.

Once the subordinate legislation mandates that the investigating authority's report is an essential ingredient for the Board to arrive at the satisfaction, it requires due disclosure.

28 Now in the above context, it would be material to advert to the decision of this court in **Natwar Singh** (*supra*). The issue before the two-judge Bench of this Court was whether a noticee who is served with a show cause notice under Rule 4(1) of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules 2000<sup>20</sup>, is entitled to demand all the documents in the possession of the adjudicating authority including those documents upon which no reliance has been placed while issuing a notice to show cause as to why an enquiry should not be initiated against him. Rule 4 is in the following terms:

**"4. Holding of inquiry.--**

(1) For the purpose of Adjudicating under section 13 of the Act whether any person has committed any contravention as specified in that section of the Act, the Adjudicating Authority shall, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than ten days from the date of service thereof) why an inquiry should not be held against him.

(2) Every notice under sub-rule (1) to any such person shall indicate the nature of contravention alleged to have been committed by him. (3) After considering the cause, if any, shown by such person, the Adjudicating Authority is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his legal practitioner or a chartered accountant duly authorised by him."

Rule 4(1) of the FEMA Rules 2000 indicates that in the first instance, the adjudicating authority has to issue a notice requiring the person to show cause why an enquiry should not be held against him. The stage of the notice under Rule 4(1) is not for adjudication but is for the purpose of deciding whether an enquiry should be held. If after considering the cause which is shown, the adjudicating authority is of the opinion that an enquiry should be held, thereupon under Rule 4(3), a notice is issued for the appearance of the person. Sub-Rule

---

<sup>20</sup>"FEMA Rules 2000"

(4) provides that on the date fixed, the adjudicating authority shall explain the contravention alleged to have been committed and under sub-Rule (5) an opportunity of producing documents or evidence has to be given. Under sub-Rule (8), the adjudicating authority is empowered to impose a penalty if it is satisfied, upon considering the evidence produced that there has been a contravention.

29 Now in this backdrop, Justice B. Sudarshan Reddy speaking for the two-judge Bench of this Court interpreted Rule 4 as follows:

"23. The Rules do not provide and empower the Adjudicating Authority to straightaway make any inquiry into allegations of contravention against any person against whom a complaint has been received by it. Rule 4 of the Rules mandates that for the purpose of adjudication whether any person has committed any contravention, the Adjudicating Authority shall issue a notice to such person requiring him to show cause as to why an inquiry should not be held against him. It is clear from a bare reading of the rule that show cause notice to be so issued is not for the purposes of making any adjudication into alleged contravention but only for the purpose of deciding whether an inquiry should be held against him or not. Every such notice is required to indicate the nature of contravention alleged to have been committed by the person concerned. That after taking the cause, if any, shown by such person, the Adjudicating Authority is required to form an opinion as to whether an inquiry is required to be held into the allegations of contravention. It is only then the real and substantial inquiry into allegations of contravention begins."

The above extract clearly indicates that the show cause notice under Rule 4(1) is not for the purpose of making an adjudication into the alleged contravention but only for deciding whether an enquiry must be conducted. The stage when an enquiry is held is subsequent to the initial stage contemplated by Rule 4(1). During the course of the adjudication, the fundamental principle is that material which is used against a person must be brought to notice. As this Court observed:

**"30. The right to fair hearing is a guaranteed right.**

Every person before an authority exercising the adjudicatory powers has a right to know the evidence to be used against him. This principle is firmly established and recognised by this Court in *Dhakeswari Cotton Mills Ltd. v. CIT* [AIR 1955 SC 65 : (1955) 1 SCR 941]. However, disclosure not necessarily involves supply of the material. A person may be allowed to inspect the file and take notes. Whatever mode is used, the fundamental principle remains that nothing should be used against the person which has not been brought to his notice. **If relevant material is not disclosed to a party, there is prima facie unfairness irrespective of whether the material in question arose before, during or after the hearing.** The law is fairly well settled if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he can prepare his defence. **However, there are various exceptions to this general rule where disclosure of evidential material might inflict serious harm on the person directly concerned or other persons or where disclosure would be breach of confidence or might be injurious to the public interest because it would involve the revelation of official secrets, inhibit frankness of comment and the detection of crime, might make it impossible to obtain certain clauses of essential information at all in the future**

(see *R. v. Secy. of State for Home Deptt., ex p H* [1995 QB 43 : (1994) 3 WLR 1110 : (1995) 1 All ER 479 (CA)] ).

31. The concept of fairness may require the adjudicating authority to furnish copies of those documents upon which reliance has been placed by him to issue show-cause notice requiring the noticee to explain as to why an inquiry under Section 16 of the Act should not be initiated. To this extent, the principles of natural justice and concept of fairness are required to be read into Rule 4(1) of the Rules. Fair procedure and the principles of natural justice are in-built into the Rules. **A noticee is always entitled to satisfy the adjudicating authority that those very documents upon which reliance has been placed do not make out even a prima facie case requiring any further inquiry. In such view of the matter, we hold that all such documents relied on by the authority are required to be furnished to the noticee enabling him to show a proper cause as to why an inquiry should not be held against him though the Rules do not provide for the same.** Such a fair reading of the provision would not amount to supplanting the procedure laid down and would in no manner frustrate the apparent purpose of the statute."

(emphasis supplied)

30 The decision of this Court distinguishes between the initial stage under Rule 4(1) which is only for the purpose of deciding whether an enquiry has to be held and the subsequent stage of adjudication into the allegations of contravention. This Court further held:

“34. As noticed, a reasonable opportunity of being heard is to be provided by the adjudicating authority in the manner prescribed for the purpose of imposing any penalty as provided for in the Act and not at the stage where the adjudicating authority is required merely to decide as to whether an inquiry at all be held into the matter. Imposing of penalty after the adjudication is fraught with grave and serious consequences and therefore, the requirement of providing a reasonable opportunity of being heard before imposition of any such penalty is to be met. In contradistinction, the opinion formed by the adjudicating authority whether an inquiry should be held into the allegations made in the complaint are not fraught with such grave consequences and therefore the minimum requirement of a show-cause notice and consideration of cause shown would meet the ends of justice. A proper hearing always include, no doubt, a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view.”

31 On the facts of that case, the Court held that the enquiry against the noticee was yet to commence:

“36. In the present case, the inquiry against the noticee is yet to commence. **The evidence as may be available upon which the adjudicating authority may place reliance, undoubtedly, is required to be furnished to the person proceeded against at the second stage of inquiry into allegations of contravention.** It is at that stage, the adjudicating authority is not only required to give an opportunity to such person to produce such documents as evidence as he may consider relevant to the inquiry, but also enforce attendance of any person acquainted with the facts of the case to give evidence or to produce any document which in its opinion may be useful for or relevant to the subject-matter of the inquiry. **It is no doubt true that natural justice often requires the disclosure of the reports and evidence in the possession of the deciding authority and such reports and evidence relevant to the subject-matter of the inquiry may have to be furnished unless the scheme of the Act specifically prohibits such disclosure.**”

(emphasis supplied)

This Court further noted that the documents which the appellant wanted were documents upon which no reliance was placed by the authority for setting the law into motion. Consequently, this Court concluded that:

"48. On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the adjudicating authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a noticee. Even the principles of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one-way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework."

32 The issue in **Natwar Singh** (supra) was whether the authority was bound to disclose to the noticee all the documents in its possession before forming an opinion on whether an enquiry is required to be held into the alleged contravention by the noticee. The Court held that at that stage there was no requirement of furnishing all such documents to the noticee since the only purpose of the notice under Rule 4(1) was for deciding whether an enquiry should be held. Rule 4(1), in other words, was not a final adjudication and consequently the requirement of a disclosure of all materials in the possession of the authority was not attracted. At that stage, it was sufficient that only documents that have been *relied* on are disclosed.

33 The High Court in the present case has palpably misconstrued the judgment in **Natwar Singh** (supra). The High Court has failed to notice that the issue in that case was whether at the stage when the authority decides under Rule 4(1) of the FEMA Rules 2000 whether an enquiry should be held, a

disclosure of all documents in the possession of the authority to the noticee is warranted. This was answered in the negative. This Court distinguished the stage of adjudication as distinct from the initial stage under Rule 4(1). At the stage of adjudication, all documents useful or relevant to the subject-matter have to be disclosed to the notice, subject to exceptions noticed by the court.

