Subject wise decisions of High Courts

*** Please click on Case Title for Details**

Sections	Subject	Court Name	Cases
Section 2 (f)	**Definition of Information**	**Delhi High Court**	PoornaPrajna Public School V/S Central Information Commission
			The registrar ,Supreme Court of India V/s Commodore Lokesh k batra
			Virendra Yadav V/S Central Public information Officer
		Kerala High Court	Mannatilkumar V/s Central Information Commission
Section 2 (h)	**Definition of Public authority**	**Delhi High Court**	Delhi Integrated Multi model Transit System Ltd V/S Rakesh Aggarwal
			Army welfare Housing Organisation V/S Adjutant Generals Branch
			Northern Zone Railway Employees cooperative thrift and credit society ltd V/s Central registrar cooperative Society
			Indian Institute of Banking and finance V/s MukulSrivastva
			Institute of Banking Personnel Selection V/s The registrar , Central Information Commission

Sections	Subject	Court Name	Cases
Section 2 (h)	**Definition of Public authority**	**Delhi High Court**	Subhash Chandra Agrawal V/s office of the Attorney general of india
			Hardicon Ltd V/S Madan Lal
			Subhash Chandra Agrawal V/s Indian Farmers fertiliser coop Ltd
			IFCI Ltd V/S RavinderBalwani
			Indian Olympic Association V/S Veeresh Malik
			Union of India V/s Central Information Commission
			Indian Potash limited V/S Union of India
			Dominic Simon V/S Central Public Information officer
			Batra Hospital & Medical Research Centre V/S Central Information commission
		Calcutta High Court	Dinesh Sinha V/S Council for the India School Certificate Examinations

Sections	Subject	Court Name	Cases
Section 2 (j)	**Right to information**	**Delhi High Court**	Registrar of companies V/S DharmendrakumarGarg
			Poorna Prajna Public School V/S Central Information Commission
			The registrar ,Supreme Court of India V/s Commodore Lokesh k batra
Section 8(1)(a)	**Security, Strategic, Scientific or Economic interests of the state**	**Delhi High Court**	Union of India V/S Central Information Commission
			Union Of India V/S G Krishnan
			Joginder Pal Gulati v/s The officer on special duty
Section 8 (1) (d)	**Commercial Confidence**	**Delhi High Court**	All India Institute of Medical Sciences V/S Vikrant Bhuria
			Reserve Bank of India V/S Kishanlal Mittal
			Bharat Sanchar Nigam ltd V/s Shri Chandersekhar
			NareshTrehan V/S Rakesh Kumar Gupta
			General Manager Finance, Airindia V/s Virender Singh
		Punjab and Haryana High Court	RajanVerma V/S Union of India
		Allahabad High Court	Anjan Mukherjee V/S Central information commission

Sections	Subject	Court Name	Cases
Section 8 (1) (e)	**Fiduciary Relationship**	**Delhi High Court**	Union of India V/s Col V K Shad
			Indian Institute of Technology V/s NavinTalwar
			Union of India V/S Central Information commission
			Union Of India v/s R S Khan
			Union Public Service Commission V/S G S Sindhu
			UPSC V/S Majorsingh
			THDC India ltd V/s R K Raturi
			Rekha Chopra V/S State Bank of Bikaner & Jaipur
			NareshTrehan V/S Rakesh Kumar Gupta
			Union public Service commission V/S Hawa Singh
			State bank of India V/s Raju Vanzhakkala
			Satpal V/S Central Information Commission
			Paras Nathsingh V/S Union of India
Section 8 (1) (g)	**Danger to Life or Physical Safety**	**Delhi High court**	Union Public Service Commission V/S G S Sindhu
			Union public service commission V/s T k Ramalingaswamy
			The CPIO, ministry of home affairs V/S central information commission

Sections	Subject	Court Name	Cases
Section 8 (1) (h)	**Impede the process of investigation**	**Delhi High Court**	Bhagat Singh V/s chief Information commissioner
			Director of Income Tax (Investigation) V/S Bhagat Singh
			Adesh Kumar V/S Union of India
			SurinderPal Singh V/S UOI
			B S Mathur V/S Public Information Officer of Delhi High court
			SudhiranjanSenapati V/S Union of India
			Union of India V/S O P Nahar
			Union of India V/S Central Information commission
			Rahul Kesarwani V/s Central information Commission
			Hemantgoswami V/s Central bureau of investigation
			Union Bank of india V/s Central Information Commission
			HiraLal Bansal V/S Central Information commission
			Deputy Commissioner of Police V/S Subhash Chandra Agarwal
			Central Board of direct Taxes V/s SatyaNarain Shukla
			Union bank of India V/s Central Information commission

