

## Whether RBI has Fiduciary Relationship with Banks in not disclosing the information sought under RTI?

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*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. 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. RBI as a Watch Dog should have been more dedicated towards disclosing information to the general public under the Right to Information Act.*

**1. Introduction:** Economic interests of a nation in most common parlance are the goals, which a nation wants to attain, to fulfil its national objectives. 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 since 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.

**1.1.** The preamble of 'The Right to Information Act, 2005' (RTI) narrates that it is "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 ....". Section 3 narrates that subject to the provisions of this Act, all citizens shall have the right to information. Section 6(2) further states that the applicant making request for

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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. However, Section 8 deals with certain cases under which the exemption from disclosure of information has been narrated.

2. Recently a case titled as *Reserve Bank of India v. Jayantilal N. Mistry* MANU/SC/1463/2015, Transferred Case (Civil) No. 91 to 101 of 2015, came up before the Supreme Court which was decided on 16<sup>th</sup> December, 2015. The main issue that arose in these transferred cases was, 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.

**2.1. Facts of the case:** Information were sought by the various RTI applicants from the Banks/RBI, as tabulated below:

<i>Transferred case (Civil) No.</i>	<i>Transfer Petition (Civil) No.</i>	<i>Petitioner(s)</i>	<i>Respondent(s)</i>
91 of 2015	707 of 2012	RBI	Jantilal N. Mistry
92 of 2015	708 of 2012	ICICI Bank Ltd	S S Vohra and Others
93 of 2015	711 of 2012	NABARD	Kishan Lal Mittal
94 of 2015	712 of 2012	RBI	P P Kapoor
95 of 2015	713 of 2012	RBI	Subhash Chandr Agrawal
96 of 2015	715 of 2012	RBI	Raja M. Shanmugam
97 of 2015	716 of 2012	NABARD	Sanjay Sitaram Kurhade
98 of 2015	717 of 2012	RBI	K P Muralidharan Nair
99 of 2015	718 of 2012	RBI	Ashwini Dixit
100 of 2015	709 of 2012	RBI	A.Venugopal and another
101 of 2015	714 of 2012	RBI	Dr. Mohan K Patil and others

**2.2** The gist of the information sought and reply given by the RBI are appended below:

<i>Information sought</i>	<i>Reply given</i>
<b>TC 91 of 2015:</b> The informant sought last 20 years inspection (carried out with name of inspector) report on Makarpura Industrial Estate Cooperative Bank Ltd and action taken report.	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.
<b>TC 91 of 2015:</b> (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 above. (ii) This information is not available with the Department.

<p><b>TC 92 of 2015:</b> 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 fined Rupees one crore for such violations. Please give me the names of the banks with details of violations committed by them.</p>	<p>We do not have this information.</p>
<p><b>TC 92 of 2015:</b> '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 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>	<p>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 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) &amp; (e) of the RTI Act (extracts enclosed). We, therefore, are unable to accede to your request.</p>
<p><b>TC 92 of 2015:</b> Imposition of fine on ICICI Bank under Section 13 of the PMLA for loss of documents in floods.</p>	<p>We do not have any information to furnish in this regard.</p>
<p><b>TC 92 of 2015:</b> Copy of the Warning or 'Advisory Note' issued twice issued to the bank in the last two years and reasons recorded therein. 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>
<p><b>TC 93 of 2015:</b> Copies of inspection reports of Apex Co-operative Banks of various States/Mumbai DCCB from 2005 till date.</p>	<p>Furnishing of information is exempt under Section 8(1)(a) of the RTI Act.</p>
<p><b>TC 93 of 2015:</b> Provide confirmed/draft minutes of meetings of Governing Board/ Board of Directors/Committee of Directors of NABARD from April, 2007 till date.</p>	<p>Furnishing of information is exempt under Sec. 8(1)(d) of the RTI Act</p>
<p><b>TC 95 of 2015:</b> Complete and detailed information including related documents/ correspondence/file noting etc of RBI on</p>	<p>As the violations of which the banks were issued Show Cause Notices and subsequently imposed penalties and based on the findings of the</p>

2016]

WHETHER RBI HAS FIDUCIARY RELATIONSHIP WITH BANKS  
IN NOT DISCLOSING THE INFORMATION SOUGHT UNDER RTI?