34 On behalf of the Board, it has been urged that the investigation report is in the nature of an inter-departmental communication and need not be disclosed. Reliance was placed on the judgment of this Court in **Krishna Chandra Tandon** (*supra*) to buttress the submission. However, it is clear from the judgment that even if the documents are merely inter-departmental communications, there is a duty to disclose such documents if they have been relied upon by the enquiry officer. A two-Judge Bench of this observed:

“16. Mr Hardy next contended that the appellant had really no reasonable opportunity to defend himself and in this connection he invited our attention to some of the points connected with the enquiry with which we have now to deal. It was first contended that inspection of relevant records and copies of documents were not granted to him. The High Court has dealt with the matter and found that there was no substance in the complaint. All that Mr Hardy was able to point out to us was that the reports received by the CIT from his departmental subordinates before the charge-sheet was served on the appellant had not been made available to the appellant. It appears that on complaints being received about his work the CIT had asked the Inspecting Assistant Commissioner Shri R.N. Srivastava to make a report. He made a report. It is obvious that the appellant was not entitled to a copy of the report made by Mr Srivastava or any other officer unless the enquiry officer relied on these reports. It is very necessary for an authority which orders an enquiry to be satisfied that there are *prima facie* grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinates to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. **Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of enquiry have really no**

importance unless the Enquiry Officer wants to rely on them for his conclusions. In that case it would only be right that copies of the same should be given to the delinquent. It is not the case here that either the Enquiry Officer or the CIT relied on the report of Shri R.N. Srivastava or any other officer for his finding against the appellant. Therefore, there is no substance in this submission."

(emphasis supplied)

35 However, merely because the investigating authority has denied placing reliance on the report would not mean that such material cannot be disclosed to the noticee. The court may look into the relevance of the material to the proposed action and its nexus to the stage of adjudication. Simply put, this entails evaluating whether the material in all reasonable probability would influence the decision of the authority. The above position was laid down by this Court in

**Khudiram Das v. State of West Bengal<sup>21</sup>.** Ruling in the context of preventive

detention, a four-judge Bench of this Court observed:

"15. Now, the proposition can hardly be disputed that if there is before the District Magistrate material against the detenu which is of a highly damaging character and having nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at his subjective satisfaction and in such a case the Court would refuse to accept the bald statement of the District Magistrate that he did not take such material into account and excluded it from consideration. It is elementary that the human mind does not function in compartments. When it receives impressions from different sources, it is the totality of the impressions which goes into the making of the decision and it is not possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision and which did not. Nor is it an easy exercise to erase the impression created by particular circumstances so as to exclude the influence of such impression in the decision making process. Therefore, in a case where the material before the District Magistrate is of a character which would in all reasonable probability be likely to influence the decision of any reasonable human being, the Court

---

<sup>21</sup>(1975) 2 SCC 81

would be most reluctant to accept the ipse dixit of the District Magistrate that he was not so influenced and a fortiori, if such material is not disclosed to the detenu, the order of detention would be vitiated, both on the ground that all the basic facts and materials which influenced the subjective satisfaction of the District Magistrate were not communicated to the detenu as also on the ground that the detenu was denied an opportunity of making an effective representation against the order of detention."

(emphasis supplied)

The principle that the material that may influence the decision of a quasi-judicial authority to award a penalty must be disclosed to a delinquent was affirmed by this Court in **Union of India and Ors. v. Mohd. Ramzan Khan**<sup>22</sup>. In that case, this Court laid down that a delinquent officer is entitled to receive the report of the enquiry officer which has been furnished to the disciplinary authority. This principle was affirmed by a Constitution Bench of this Court in **Managing Director, ECIL, Hyderabad v. B. Karunakar**<sup>23</sup>. The rationale behind the right to receive the report of the enquiry officer was explained by this Court in the following terms:

**"26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings**

---

<sup>22</sup>(1991) 1 SCC 588

<sup>23</sup>(1993) 4 SCC 727

recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

(emphasis supplied)

For the purpose of determining if prejudice has been caused by a non-disclosure, this Court held that the report must be furnished to the aggrieved person and the employee must shoulder the burden of proving on facts that his case was prejudiced – either the outcome or the punishment – by the non-disclosure:

"30. [v] ] The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all

cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions.

**Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits.**

It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

**31.** Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and **give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment.** The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present.

(emphasis supplied)

36 In **State Bank of Patiala v. SK Sharma**<sup>24</sup>, this Court noted that if a facet of a rule of natural justice is violated on grounds of preserving public interest, the entire proceeding is not vitiated unless prejudice has been caused to the delinquent. A distinction was made between the complete non-abidance of the principles of natural justice, that is where no information was disclosed and arguments of insufficient disclosure. It was held that when the latter argument is

---

<sup>24</sup>(1996) 3 SCC 364

made, the Court must determine if the insufficient disclosure caused prejudice.

This Court observed:

"28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in *Russell v. Duke of Norfolk* [(1949) 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See *Mohinder Singh Gill v. Chief Election Commr.* [(1978) 1 SCC 405 : (1978) 2 SCR 272] ) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See *A.K. Roy v. Union of India* [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] and *Swadeshi Cotton Mills v. Union of India* [(1981) 1 SCC 664]. ) As pointed out by this Court in *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262], the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable — a fact also emphasised by House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* [(1984) 3 All ER 935 : (1984) 3 WLR 1174 : 1985 AC 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing — applying the test of prejudice, as it may be called — that any and every complaint of violation of the rule of *audi alteram partem* should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding — which may result in grave prejudice to public interest. It is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., *Liberty Oil Mills v. Union of India* [(1984) 3 SCC 465]. **There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of *audi alteram partem* altogether [as in the case of situations contemplated by clauses (b) and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken.** There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate

— take a case where the person is dismissed from service without hearing him altogether (as

in Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 935]. It would be a case falling under the first category and the order of dismissal would be invalid — or void, if one chooses to use that expression (Calvin v. Carr [1980 AC 574 : (1979) 2 All ER 440 : (1979) 2 WLR 755, PC]. But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category — violation of a facet of the said rule of natural justice — in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. **It would not be correct**

**— in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.”**

(emphasis supplied)

37      In **State of Uttar Pradesh v. Ramesh Chandra Mangalik**<sup>25</sup>, it was held that the duty to disclose is confined only to material and relevant documents which may have been relied upon in support of the charges. In that case, the personal file of other officers was not supplied to the delinquent officer. It was noted that such documents have not been relied upon by the enquiry officer. The delinquent officer was not able to prove the relevance of the documents that were suppressed. This Court observed:

“11. Learned counsel for the appellant has further submitted that particular documents, copies of which are said to have not been supplied are not indicated by the respondent, much less in the order of the High Court nor has their relevance been pointed out. The submission is that the delinquent will also have to show as to in what

---

<sup>25</sup>(2002) 3 SCC 443

manner any particular document was relevant in connection with the inquiry and what prejudice was caused to him by non-furnishing of a copy of the document. In support of this contention, reliance has been placed upon a case reported in Chandrama Tewari v. Union of India [1987 Supp SCC 518 : 1988 SCC (L&S) 226 : (1987) 5 ATC 369]. It has been observed in this case that the obligation to supply copies of documents is confined only to material and relevant documents which may have been relied upon in support of the charges. It is further observed that if a document even though mentioned in the memo of charges, has no bearing on the charges or if it is not relied upon or it may not be necessary for cross-examination of any witness, non-supply of such a document will not cause any prejudice to the delinquent. The inquiry would not be vitiated in such circumstances. In State of T.N. v. Thiru K.V. Perumal [(1996) 5 SCC 474 : 1996 SCC (L&S) 1280] relied upon by the appellant, it is held that it is for the delinquent to show the relevance of a document a copy of which he insists to be supplied to him. Prejudice caused by non-supply of document has also to be seen. In yet another case relied upon by the learned counsel for the appellant, reported in State of U.P. v. Harendra Arora [(2001) 6 SCC 392 : 2001 SCC (L&S) 959] it has been held that a delinquent must show the prejudice caused to him by non-supply of a copy of the document where order of punishment is challenged on that ground."