Sections	Subject	Court Name	Cases
Section 8 (1) (i)	**Disclosure of Cabinet Papers**	**Delhi High Court**	Union of India V/S Central Information Commission
			Union of India V/S Central Information commission
			Union Of India V/S Pramodkumar Jain
Section 8 (1) (j)	**Personal Information**	**Delhi High court**	JamiaMilliaIslamia V/S Ikramuddin
			Presidents Secretariat V/s NitishkumarTripathi
			BrijLal V/S Central Information Commission
			Union Public Service Commission V/S R K Jain
			Union of India V/s Hardev Singh
			Oriental Bank of commerce V/S Sunita Sharma
			Union Of India V/S R jayachandran
			Vijay Prakash V/s UOI
			Union of India V/S Central Information commission
			Arvind Kejriwal V/S Cabinet Secretariat
			Rajinder Jaina V/S central Information commission

Sections	Subject	Court Name	Cases
Section 8 (1) (j)	**Personal Information**	**Delhi High court**	Union Public Service Commission V/S G S Sindhu
			Union of India V/S Balendra Kumar
			Telecom Regulatory authority of india V/S Yashpal
			THDC India ltd V/s R K Raturi
			Union Of India V/S Sita Ram Verma
			The registrar , Supreme Court of india V/s subash Chandra Agarwal
			Union public Service commission V/S Hawa Singh
			Canara Bank V/s P N Shukla
			Central Bank Of India V/S Union of India
			The institute of Cost Accountants of India v/s Central information Commission
			Rahul Kesarwani V/s Central information Commission
			UPSC V/S PinkiGaneriwal
			Union of India V/s kishanLal Meena
			Municipal Corporation pf Delhi V/S Rajbir
			Kamal Bhasin V/S Radha Krishna Mathur
			Satpal V/S Central Information Commission
			Allahabad Bank V/s Niteshkumartripathi

Sections	Subject	Court Name	Cases
Section 11	**Third Party information**	**Delhi High Court**	Oriental Bank of commerce V/S Sunita Sharma
			Bharat Sanchar Nigam ltd V/s Shri Chandersekhar
			THDC India ltd V/s R K Raturi
			Zoom Entertainment network ltd v/S central information Commission
			Harish Kumar V/S Provost marshal –Cum appellate authority
		High Court of Bombay	SurupsinghHryanaik V/s State of Maharashtra
		High Court of Gujarat	Reliance Industries Limited V/s Gujarat State Information Commission
Section 18	**Information Cannot be provided in Complaint filed**	**Delhi High Court**	Delhi Development Authority V/S Central Information Commission
			Union of India V/S P K Srivastava
			J K Mittal V/s CIC
			R K Jain V/S Chairman ,Incometax settlement Commission

Sections	Subject	Court Name	Cases
Section 20	**Penalty Proceedings**	**Delhi High court**	Registrar of companies V/S Dharmendra kumar Garg
			Mujibar rehman V/S Central Information Commission
			Ankur Mutreja V/S Delhi University
			UOI V/S Central Information Commission
			Praveen kumar Jha V/S Bhel Foundation
			Ministry of railways through V/S Girish mittal
			Maniram sharma V/s Central information Commission
			Naresh Kumar V/s Central Information commission
			B B Dash V/S Central Information commission
			N k Pandey V/S Puneet Gupta
			Harkrishan Das Nijhawan V/S SatyavirKatar
			AnandBhusan V/s Haritash
			Kripa Shankar V/S Central Information Commission
			R K Jain V/S Central Public Information officer
			Municipal Commission of delhi V/S R K jain
			V Rajan V/S Neeraj Kumar