5

<p>imposing fines on some banks for violating rules like also referred in enclosed news clipping.</p> <p>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.</p>	<p>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.</p>
<p><b>TC 95 of 2015:</b> 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.</p> <p>List of banks out of those in query (2) above where fine was not imposed giving details like if their reply was satisfactory etc.</p>	<p>Same as above</p>
<p><b>TC 96 of 2015:</b> 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>
<p><b>TC 97 of 2015:</b> 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.</p>	<p>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.</p>
<p><b>TC 98 of 2015:</b> 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>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>Also, please provide the above information in the following format-</p> <p>Date of the complaint</p> <p>Name of the complaint</p> <p>Subject matter of the complaint</p> <p>Brief description of the facts and 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>	
<p><b>TC 98 of 2015:</b> 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.</p>	<p>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.</p>
<p><b>TC 98 of 2015:</b> 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> <ul style="list-style-type: none"> <li>- Brief violations/contraventions made by SCB</li> <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 Replies/defense/explanations for each of the violation/contravention made by SCB.</li> <li>- RBI remarks/findings with regard to the violations/contraventions made by SCB.</li> </ul>	<p>Same as above.</p>
<p><b>TC 99 of 2015:</b> 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>	<ol style="list-style-type: none"> <li>1. Enquiry was carried out against scams/financial irregularities of United Mercantile Cooperative Bank Ltd. as mentioned in the enclosed published news.</li> <li>2. Note/explanation has been called for from the bank <i>vide</i> our letter dated 8<sup>th</sup> July, 2011 regarding errors mentioned in enquiry report.</li> <li>3. The other information asked here is based on</li> </ol>

2016]

WHETHER RBI HAS FIDUCIARY RELATIONSHIP WITH BANKS  
IN NOT DISCLOSING THE INFORMATION SOUGHT UNDER RTI?

7

	the conclusions of Inspection Report. We 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.
<b>TC 101 of 2015:</b> Copies of complaints received by RBI against illegal working of the Deendayal Nagri Shakari Bank Ltd, District Beed, 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.
<b>TC 101 of 2015:</b> Action initiated by RBI against the Deendayal Nagri Shakari Bank Ltd, District Beed, i, 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 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.
<b>TC 101 of 2015:</b> 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.

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, the Supreme Court directed to remit the entire record of the writ petitions to this Court within four weeks."

### 2.3. Issue involved in the matter:

- 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.



- 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?

#### 2.4. Observation made by the Supreme Court:

2.4.1. 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. The relevant Section/Sub-sections are narrated for clarity on the issue:

**Section 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;
- (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;

#### 2.4.2. Whether RBI is having fiduciary relations with banks:

- The 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. **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.**
- **What is Fiduciary Relation:** Fiduciary relationship as defined by The Advanced Law Lexicon, 3<sup>rd</sup> Edition, 2005, means, “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 traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer.”
- 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.

- The Apex Court opined that 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.

#### 2.4.3. Whether the statutory duty of RBI is to uphold the interest of public at large:

- 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.
- 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 Central Information Commission (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. 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.

#### 2.4.4. Information by Mandate of Law v/s Fiduciary relationship:

- 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 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.
- 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;

- 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.

#### 2.4.5. Transparency of Financial Institutions:

- The Court surmised that many Financial Institutions have resorted to such acts which are neither clean nor transparent and have tried to defraud the public.. 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. These acts are neither in the best interests of the Country nor in the interests of citizens. The RBI as a Watch Dog should have been more dedicated towards disclosing information to the general public under the Right to Information Act.

#### 2.4.6. Severability of information:

- The Court opined 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."

**2.5. Held:** The Supreme Court came to the conclusion that the CIC has passed the impugned orders giving valid reasons and the said orders, therefore, need no interference by this Court.

**3. Summing up:** This is a land mark decision of Supreme Court under RTI Act. 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.