(emphasis supplied)

38      In **Kothari Filaments v. Commr. Of Customs<sup>26</sup>**, this Court held that the Commissioner of Customs in the exercise of its quasi-judicial powers cannot pass an order on the basis of material which is only known to the authorities. This Court held:

"14. The statutory authorities under the Act exercise quasi-judicial function. By reason of the impugned order, the properties could be confiscated, redemption fine and personal fine could be imposed in the event an importer was found guilty of violation of the provisions of the Act. In the event a finding as regards violation of the provisions of the Act is arrived at, several steps resulting in civil or criminal consequences may be taken. The principles of natural justice, therefore, were required to be complied with.

15. The Act does not prohibit application of the principles of natural justice. The Commissioner of Customs either could not have passed the order on the basis of the materials which were known only to them, copies whereof

---

<sup>26</sup>(2009) 2 SCC 192

were not supplied or inspection thereto had not been given. He, thus, could not have adverted to the report of the overseas enquiries. A person charged with misdeclaration is entitled to know the ground on the basis whereof he would be penalised. He may have an answer to the charges or may not have. But there cannot be any doubt whatsoever that in law he is entitled to a proper hearing which would include supply of the documents. Only on knowing the contents of the documents, he could furnish an effective reply...."

39 The following principles emerge from the above discussion:

- (i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and
- (ii) An *ipse dixit* of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is *relevant* to and has a *nexus* to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.

Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.

40 The investigation report forms the material considering which, the Board arrives at a satisfaction regarding whether there has been a violation of the regulations. If it is satisfied that there has been a violation of the regulations, after giving a reasonable opportunity to be heard, the Board is empowered to take action according to Regulations 11 and 12. It would not suffice for the first respondent to claim as it did before the High Court that it did not rely on the investigation report. The *ipse dixit* of the authority that it was not influenced by certain material would not suffice. If the material is relevant to and has a nexus to

the stage at which satisfaction is reached by an authority, such material would be deemed to be important for the purpose of adjudication. The written submissions of the Board clearly state that the findings of the investigation report are important for the authority to decide whether there are any *prima facie* grounds to initiate enforcement proceedings under Regulation 10. The relevant extract of the submissions is reproduced below:

"It is submitted that Regulation 9 of PFUTP Regulations require the Investigating Authority to submit the report after completion of the investigation to the appointing authority. However, the provision does not require furnishing of the report to the Noticee. Further, the investigation report is merely a culmination of documents which the investigating authority relies on/come across while conducting the investigation and is not a piece of evidence in itself. **It is a report which is necessary for an authority, who orders an investigation, to decide as to whether there are prima-facie grounds to initiate enforcement proceedings or not.** Therefore, before the authority makes up his mind, he will either himself investigate or direct his subordinates to investigate in the matter. It is only after the authority receives the report of the investigation that he can decide as to whether action is called for or not. Therefore, the investigation report is in the nature of inter-departmental communications between officers investigating the matter and authority who can decide any enforcement action against the entity.

.....  
**The findings recorded in the investigation report against the Noticee** are brought out in the SCN and the copies of all the documents that are relied upon by SEBI, while issuing the SCN are always shared with the concerned. The present case is no exception."

(emphasis supplied)

41 The above extracts indicate that the findings of the investigation report are relevant for the Board to arrive at the satisfaction on whether the Regulations have been violated. Even if it is assumed that the report is an inter-departmental communication, as held in **Krishna Chandra Tandon** (supra), there is a duty to disclose such report if it is relevant for the satisfaction of the enforcement authority for the determination of the alleged violation.

42 In **Khudiram Das** (supra), a four-Judge Bench of this Court laid down a two-prong test for the standard of ‘relevancy’; *firstly*, the material must have nexus with the order and *secondly*, the material *might* have influenced the decision of the authority. A Constitution Bench of this Court in **Karunakar** (supra) held that the non-disclosure of the relevant information is not in itself sufficient to warrant the setting aside of the order of punishment. It was held that in order to set aside the order of punishment, the aggrieved person must be able prove that prejudice has been caused to him due to non-disclosure. To prove prejudice, he must prove that had the material been disclosed to him the outcome or the punishment would have been different. The test for the extent of disclosure and the corresponding remedy for non-disclosure is dependent on the objective that the disclosure seeks to achieve. Therefore, the impact of non-disclosure on the *reliability* of the verdict must also be determined vis-à-vis, the overall fairness of the proceeding. While determining the reliability of the verdict and punishment, the court must also look into the possible uses of the undisclosed information for purposes ancillary to the outcome, but that which *might* have impacted the verdict.

43 In **Natwar Singh** (supra), it was held that material which is *relevant* to the subject-matter of the proceedings must be disclosed, unless the scheme of the statute indicates to the contrary. The non-disclosure of such material is *prima facie* arbitrary. A deviation from this general rule was made based on the stage of the proceedings. It was held that it is sufficient to disclose the materials *relied* on if it is for the purpose of issuing a show cause notice for initiating inquiry. However, in the present case, since the report of the investigating authority under

Regulation 9 enters into the calculus of circumstances borne in mind by the Board in arriving at its satisfaction under Regulation 10 for taking actions as specified in Regulations 11 and 12, it would be contrary to the Regulations to assert that the investigation report is merely an internal document of which a disclosure is not warranted. In any event, the language of Regulation 10 makes it clear that the Board forms an opinion regarding the violation of Regulations after considering the investigation report prepared under Regulation 9. Thus, the investigation report has to be duly disclosed to the noticee. However, the right to disclosure is not absolute. It needs to be determined if the non-disclosure of the investigative report is protected by any of the exceptions to the rule.

### **C.3. Exceptions to the Duty to Disclose**

44 The contention of the respondents is that since the investigation report under Regulation 9 would also include information on “commercial and business interests, documents involving strategic information, investment strategies, rationale for investments, commercial information and information regarding the business affairs of the entities/persons concerned” affecting the privacy and the competitive position of other entities, it should not be disclosed. Buttressing this argument, the respondent referred to clauses (d), (e) and (h) of the sub-Section (1) of the RTI Act which states there shall be no duty to disclose information affecting the commercial confidence or that which could harm the competitive position of a third party or impede the process of investigation, unless there is a larger public interest in the disclosure of information. The RTI Act attempts to balance the interests of third party individuals whose information may be disclosed and public interest in ensuring transparency and accountability. The

RTI Act is reflective of the parliamentary intent to facilitate transparency in the administration, which is the rationale for the disclosure of information. This is subject to certain defined exceptions.

45 We cannot be oblivious to the wide range of sensitive information that the investigation report submitted under Regulation 9 may cover, ranging from information on financial transactions and on other entities in the securities market, which might affect third-party rights. The report may contain market sensitive information which may impinge upon the interest of investors and the stability of the securities market. The requirement of compliance with the principles of natural justice cannot therefore be read to encompass the right to a roving disclosure on matters unconnected or as regards the dealings of third parties. The investigating authority may acquire information of sensitive nature bearing upon the orderly functioning of the securities market. The right of the noticee to disclosure must be balanced with a need to preserve any other third-party rights that may be affected.

46 In **Natwar Singh** (supra), this Court has observed that there are exceptions to the general rule of disclosing evidentiary material. This Court held that such exceptions can be invoked if the disclosure of material causes harm to others, is injurious to public health or breaches confidentiality. While identifying the purpose of disclosure, we have held that one of the crucial objectives of the right to disclosure is securing the transparency of institutions. The claims of third party rights vis-à-vis the right to disclosure cannot be pitted as an issue of public interest and fair adjudication. The creation of such a binary reduces and limits the purpose that disclosure of information serves. The respondent should *prima*

*facie* establish that the disclosure of the report would affect third party rights. The onus then shifts to the appellant to prove that the information is *necessary* to defend his case appropriately.

47 Applying this test to the facts, we find that the appellant is unable to prove that the disclosure of the entire report is necessary for him to defend the case. The first respondent made the following arguments making a *prima facie* case that the disclosure of the report would violate third party rights:

- (i) Investigation reports contain information on the volatile nature of the market;
- (ii) The report also contains the personal information of various stakeholders. Disclosure will violate the right to privacy of the third party individuals; and
- (iii) It includes strategic information.

48 The appellant did not sufficiently discharge his burden by proving that the non-disclosure of the above information would affect his ability to defend himself. However, merely because a few portions of the enquiry report involve information on third-parties or confidential information on the securities market, the respondent does not have a right to withhold the disclosure of the relevant portions of the report. The first respondent can only claim non-disclosure of those sections of the report which deal with third party personal information and strategic information on the functioning of the securities market.