Sections	Subject	Court Name	Cases
Section 22	**Act to have overriding effect**	**Delhi High Court**	Registrar of companies V/S Dharmendra kumar Garg
			Poorna Prajna Public School V/S Central Information Commission
			Deputy commissioner Of police v/S D K sharma
Section 24	**Act not to apply to certain organizations**	**Delhi High Court**	Directorate General of Security V/S Harender
			Union of India V/S Adarsh Sharma
			CPIO CBI V/S C J karira
			Dr Neelambhalla v/s Union of India
			Alam Singh V/S Union of India
			CBDT , M/O Finance , revenue Department V/s Central information Commission
			CPIO, Intelligence Bureau V/S Sanjiv Chaturvedi
			Central Board of direct Taxes V/s Satya Narain Shukla
			Presidents Secretariat V/s subhash Chandra Agarwal
			CPIO, Central Bureau of Investigation V/S Central Information commission

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION (CIVIL) NO. 7265 OF 2007

Reserved on : 15th September, 2009.
% Date of Decision : 25th September, 2009.

POORNA PRAJNA PUBLIC SCHOOL ….Petitioner.

Through Mr. Maninder Singh, Sr. Advocate with Mr.Ankur S.Kulkarni, Mr.Nirnimesh Dube, advocates.

VERSUS

CENTRAL INFORMATION COMMISSION & OTHERS …..Respondents

Mr.Sanjeev Sabharwal, advocate for respondent no.2-GNCTD.
Mr.K.K. Nigam, advocate for respondent 3-CIC.
Mr.Tushti Chopra, advocate for respondent no.4.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J.:

1. The petitioner Poorna Prajna Public School is a private unaided school recognized under the Delhi School Education Act, 1973 (hereinafter referred to as DSE Act, for short). Mr. D.K.Chopra, respondent no.4 herein, father of a former student of the petitioner School, had filed an application under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act, for short) before the Public Information Officer appointed by the Department of Education, Government of National Capital Territory of

Delhi(GNCTD, for short) on or about 18th September, 2006. Respondent no.4 had asked for the following information :-

> "1. Please provide me the information under RTI Act as to what decision were taken on my representations filed in your office Vasant Vihar file no.133/2005 and other offices. Why they were not communicated to me within stipulated period? What are the office rules?
>
> 2. MVS Thakur, Education Officer, told me on 25.1.2006 that they cannot interfere much in the non-aided school, but what is the role of your observer who was present in Executive Committee Meeting in Pooran Prajna Public School on 24.1.2006. If school does not do two meetings in a year what punishment can be given and who will give it.
>
> 3. I may be provided all copies of the minutes of the school since 1988 and action taken report."

2. Information in respect of query no.3 i.e. copies of the minutes of the managing committee were not available with the Department of Education. Accordingly, a request was sent by the Department of Education to the petitioner School. The petitioner School by their letter dated 30th August, 2007 submitted that they were a private unaided institution and not covered under the RTI Act and respondent no.4 had no *locus standi* to ask for information. It was pointed out that respondent no.4 had filed a writ petition in the High Court against the petitioner School which was dismissed. The petitioner also relied upon Rule 180(i) of the Delhi School Education Rules, 1973 (hereinafter referred to as DSE Rules, for short) and submitted that the information sought for cannot be furnished and was outside the purview of the RTI Act.

3. Not satisfied with the order passed by the public information officer, the respondent no.4 filed the first appeal and then approached the Central Information Commission (hereinafter referred to as CIC, for short).

4. The CIC by their impugned Order dated 12th September, 2007 has held that the petitioner School was indirectly funded by the Government as it enjoyed income tax concessions; was provided with land at subsidized rates etc. Further, the petitioner school was a 'public authority' as defined in Section 2(h) of the RTI Act. Lastly, the Information Commissioner has held that the public authority i.e. GNCTD can ask for information from the petitioner School and therefore the public information officer should have collected the information with regard to the minutes of the managing committee from the petitioner School and furnished the same to the respondent no.4. It was noted that all aided and unaided schools perform governmental function of promoting high quality education and further an officer of the GNCTD was nominated by the Directorate of Education as a member of the managing committee. GNCTD has control over the functioning of the private schools and has access to the information required to be furnished.

5. RTI Act was enacted in the year 2005 as a progressive and enabling legislation with the object of assigning meaningful role and providing access to the citizens. It ensures openness and transparency consistent with the concept of participatory democracy and constitutional right to seek information and be informed. It also ensures that the Government

and their instrumentalities are accountable to the governed and checks corruption, harassment and red-tapism.