49 Therefore, the Board should determine such parts of the investigation report under Regulation 9 which have a bearing on the action which is proposed to be taken against the person to whom the notice to show cause is issued and disclose the same. It can redact information that impinges on the privacy of third parties. It cannot exercise unfettered discretion in redacting information. On the other hand, such parts of the report which are necessary for the appellant to defend his case against the action proposed to be taken against him need to be disclosed. It is needless to say that the investigating authority is duty-bound to disclose such parts of the report to the noticee in good faith. If the investigating authority attempts to circumvent its duty by revealing minimal information, to the prejudice of the appellant, it will be in violation of the principles of natural justice. The court/appellate forum in an appropriate case will be empowered to call for the investigation report and determine if the duty to disclose has been effectively complied with.

50 The notice to show cause issued to the appellant is for violation of the provisions of the SEBI Act, SCRA and PFUTP Regulations. The show cause notice has specifically referred to what was revealed during the course of the investigation and has invoked the provisions of the PFUTP Regulations in the allegations against the appellant. Para 8 (2) of the show cause notice is extracted below:

“(II) It is alleged that Mr. T. Takano, during whose tenure the business transactions with FDSL started by virtue of his position as MD & CEO of Ricoh during FY 2012 -13 to FY 2014 -15, was actively involved in committing the fraud and had knowingly restricted the mandate given to PwC to six month so as to succeed in hiding his role in the commission of fraud of publishing untrue financial statement of Ricoh which resulted in misleading the

investors about the financial performance of the company and thereby resulted in inducement of traders in the scrip. The said acts of the Noticee no. 2 are alleged to be violation of regulations 3 (b), (c), (d), 4(1) and 4(2)(e), (f), (k) and (r) of SEBI (PFUTP) Regulations, 2003 and clause 49 (V) read with 41 (II)(a) of the erstwhile Listing Agreement."

Since the show cause notice has specifically relied upon the report of the investigation and invokes, *inter alia*, a violation of the PFUTP Regulations by the appellant, the mandate of Regulation 10 must be complied with. However, while directing that there should be a disclosure of the investigation report to the appellant, it needs to be clarified that this would not permit the appellant to demand roving inspection of the investigation report which may contain sensitive information as regards unrelated entities and transactions.

#### D. Conclusion

51 The conclusions are summarised below:

- (i) The appellant has a right to disclosure of the material *relevant* to the proceedings initiated against him. A deviation from the general rule of disclosure of relevant information was made in **Natwar Singh** (supra) based on the stage of the proceedings. It is sufficient to disclose the materials *relied* on if it is for the purpose of issuing a show cause notice for deciding whether to initiate an inquiry. However, all information that is relevant to the proceedings must be disclosed in adjudication proceedings;
- (ii) The Board under Regulation 10 considers the investigation report submitted by the Investigating Authority under Regulation 9, and if it is

satisfied with the allegations, it could issue punitive measures under Regulations 11 and 12. Therefore, the investigation report is not merely an internal document. In any event, the language of Regulation 10 makes it clear that the Board forms an opinion regarding the violation of Regulations after considering the investigation report prepared under Regulation 9;

- (iii) The disclosure of material serves a three-fold purpose of decreasing the error in the verdict, protecting the fairness of the proceedings, and enhancing the transparency of the investigatory bodies and judicial institutions;
- (iv) A focus on the institutional impact of suppression of material prioritises the process as opposed to the outcome. The direction of the Constitution Bench of this Court in **Karunakar** (*supra*) that the non-disclosure of relevant information would render the order of punishment void only if the aggrieved person is able to prove that prejudice has been caused to him due to non-disclosure is founded both on the *outcome* and the *process*;
- (v) The right to disclosure is not absolute. The disclosure of information may affect other third-party interests and the stability and orderly functioning of the securities market. The respondent should *prima facie* establish that the disclosure of the report would affect third-party rights and the stability and orderly functioning of the securities market. The onus then shifts to the appellant to prove that the information is *necessary* to defend his case appropriately; and

## PART D

(vi) Where some portions of the enquiry report involve information on third-parties or confidential information on the securities market, the respondent cannot for that reason assert a privilege against disclosing any part of the report. The respondents can withhold disclosure of those sections of the report which deal with third-party personal information and strategic information bearing upon the stable and orderly functioning of the securities market.

52 The Board shall be duty-bound to provide copies of such parts of the report which concern the specific allegations which have been levelled against the appellant in the notice to show cause. However, this does not entitle the appellant to receive sensitive information regarding third parties and unrelated transactions that may form part of the investigation report.

53 During the course of the hearing, the Court has been apprised of the fact that though the hearing before the designated officer has been held, no orders have been passed in deference to the pendency of the present proceedings. Having regard to the conclusion which has been arrived at above, we direct that after a due disclosure is made to the appellant in terms as noted above, a reasonable opportunity shall be granted to the appellant of being heard with reference to the matters of disclosure in compliance with the principles of natural justice before a final decision is arrived at.

54 The disclosure in terms of the present judgment shall be communicated to the appellant within one month from the date of this judgment and the appellant shall be given a period of one month to respond. The officer concerned in charge



of the enquiry shall fix a date for personal hearing before taking a final decision.

The appeals are allowed in the above terms.

55 The judgment of the Division Bench of the High Court of Judicature at Bombay dated 29 September 2020 is accordingly set aside. In the circumstances of the case, there shall be no order as to costs.

56 Pending application(s), if any, shall stand disposed of.

.....J.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[Sanjiv Khanna]

New Delhi;  
February 18, 2022



2023INSC741

**REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

**WRIT PETITION (CIVIL) No. 990 of 2021**

KISHAN CHAND JAIN

....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

...RESPONDENT(S)

**JUDGMENT**

**PAMIDIGHANTAM SRI NARASIMHA, J.**

1. This Writ Petition under Article 32 of the Constitution of India filed by way of a public interest litigation seeking multiple reliefs, running into three pages, the gist of which is only for a direction to implement the mandate of Section 4 of the Right to Information Act, 2005.<sup>1</sup> As the prayer is only for implementing the various obligations enlisted under Section 4, it is necessary to reproduce the Section for ready reference:

***“4. Obligations of public authorities-***

***(I) Every public authority shall—***

***(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a***

Signature Not Verified  
Digitally Signed by  
Deepak Singh  
Date: 2023-08-18  
17:18:29 IST  
Reason:

<sup>1</sup> Hereinafter referred to as 'Act'

*network all over the country on different systems so that access to such records is facilitated;*

*(b) publish within one hundred and twenty days from the enactment of this Act,—*

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

*(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.*

*(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.*

*(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.*

*(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed. Explanation.—For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority."*

2. The statutory obligations of public authorities under Section 4(1) relate to: (a) maintenance of all public records, duly catalogued and indexed for easy accessibility of the information; (b) publishing particulars of the organisational structure, functions and duties of officers, procedures that are followed for decision-making, salary structure, budget allocation, publication of facts relating to policies and announcements which includes providing reasons for quasi-judicial decisions. Sub-section (2) mandates the public authority to take steps for providing information under clause (b) of sub-section (1) *suo motu* and further to disseminate the said information for easy accessibility to the public. The scope

and ambit of Section 4 has already been considered by this Court in a number of decisions.<sup>2</sup>

3. We may note the observation of this Court in just one of the cases, namely *Institute of Chartered Accountants of India v. Shaunak H. Satya and others* (2011) 8 SCC 781:

*"23. The information to which the RTI Act applies falls into two categories, namely, (i) information which promotes transparency and accountability in the working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in clauses (b) and (c) of Section 4(1) of the RTI Act; and (ii) other information held by public authorities not falling under Sections 4(1)(b) and (c) of the RTI Act. In regard to information falling under the first category, the public authorities owe a duty to disseminate the information widely *suo motu* to the public so as to make it easily accessible to the public. In regard to information enumerated or required to be enumerated under Sections 4(1)(b) and (c) of the RTI Act, necessarily and naturally, the competent authorities under the RTI Act will have to act in a proactive manner so as to ensure accountability and ensure that the fight against corruption goes on relentlessly. But in regard to other information which do not fall under Sections 4(1)(b) and (c) of the Act, there is a need to proceed with circumspection as it is necessary to find out whether they are exempted from disclosure.*