6. The provisions of the RTI Act have not been challenged by the petitioner School in the present petition. The contentions raised and argued relate to interpretation of the provisions of RTI Act.

7. The terms "information" and "right to information" have been defined in Sections 2(f) and 2(j) of the RTI Act and read as under:-

> "**2(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"
>
> **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;"
>
> (emphasis supplied)

8. Information as defined in Section 2(f) means details or material available with the public authority. The later portion of Section 2(f)

expands the definition to include details or material which can be accessed under any other law from others. The two definitions have to be read harmoniously. The term "held by or under the control of any public authority" in Section 2(j) of the RTI Act has to be read in a manner that it effectuates and is in harmony with the definition of the term "information" as defined in Section 2(f). The said expression used in Section 2(j) of the RTI Act should not be read in a manner that it negates or nullifies definition of the term "information" in Section 2(f) of the RTI Act. It is well settled that an interpretation which renders another provision or part thereof redundant or superfluous should be avoided. Information as defined in Section 2(f) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law for the time being in force. Therefore, if a public authority has a right and is entitled to access information from a private body, under any other law, it is "information" as defined in Section 2(f) of the RTI Act. The term "held by the or under the control of the public authority" used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body. A private body need not be a public authority and the said term "private body" has been used to distinguish and in contradistinction to the term "public authority" as defined in Section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access, under any law, from private body, is information as defined under Section 2(f) of the RTI Act and has to be furnished.

9. It may be appropriate here to refer to the definition of the term "third party" in Section 2(n) of the RTI Act which reads as under:-

> "**2(n).** "third party" means a person other than the citizen making a request for information and includes a public authority."

10. Thus the term "third party" includes not only the public authority but also any private body or person other than the citizen making request for the information. The petitioner School, a private body, will be a third party under Section 2(n) of the RTI Act.

11. The above interpretation is in consonance with the provisions of Sections 11(1) and 19(4) of the RTI Act. Section 11 prescribes the procedure to be followed when a public information officer is required to disclose information which relates to or has been supplied by a third party and has been treated as confidential by the said third party. Section 19(4) stipulates that when an appeal is preferred before the CIC relating to information of a third party, reasonable opportunity of hearing will be granted to the third party before the appeal is decided. Third party as stated above includes a private body. As held above, a public authority is not a private body.

12. A private body or third party can take objections under Section 8 of the RTI Act before the public information officer or the CIC. In terms of Section 11(4) of the RTI Act, an order under Section 11(3) rejecting objections of the third party is appealable under Section 19 of the RTI Act before the CIC.

13. Information available with the public authority falls within section 2(f) of the RTI Act. The last part of section 2 (f) broadens the scope of the term 'information' to include information which is not available, but can be accessed by the public authority from a private authority. Such information relating to a private body should be accessible to the public authority under any other law. Therefore, section 2(f) of the RTI Act requires examination of the relevant statute or law, as broadly understood, under which a public authority can access information from a private body. If law or statute permits and allows the public authority to access the information relating to a private body, it will fall within the four corners of Section 2(f) of the RTI Act. If there are requirements in the nature of preconditions and restrictions to be satisfied by the public authority before information can be accessed and asked to be furnished from a private body, then such preconditions and restrictions have to be satisfied. A public authority cannot act contrary to the law/statute and direct a private body to furnish information. Accordingly, if there is a bar, prohibition, restriction or precondition under any statute for directing a private body to furnish information, the said bar, prohibition, restriction or precondition will continue to apply and only when the conditions are satisfied, the public authority is obliged to get information. Entitlement of the public authority to ask for information from a private body is required to be satisfied.

14. 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."

15. Section 22 of the RTI Act is an overriding clause but it does not modify any other statute or enactment, on the question of right and power of a public authority to call for information relating to a private body. A bar, prohibition or restriction in a statutory enactment, before information can be accessed by a public authority, continues to apply and is not obliterated by section 22 of the RTI Act. Section 2(f) of the RTI Act does not bring about any modification or amendment in any other enactment, which bars or prohibits or imposes pre-condition for accessing information from private bodies. Rather, it upholds and accepts the said position when it uses the expression "which can be accessed" i.e. the public authority should be in a position and entitled to ask for the said information. Section 22 of the RTI Act, an overriding provision does not mitigate against the said interpretation for there is no contradiction or conflict between the provisions of Section 2(f) of the RTI Act and other statutory enactments/law. Section 22 will apply only when there is a conflict between the RTI Act and Official Secrets Act or any other enactment. As a private body, the Petitioner School is entitled to plead that they cannot be compelled to furnish information because the public authority is not entitled to information/documents under the law. The petitioner school can also claim that information should not be furnished because it falls under any of the sub-clauses to Section 8 of the RTI Act. Any such claim, when made, has to be considered by the public information officer, first appellate authority and the CIC. In other words, a

private body will be entitled to the same protection as is available to a public authority including protection against unwarranted invasion of privacy unless there is a finding that the disclosure is in larger public interest.

16. Section 8 of the RTI Act is a non-obstante provision which applies notwithstanding other sections of the RTI Act. In other words, Section 8 over-rides other provisions of the RTI Act. Section 8 stipulates the exceptions or rules when information is not required to be furnished. Section 8 of the RTI Act is a complete code in itself. Section 8 does not modify the term "information" as defined in Section 2(f) of the RTI Act. Whether or not Section 8 applies is required to be examined when information under Section 2(f) is asked for. To deny "information" as defined in section 2(f), the case must be brought under any of the clauses of Section 8 of the RTI Act. "Right to information" under the RTI Act is a norm and Section 8 adumbrates exceptions i.e. when information is not to be supplied. It is not possible to accept the contention of the petitioner School that "information" as defined in Section 2(f) need not be furnished under the RTI Act for reasons and grounds not covered in Section 8. This will be contrary to the scheme of the RTI Act. Information as defined in Section 2(f) of the RTI Act is to be furnished and supplied, unless a case falls under sub-clauses (a) to (j) of Section 8(1) of the RTI Act. Thus all information including information furnished and relating to private bodies available with public authority is covered by Section 2(f) of the RTI Act. Further, information which a public authority can access under any other

law from a private body is also "information" under section 2(f). The public authority should be entitled to ask for the said information under law from the private body. Details available with a public authority about a private body are "information" and details which can be accessed by the public authority from a private body are also "information" but the law should permit and entitle the public authority to ask for the said details from a private body. Restrictions, conditions and prerequisites imposed and prescribed by law should be satisfied. The question whether information should be denied requires reference to Section 8 of the RTI Act.

17. Learned counsel for the petitioner School submitted that the Directorate of Education does not have an access to the minutes of the managing committee. Under Rule 180 (i) of the DSE Rules, the private unaided schools are required to submit return and documents in accordance with Appendix 2 thereto and minutes of the managing committee are not included in Appendix 2. Rule 180 (i) of the DSE Rules is not the only provision in the DSE Rules under which Directorate of Education are entitled to have access to the records of a private unaided school. Rule 50 of the DSE Rules, stipulates conditions for recognition of a private school and states that no private school shall be recognized or continue to be recognized unless the said school fulfills the conditions mentioned in the said Section. Clause (xviii) of Rule 50 of the DSE Rules reads as under:-

> "**50. Conditions for recognition.**- No private school shall be recognized, or continue to be

recognized, by the appropriate authority unless the school fulfills the following conditions, namely-

(i) - (xvii) x x x x x x

(xviii) the school furnishes such reports and information as may be required by the Director from time to time and complies with such instructions of the appropriate authority or the Director as may be issued to secure the continue fulfillment of the condition of recognition or the removal of deficiencies in the working of the school;"

18. Under Rule 50(xviii) of the DSE Rules, the Directorate of Education can issue instructions and can call upon the school to furnish information required on conditions mentioned therein being satisfied. Rule 50 therefore authorizes the public authority to have access to information or records of a private body i.e. a private unaided school. Validity of Rule 50(xviii) of the DSE Rules is not challenged before me. Under Section 5 of the DSE Act, each recognized school must have a management committee. The management committee must frame a scheme for management of the school in accordance with the Rules and with the previous approval of the appropriate authority. Rule 59(1)(b)(v) of the DSE Rules states that the Directorate of Education will nominate two members of the managing committee of whom one shall be an educationist and the other an officer of the Directorate of Education. Thus an officer of the Directorate of Education is to be nominated as a member of the management committee. Minutes of the management committee have to be circulated and sent to the officer of the Directorate of Education. Obviously, the minutes once circulated to the officer of the Directorate of Education have to be regarded as 'information' accessible to the Directorate of Education,

GNCTD. In these circumstances, it cannot be said that information in the form of minutes of the meeting of the management committee are not covered under Section 2(f) of the RTI Act.