*24. One of the objects of democracy is to bring about transparency of information to contain corruption and bring about accountability. But achieving this object does not mean that other equally important public interests including efficient functioning of the governments and public authorities, optimum use of limited fiscal resources, preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of the RTI Act is to harmonise the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient*

---

<sup>2</sup> Central Board of Secondary Education and another v. Aditya Bandopadhyay and others (2011) 8 SCC 497, Institute of Chartered Accountants of India v. Shaunak H. Satya and others (2011) 8 SCC 781, Verhoeven, Marie -Emmanuelle v. Union of India and others. (2016) 6 SCC 456 and Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal (2020) 5 SCC 481

*functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective.”*

4. Having noted the scope and ambit of the obligations imposed on public authorities under Section 4, as elucidated by this Court, we may now refer to the prayer made by the petitioner in the Writ Petition. The writ petitioner seeks a direction:
  - (a) *to ensure that public authorities comply with the mandatory suo motu disclosures under Section 4 on a proactive basis;*
  - (b) *to ensure that website disclosures of public authorities are complete, easily accessible as required by Clause No. 2.2 of the O.M. dated 07.11.2019;*
  - (c) *to ensure compliance of proactive disclosure package audited by third party under Section 4 of the Act read with Clause 4.4 of O.M. dated 07.11.2019;*
  - (d) *to appoint senior officer as nodal officer for being accountable for compliances with respect to proactive disclosure guidelines as per Clause 5.1 of the O.M. dated 07.11.2019;*
  - (e) *direct Central Information Commission/State Information Commissions to examine third party audit reports as per Clause 4.5 of the O.M. dated 07.11.2019;*
  - (f) *to ensure that details of disclosure guidelines are reflected in the Annual Report as per Clause 6.1 of the O.M. dated 07.11.2019; and*
  - (g) *to send ‘Action Taken Report’ to the concerned Information Commission as per Clause 4.3 of O.M. dated 07.11.2019.*
5. In other words, the prayers in the Writ Petition are for implementation of Section 4 of the Act, coupled with the instructions for its execution as provided in the O.M. dated 07.11.2019.

6. Union of India has filed a 'Note on Submissions' explaining the steps that have been taken for implementation of the statutory mandate of Section 4. We will refer to some of these before giving necessary directions.
7. In order to implement the provisions of the Act, the Department of Personnel and Training constituted a Task Force on 06.05.2011 to improve quality and quantity of disclosure contemplated under Section 4. Pursuant to the report submitted by the Task Force, the Department issued certain Guidelines through its O.M. dated 15.04.2013. These guidelines relate to various issues including *suo motu* proactive disclosures under Section 4 and also to put in place a mechanism for compliance and monitoring.
8. As per the Guidelines each Public Authority must undertake the following steps:

*"(a) Comply with the guidelines and send an action taken report to the CIC; (b) Get the proactive disclosure package [Section 4(1)(b) of the RTI, Act] audited by a third party audit every year. This should be communicated to the CIC annually through publication on their own websites. This requirement to publish the needful information on the website of each public authority would fully take care of the grievances of the petitioner; (c) The CIC should examine the third-party audit reports for each Ministry/Public Authority and offer advice/ recommendations to the concerned Ministry/Public Authority; (d) The CIC should carry out sample audits for a few of the Ministries/Public Authorities each year with regard to adequacy of the items included as well as compliance of the Ministry/Public Authority with these guidelines; (e) An officer, not below the rank of a Joint Secretary, should be appointed as the Nodal officer in the Central Ministry/Public Authority to ensure compliance with the proactive disclosure guidelines, and (f) Every Ministry/Department to include a chapter on RTI Act in its Annual Report submitted to the Parliament, mandatorily containing the details about compliance with proactive disclosure guidelines."*

9. It is relevant to refer to Clause 4 of O.M. dated 15.04.2013 which deals with the compliance mechanism:

- "4.0 Compliance with Provisions of suo motu (proactive) disclosures under the RTI Act.
- 4.1 Each Ministry/Public Authority shall ensure that these guidelines are fully operationalized within a period of 6 months from the date of their issue.
- 4.2 Proactive disclosure as per these guidelines would require collating a large quantum of information and digitizing it. For this purpose, Ministries/Public Authorities may engage consultants or outsource such work to expeditiously comply with these guidelines. For this purpose, the plan/non-plan funds of that department may be utilized.
- 4.3 The Action Taken Report on the compliance of these guidelines should be sent, along with the URL link, to the DoPT and Central Information Commission soon after the expiry of the initial period of 6 months.
- 4.4 Each Ministry/Public Authority should get its proactive disclosure package audited by third party every year. The audit should cover compliance with the proactive disclosure guidelines as well as adequacy of the items included in the package. The audit should examine whether there are any other types of information which could be proactively disclosed. Such audit should be done annually and should be communicated to the Central Information Commission annually through publication on their own websites. All Public Authorities should proactively disclose the names of the third party auditors on their website. For carrying out third party audit through outside consultants also, Ministries/Public Authorities should utilize their plan/non-plan funds.
- 4.5 The Central Information Commission should examine the third-party audit reports for each Ministry/Public Authority and offer advice/recommendations to the concerned Ministries/Public Authorities.
- 4.6 Central Information Commission should carry out sample audit of few of the Ministries/Public Authorities each year with regard to adequacy of items included as well as compliance of the Ministry/Public Authority with these guidelines.
- 4.7 Compliance with the proactive disclosure guidelines, its audit by third party and its communication to the Central Information Commission should be included as RFD target."

10. The 'Note on Submissions' discloses that the Department continued to follow the mandate of Section 4 and sought compliance of the Guidelines by issuing further O.M.'s such as O.M. issued on 10.12.2013, 22.09.2014 and 09.07.2015.
11. Proceeding further, in its endeavour to make information more accessible, the Department constituted two more Committees which made recommendations for effective implementation of Section 4. The first Committee headed by Shri A. N. Tiwari, CIC (Retd) made recommendations with respect to (a) making online access to information more user-friendly and (b) setting up of grievance redressal mechanism, amongst others. These recommendations were accepted by the Department vide O.M. dated 29.06.2015.
12. The second committee headed by Dr. Devesh Chaturvedi, former Joint Secretary also made certain recommendations and some of them were accepted through O.M. dated 30.06.2016. Some of the recommendations that were accepted relate to (a) setting up of Consultative Committees by public authority for systematic and regular interaction with its officials and to advise public authorities on information which can be uploaded *suo motu*, (b) setting up of Information and Facilitation Centres to educate citizens about information available, (c) providing searchable and retrievable database of information on the website of the public authorities; and importantly (d) to undertake transparency audits by training institutes under the Ministry/Department/Public Authority.
13. The Note also indicated that by O.M. dated 15.10.2019, the Department relaxed the audit criteria by allowing the public authorities to give the transparency audits

conducted by any Government Training Institutes, i.e., in cases where there is no institute existing in the Ministry/Department/Public Authority.

14. As many Central Authorities faced difficulties on account of, (a) substantial difference in the audit cost charged by different auditing training institutes, (b) shortage of manpower/adequately trained manpower, and (c) pre-engagement of the training institute with its scheduled training activities, a further relaxation through O.M. dated 20.09.2022 was given as per which the task of transparency audits was permitted to be given to any Government Training Institute by the Ministry/Department/Public Authority under the Central or State Governments.
15. It is clarified that if a Training Institute is in itself a public authority, then it may give its audits conducted by Government Training Institute (O.M. 07.09.2021). The Note also states that the department issued O.M. dated 14.09.2022 directing all Ministries/Departments/Public Authorities to (a) nominate Training Institute for third party audit; (b) furnish other requisite details to the CIC as per the Exhaustive Guidelines issued *vide* OM dated 07.11.2019; (c) adhere to the timelines set by the CIC for conducting transparency audits; and (d) observe the earlier guidelines issued *vide* OM dated 13.04.2013 and 07.11.2019.
16. On 07.11.2019, the Department of Personnel and Training issued an O.M. reiterating the 15.04.2013 Guidelines. Clause 4.4 was revised in the following terms:

*"4.4 Each Ministry/Public Authority should get its proactive disclosure package audited by third party every year. The audit should cover compliance with the proactive disclosure guidelines as well as adequacy of the items included in the package. The*

*audit should examine whether there are any other types of information which could be proactively disclosed. Such audit should be done annually and should be communicated to the Central Information Commission annually through publication on their own websites. Further the task of undertaking transparency audits may be given to the respective Training Institutes under each Ministry/Department/Public Authority and across the States and Union Territories. "However in cases where no training institute exists under the Ministries/Departments/Public Authorities the tasks of undertaking transparency audits may be given to any Government Training Institute." All Public Authorities should proactively disclose the names of the third party auditors on their website. For carrying out third party audit through outside consultants also. Ministries/Public Authorities should utilize their plan/non-plan funds."*

17. It is important to extract the 'present status' of compliances as indicated in the Note filed on behalf of Union of India. Para 17 to 20 of the affidavit is as follows:

*"17. Every public authority registered with the CIC is required to submit four quarterly returns for assessment of its performance in respect of the implementation of the RTI Act.*

*18. Out of total 2278 Public Authorities, 2173 of them i.e., 95% public authorities have submitted their all four quarterly returns to the Commission in the reporting year i.e., 2021-22 (Annual Report 2021-22 of the CIC).*

*19. The suo motu disclosure under Section 4 of the Act by the public authorities and undertaking the transparency audit of the disclosure are two different provisions. Whereas the former is a mandatory provisions stipulated in the RTI Act, the latter was introduced vide OM date 15.04.2013 and is directory.*

*20. Thus, it is respectfully submitted that those public authorities which have not obtained an audit of their proactive disclosure packages by a third party cannot be construed to be in violation of Section 4 of the RTI Act."*

18. On the other hand, the written submission filed on behalf of the petitioner disclosed that only 33% of the public authorities have got transparency audits conducted in the last four years. It is stated that the poor implementation of third-party audit is adversely commented upon even by the Department in its O.M. dated 14.09.2022. It is further averred that apart from the poor implementation

of third-party audit, 33% of public authorities which had their transparency audits conducted performed badly, clearly evidences that quality and quantity of proactive disclosure were not in accordance with Section 4 of the Act.

19. From the information made available to us, one thing is evident. The system needs the concerned authority's complete attention, followed by strict and continuous monitoring. It is in this context that the functioning and duties of the Central and State Information Commissions assume utmost importance.
20. It is necessary to take note of the statutorily incorporated 'monitoring and reporting' mechanism in section 25 of the Act. This is an important feature of 'accountability' of statutory authorities.

*"25. Monitoring and reporting.*

*(1) The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government. (2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section. (3) Each report shall state in respect of the year to which the report relates,— (a) the number of requests made to each public authority; (b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked; (c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals; (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act; (e) the amount of charges collected by each public authority under this Act; (J) any facts which indicate an effort by the public authorities to*

*administer and implement the spirit and intention of this Act; (g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information. (4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in subsection (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House. (5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.”*

21. Section 25 gloriously integrates ‘the right to information’ of a citizen with the *collective responsibility* of the Government to the Legislature under Article 75(3) or 164(2) of the Constitution. At the beginning of the chain is the citizen exercising her right to information. The Public Authority obligated to provide the information is *accountable* to the Department. The Department, shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the CIC or SIC (see Section 25(2)). The CIC or SIC shall then prepare a ‘Report’ on the implementation of the provisions of the Act during the year and forward a copy to the appropriate Government (see Section 25(1)). The ‘Report’ prepared by the CIC or SIC is mandated to comprise all details specified in Clauses (a) to (g) of Section 25(3). The Central or the State Government shall cause a copy of the Report of the CIC/SIC be laid before Parliament/Legislative

Assembly (Section 25(4)). It is then for the House, representing the will of the people, to ensure that the confidence reposed by it in the Council of Ministers (Government) is affirmed. Thus, the circle of representative democracy connects supremacy of the Parliament with the right of the citizen by ensuring that the State performs its obligations. This is the primary principle of accountability.

22. Power and accountability go hand in hand. While declaring that all citizens shall have the 'right to information' under Section 3 of the Act, the co-relative 'duty' in the form of obligation of public authorities is recognized in Section 4. The core of the right created under Section 3 in reality rests on the duty to perform statutory obligations. Public accountability is a crucial feature that governs the relationship between 'duty bearers' and 'right holders'. Recognizing the importance of accountability as a measure of administrative law, this Court in *Vijay Rajmohan v. CBI*,<sup>3</sup> held as follows:

*"34. Accountability in itself is an essential principle of administrative law. Judicial review of administrative action will be effective and meaningful by ensuring accountability of the officer or authority in charge.*

*35. The principle of accountability is considered as a cornerstone of the human rights framework. It is a crucial feature that must govern the relationship between "duty bearers" in authority and "right holders" affected by their actions. Accountability of institutions is also one of the development goals adopted by the United Nations in 2015 and is also recognized as one of the six principles of the Citizens Charter Movement.*

*36. Accountability has three essential constituent dimensions : (i) responsibility, (ii) answerability, and (iii) enforceability. Responsibility requires the identification of duties and performance obligations of individuals in authority and with*

---

<sup>3</sup> (2023) 1 SCC 329

*authorities. Answerability requires reasoned decision-making so that those affected by their decisions, including the public, are aware of the same. Enforceability requires appropriate corrective and remedial action against lack of responsibility and accountability to be taken. Accountability has a corrective function, making it possible to address individual or collective grievances. It enables action against officials or institutions for dereliction of duty. It also has a preventive function that helps to identify the procedure or policy which has become non-functional and to improve upon it.”*

23. In *Government (NCT of Delhi) v. Union of India*<sup>4</sup> referring to the direct relationship between principles of collective responsibility and Government accountability, this Court held:-

*“325. There is a direct relationship between the principle of collective responsibility and Government accountability. This relationship is conceptualised in The Oxford Companion to Politics in India:*

*Accountability can be defined in terms of outcomes rather than processes of Government..... It also includes the criterion of responsiveness to changes in circumstances that alter citizen needs and abilities... In other words, accountability refers to the extent to which actual policies and their implementation coincide with a normative ideal in terms of what they ought to be... In this broad sense, accountability amounts to evaluating the nature of governance itself, in outcome-oriented terms.”*

24. Apart from the obligation of monitoring and reporting, the Central and State Information Commissioners are also given the power to recommend steps which the public authority ought to take in implementing the Act. Sub-Section (5) of Section 25 is in the following terms:

*“(5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying*

---

<sup>4</sup> (2018) 8 SCC 501

*the steps which ought in its opinion to be taken for promoting such conformity.”*

25. Having examined the *Right to Information* established by the statute under Section 3 in the context of the *obligations of public authorities* under Section 4, we are of the opinion that the purpose and object of the statute will be accomplished only if the *principle of accountability* governs the relationship between ‘right holders’ and ‘duty bearers’. The Central and State Information Commissions have a prominent place, having a statutory recognition under Chapters III and IV of the Act and their powers and functions all enumerated in detail in Section 18 of the Act. We have also noted the special power of ‘Monitoring and Reporting’ conferred on the Central and State Information Commissioners which must be exercised keeping in mind the purpose and object of the Act, i.e., ‘to promote transparency and accountability in working of every public authority’.
26. For the reasons stated above, we direct that the Central Information Commission and the State Information Commissions shall continuously monitor the implementation of the mandate of Section 4 of the Act as also prescribed by the Department of Personnel and Training in its Guidelines and Memorandums issued from time to time. The directions will also include instructions under O.M. dated 07.11.2019 issued by the Department. For this purpose, the Commissioners will also be entitled to issue recommendations under sub-Section (5) of Section 25 to public authorities for taking necessary steps for complying with the provisions of the Act.

27. The Writ Petition (C) No. 990 of 2021 is disposed of with the direction to the Central Information Commission and the State Information Commissions to ensure proper implementation of the mandate of Section 4 of the Act, by following the directions as indicated above.
28. There shall be no order on costs.

.....CJI.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[Pamidighantam Sri Narasimha]

.....J.  
[J.B. Pardiwala]

**New Delhi;**  
**August 17, 2023**



2023 INSC 915

Reportable

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION**

**Writ Petition (Civil) No. 360 of 2021**

**Kishan Chand Jain**

**...Petitioner**

**Versus**

**Union of India & Ors**

**...Respondents**

**O R D E R**

1. The petitioner invokes the jurisdiction of this Court under Article 32 of the Constitution seeking directions for the better functioning of the State Information Commissions<sup>1</sup> under the Right to Information Act, 2005.<sup>2</sup> It is stated that the SICs, along with the Central Information Commission,<sup>3</sup> play a pivotal role in the proper implementation of the RTI Act. However, most of the SICs are located in the capital cities of the States and conduct proceedings physically. The petitioner asserts that this imposes prohibitive costs on applicants and appellants, especially those living in the remote areas, as they have to travel long distances to approach the SICs. Such bottlenecks in the functioning of the SICs deprive applicants and appellants from effectively

Signature Not Verified

Digitally signed by  
NEETA SAPRA  
Date: 2023-10-16  
16:13:52 IST  
Reason:

<sup>1</sup> "SIC"

<sup>2</sup> "RTI Act"

<sup>3</sup> "CIC"

exercising their right to information. Therefore, the petitioner urges that the SICs should allow the option of virtual hearings along with physical hearings.

2. The petitioner asserts that it is the legislative intention of Parliament in enacting the RTI Act to provide information to applicants at a reasonable expense. Virtual hearings further this legislative intention as they provide access to information to an applicant in a cost-effective manner. It has been further asserted that most SICs do not have the facility of online filing of RTI appeals and complaints similar to the CIC. Moreover, the petitioner urged that the SICs should adopt a user-friendly digital portal to make the functioning of the SICs more effective and productive.
3. On the basis of the averments, the petitioner has sought the reliefs as summarized below:
  - (i) SICs should hear complaints as well as second appeals by giving the option of both, physical and virtual hearing through a digital platform and the State Governments must support the SICs financially and technically to conduct virtual hearings;
  - (ii) SICs must update and have self-contained digital portals with online facilities for:
    - (a) filing RTI complaints and appeals;
    - (b) showing the case status of pending/decided matters;
    - (c) uploading daily orders and judgments;
    - (d) uploading cause lists; and
    - (e) uploading annual reports under Section 25 in line with Section 4(2).

- (iii) SICs must be directed to dispose of the complaints within a fixed time frame, preferably within four months;
  - (iv) Norms be set up for disposal of a stipulated number of cases per working day by every Information Commissioner;
  - (v) SICs should prepare annual reports on the implementation of the provisions of the 2005 Act and provide them to the State Government under Section 25(1); and
  - (vi) SICs should ensure the imposition and recovery of penalties from erring information officers according to Section 20(1).
4. Notice was issued in these proceedings on 20 April 2021. Thereafter, the proceedings have been listed before this Court on 21 April 2023 and 10 July 2023.
5. The RTI Act was enacted to operationalize the rights of citizens to access information about the functioning of the government, which is otherwise only held by the government authorities. The legislation sets out a practical regime for citizens to secure access to information under the control of the public authorities, promote transparency and accountability in the functioning of public authorities, and constitute the CIC and SICs. Thus, the RTI Act pursues the legitimate state aim of ensuring transparent and accountable government.
6. In view of the stated objectives, Section 3 of the RTI Act provides that all citizens shall have the right to information. Section 2(j) defines right to information to mean the right to information accessible under the RTI Act which is held by or under the control of any public authority and to include :

(i) the right to inspection of work, documents records; (ii) taking notes, extracts or certified copies of documents or records; (iii) taking certified samples of material; and (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes, or in any other electronic mode or through printouts where such information is stored in a computer or in any other device. Section 2(h) defines a public authority as follows:

(h) "public authority" means any authority or body or institution of self-government established or constituted –

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government, and includes any –
  - i. body owned, controlled or substantially financed;
  - ii. non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

7. Section 4 obliges every public authority to maintain its records and computerize them to facilitate right to information under the RTI Act. Section 5 mandates every public authority to designate Central Public Information Officers<sup>4</sup> or State Public Information Officers<sup>5</sup>, as the case may be, to provide information to persons requesting for the information under the RTI Act. Section 6 allows any person to make a request in writing to the CPIO or the SPIO, as the case may be, specifying the particulars of the information sought by them. Section 7(1) mandates the CPIO or SPIO to act on the request for information within thirty days and forty-eight hours in case of information

---

<sup>4</sup> "CPIO"

<sup>5</sup> "SPIO"

concerning the life and liberty of a person. Moreover, Section 7(2) states that failure of the CPIO or SPIO to give a decision within the stipulated timelines will be deemed to be a refusal of the request.

8. Section 2(k) defines SIC to mean “the State Information Commission constituted under sub-section (1) of section 15.” Section 15 provides that every State Government shall, by notification in the Official Gazette, constitute an SIC to exercise powers conferred on, and to perform the functions assigned to them under the RTI Act. The SICs consists of the State Chief Information Commissioner and such number of State Information Commissioners, not exceeding ten, as may be deemed necessary. The general superintendence, direction, and management of the affairs of the SICs is vested in the State Chief Information Commissioner.
9. Section 18 specifies the powers and functions of Information Commissions in the following terms:

**“18. Powers and functions of Information Commissions – (1)**

Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person, –

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

- (b) who has been refused access to any information requested under this Act;
- (c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;
- (d) who has been required to pay an amount of fee which he or she considers unreasonable;
- (e) who believes that he or she has been given incomplete, misleading, or false information under this Act; and
- (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil suit while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing summons for examination of witnesses or documents; and
- (f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or the State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds."

10. The nature of powers exercised by the CIC or SICs under Section 18 is supervisory in nature.<sup>6</sup> Under Section 18(3), the CIC or SICs have the same powers as are vested in a civil court while trying a suit in respect of the matters specified under the said provision.

11. Section 19 provides the appellate procedure by allowing any person who is aggrieved by refusal of information to seek an effective redress and remedy. Section 19(1) allows any person who does not receive a decision within the time specified in Section 7 to prefer a first appeal to a senior officer of CPIO or SPIO. Section 7(3) allows any person who is aggrieved by the decision of such senior officer of CPIO or SPIO to file a second appeal with the CIC or SIC. In such proceedings, the onus to prove that the denial of request was justified lies on the CPIO or SPIO who denied the request. Section 19(8) provides that a CIC or SIC, while deciding, has the power to:

- (a) require the public authority to take such steps as may be necessary to secure compliance with the provisions of the RTI Act, including –
  - (i) provide access to information, if so requested, in a particular form;
  - (ii) appoint a CPIO or SPIO, as the case may be;
  - (iii) publish certain information or categories of information;
  - (iv) make necessary changes to its practices in relation to the maintenance, management and destruction of records;

---

<sup>6</sup> Chief Information Commissioner v. State of Manipur, (2011) 15 SCC 1

- (v) enhance the provision of training on the right to information for its officials;
  - (vi) provide it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) impose any of the penalties provided under this Act; and
- (d) reject the application.
12. The SICs exercise broad powers, including among them the power to conduct inquiries into complaints from any person, hear appeals, and impose penalties. They decide on matters and issues pertaining to the right to information. In **Union of India v. Namit Sharma**,<sup>7</sup> this Court held that the Information Commissions are required to act in a fair and just manner while following the procedure laid down in Sections 18, 19, and 20.
13. Section 26(3)(b) requires the appropriate government, if necessary, to update and publish guidelines referred to in sub-section (2) including the postal and street address, phone and fax number and, if available, electronic mail address of the CPIO or SPIO, as the case may be of every public authority appointed under Section 5(1).
14. In pursuance of the order issuing notice, counter affidavits have been filed by SICs of Arunachal Pradesh, Assam, Bihar, Goa, Haryana, Himachal Pradesh, Karnataka, Madhya Pradesh, Manipur, Sikkim, Tamil Nadu, Uttar Pradesh,

---

<sup>7</sup> (2013) 10 SCC 359

and West Bengal. The position in regard to the SICs has been summarized in the following tabulation contained in the rejoinder:

<b>S.No.</b>	<b>Name of SIC</b>	<b>Whether hybrid mode adopted</b>	<b>Para of CA</b>
1	Himachal Pradesh (R-12)	Yes	4
2	Karnataka (R- 14)	Yes	2
3	Haryana (R-11)	Yes	4
4	Sikkim (R-25)	No	5
5	Punjab (R-35)	Yes	6
6	Arunachal Pradesh (R-48)	No Mention	-
7	Tamil Nadu (R-42)	Yes	12-13
8	Uttar Pradesh (R 29)	No but is not opposed to virtual hearing	17
9	Bihar(R-7)	Yes but discretion to conduct hearing through hybrid mode be left to SIC	6
10	Manipur (R-18)	Yes	4
11	Goa (R-9)	No	7 & 8
12	West Bengal (R-38)	Yes	3(iv)
13	Madhya Pradesh (R -43)	Yes	6

15. The CIC conducts its proceedings in a hybrid manner, which ensures ease of access to citizens in pursuing their complaints and appeals under the RTI Act. However, from the material which has been placed before the Court in the counter affidavits filed by some of the SICs, it is evident that there is a variation in the practice which is followed across different States.

16. The RTI Act is based on the principle that citizens have a right to know about the functioning of every public authority. Correspondingly, it also places a duty on the public authorities to act in a responsible and transparent manner by providing information about their functioning to the citizens.<sup>8</sup> In the process, the legislation promotes the ideals of open government and democracy.<sup>9</sup> Democracy requires an informed citizenry and transparency in functioning for the electors to hold the elected representatives to account.<sup>10</sup> Thus, the right to information promotes the values of participative democracy and accountability.
17. The right to information is not merely a statutory right for, it has also been recognized as a constitutional right. The freedom of speech and expression under Article 19(1)(a) includes the right to acquire and disseminate information.<sup>11</sup> The right to information has also been recognized as a facet of Article 21.<sup>12</sup> This intersection with the constitutional right entails a heightened burden and responsibility on the CIC and SICs to ensure that individuals get access to information on matters of public concern under the provisions of the RTI Act. In **Anjali Bharadwaj v. Union of India**, this Court held that the existence of the CIC and SICs is imperative and vital for the smooth working of the RTI Act.<sup>13</sup> Recently, a three-Judge Bench of this Court in **Kishan**

---

<sup>8</sup> State of U P v. Raj Narain, (1975) 4 SCC 428

<sup>9</sup> S P Gupta v. Union of India, 1981 Supp SCC 87

<sup>10</sup> Dinesh Trivedi v. Union of India, (1997) 4 SCC 306

<sup>11</sup> Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal, (1995) 2 SCC 161

<sup>12</sup> Reliance Petrochemicals Ltd v. Proprietors of Indian Express Newspapers, Bombay Pvt Ltd, (1988) 4 SCC 592

<sup>13</sup> (2019) 18 SCC 246

**Chand Jain v. Union of India**<sup>14</sup> observed that the CIC and SICs have a prominent place under the RTI Act and they must exercise their powers and functions keeping in mind the purpose and object of the legislation.

18. The RTI Act provides for setting up of Information Commissions for providing effective access to justice to citizens to agitate their grievance of perceived breaches of the right to information by public authorities. Under the scheme of the RTI Act, any person aggrieved by the denial of information under Section 7 can approach the SICs to seek redressal. In more than one way, the SICs are authorities empowered to redress and remedy the grievances of citizens.
19. Access to justice is a right of constitutional purport which signifies that individuals have effective means to approach legal institutions to seek appropriate legal remedies. The ability to access legal institutions empowers individuals to understand and exercise their legal and constitutional rights. Access to justice enhances the quality of human life and, therefore, is an important facet of right to life under Article 21. In **Anita Kushwaha v. Pushap Sadan**,<sup>15</sup> a Constitution Bench of this Court held that access to justice is also a facet of Article 14, which guarantees equality before law and equal protection of laws to both the citizens and non-citizens alike. As a result, the inability of any person to access courts or any other adjudicatory mechanism

---

<sup>14</sup> 2023 SCC OnLine SC 1021

<sup>15</sup> (2016) 8 SCC 509

provided for determination of rights and obligations due to institutional inadequacy is bound to result in a denial of right to equality.

20. Article 39A of the Constitution recognizes the rights of citizens to equal justice and free legal aid. Reading Articles 14, 21, and 39A harmoniously, it is evident that is the constitutional duty of the organs of the state to provide individuals with the means of access to justice in an effective and efficient manner.<sup>16</sup> Particularly, it is duty of the Government to raise the standards of infrastructure by adopting technology to make our institutional processes accessible and inclusive.
21. The recent technological advancements in terms of video-conferencing must be used to promote inclusion of people living in remote areas within the fold of the justice delivery mechanism. Physical courts require the litigants and parties living in remote areas to travel long distances to appear before the court. With increasing costs of travel and other related expenses, video-conferencing solutions provide a cost-effective and efficient alternative to the physical courts. Technology allows us to create and use a “virtual courtroom” which is as real as any physical courtroom. In more than one-way, virtual courts democratize our legal processes by expanding the courtroom area beyond the walls of the courtroom. In **Swapnil Tripathi v. Supreme Court of India**, it was observed that technological solutions can be a tool to actualize the right of access to justice by providing virtual entry to the litigants in the courtroom.<sup>17</sup> However, virtual courtrooms are not just restricted to allowing

---

<sup>16</sup> Brij Mohan Lal v. Union of India, (2012) 6 SCC 502

<sup>17</sup> (2018) 10 SCC 639

litigants to virtually enter courtrooms; they also allow citizens to participate effectively in the court proceedings. The transcendental effect of technology is not only to further the constitutional right of individuals to access justice, but it also strengthens the rule of law and democracy.

22. It is a constitutional duty of every adjudicatory institution, may it be courts, tribunals, or commissions, to adopt technological solutions such as video-conferencing and make them available to litigants and the members of the Bar on a regular and consistent basis. The use of technology is no longer an option. Properly deployed for the purpose of conducting hybrid or virtual hearings, technology has the potential to ensure access to justice by obviating the need for citizens to travel long distances to secure the right of being heard.
23. In view of the above discussion, we are of the considered view that access to the Information Commissions is integral to securing the right to information, which is a necessary concomitant of right to equality under Article 14, the freedom of speech and expression under Article 19(1)(a) of the Constitution, and the right to life under Article 21. Accordingly, we direct that all SICs across the country must provide hybrid modes of hearing to all litigants for the hearing of complaints as well as appeals. All SICs must provide an option for availing of a hybrid mode of hearing which shall be at the discretion of the applicant, or as the case may be, the appellant. The links for availing of the option must be stipulated in the daily cause list of the Information Commissions across the country. This shall be operationalized no later than by 31 December 2023.

24. That apart, there can be no gainsaying the fact that e-filing provides round the clock access to courts, and in the process, facilitates the convenience of lawyers and litigants.<sup>18</sup> We direct that all SICs must ensure that e-filing of complaints and appeals is provided in a streamlined manner to every litigant. Steps should also be taken having regard to the provisions of Section 26 of the RTI Act to ensure that service is effected on the Public Information Officers through the electronic mode. This shall also be implemented by 31 December 2023.
25. All Central and State Ministries shall take steps within a period of one month from the date of this order to compile the email addresses of the Central and State Public Information Officers which shall be furnished to the CIC and to all the SICs, as the case may be.
26. In order to facilitate the implementation of this order, we direct that the Secretary, Department of Personnel and Training shall convene a meeting of all the Central and State Information Commissioners within a period of one month from the date of this order. Comprehensive modalities for the implementation of the above directions shall be set up.
27. All the State Governments shall cooperate in the implementation of the order. The State Governments shall, where funds are required, ensure provision of necessary funds to all the SICs for setting up the infrastructure for conducting virtual hearings. The CIC and SICs would be at liberty to avail of the facilities

---

<sup>18</sup> M P High Court Bar v. Union of India, 2023 SCC OnLine SC 365

which have been provided by the NIC for setting up the websites on the S3  
WAS Platform which provides for ease of access in the electronic mode.

28. We are hopeful that with the fulfilment of the above directions, the implementation of the RTI Act would be streamlined to facilitate access to justice and information to citizens.
29. The writ petition is accordingly disposed of.
30. This Court wishes to record its appreciation of the assistance which has been rendered by Mr. Kishan Chand Jain on the one hand and Mr. K. M. Natraj, Additional Solicitor General, on the other.
31. Pending applications, if any, stands disposed of.

.....CJI.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[J B Pardiwala]

.....J.  
[Manoj Mishra]

New Delhi;  
October 09, 2023

GKA