19. In view of the above findings, the question whether the petitioner school is a public authority is left open and not decided.

Writ Petition has not merit and is accordingly dismissed. No costs.

(SANJIV KHANNA)
JUDGE

SEPTEMBER 25, 2009.
P

IN THE HIGH COURT OF DELHI AT NEW DELHI

(CIVIL APPELLATE JURISDICTION)

LETTERS PATENT APPEAL NO. 24 of 2015

IN THE MATTER OF:

The Registrar, Supreme Court of India …. Appellant

Versus

Commodore Lokesh K. Batra (Retd.) & Ors …. Respondents

Written Submissions on behalf of the Respondent No. 1

1. In India, the people are the true sovereign. The Constitution begins with the words "*We the people of India having solemnly resolved to constitute India*" and ends with the words "*do hereby adopt, enact and give to ourselves this Constitution.*" Thus people have given themselves the Constitution of India. Through the said Constitution, people have created legislatures, executive and the judiciary to exercise such duties and functions as laid out in the Constitution itself. In this democratic republic, it is not only the right, but also the duty of the people to oversee the functioning of all the institutions, including the judiciary.

2. The right to information regarding the functioning of public institutions is a fundamental right as enshrined in Article 19 of the Constitution of India. The Courts of the country have declared in a plethora of cases that the most important value for the functioning of a healthy and well informed democracy is transparency. In the matter of *State of UP v. Raj Narain*, AIR 1975 SC 865, a constitutional bench of the Hon'ble Supreme Court held that: "*[I]n a government of*

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." (Para 74)

3. In the case of *S.P. Gupta v. President of India and Ors*, AIR 1982 SC 149, a seven Judge Bench of the Hon'ble Supreme Court of India 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 arid at tunes, 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." (Para 65)

4. In the case of the *Union of India v. 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 Parliament or the State Legislatures, a 3 judge bench of the Hon'ble Supreme Court of India, 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's Act 1951 that candidates need not provide such information. The Hon'ble Supreme Court in PUCL case (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."

5. RTI Act 2005 as is noted in its very preamble that it 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*". All public authorities and not just the Supreme Court have had to change their administrative practices and maintenance of records in order to bring it in conformity with the RTI Act and also to facilitate the right to information. The CIC and SICs have been given the statutory responsibility and power to over-see this process of reform in the management, maintenance and retention of records in a manner that facilitates the right to information. The Ld. Single Judge in his judgment has therefore rightly upheld the order of the CIC.

6. As is clear from the counter affidavit filed by the respondent that he had sought similar information (as was sought from Supreme Court), from this Hon'ble Court. The PIO of this Hon'ble Court collated the said data from various Court Masters and provided the information to the respondent judge wise. Thereafter the respondent had also sought file notings from this Hon'ble Court as to how the earlier RTI application was processed. The entire file including file notings were

made avilable by this Hon'ble Court and the same were annexed to the counter affidavit filed by the respondent. The said notings demonstrate a simple fact that every court including the Supreme Court retains this information in easily accessible manner.

7. The argument of the Supreme Court registry that they do not separately keep the information of cases where judgments are reserved is incorrect and false. If it were true, then that would mean that if a Hon'ble judge of the Supreme Court wishes to know the cases where he has to deliver his judgments, the Supreme Court Registry would not be of much help to him, and would instead ask the Hon'ble judge to recall from his own memory.

8. It is submitted that there are 2 types of cases: Pending and Disposed. And then there are 2 types of pending cases: (i) where next date of listing has to be given, (ii) where judgments are reserved. Registry has to fix dates and send the cases to listing branch of SC in cases where more arguments/hearing is required. These cases are also known as adjourned matters. In the other cases, which are also 'pending', no dates have to be fixed/given since the arguments have been concluded and judgment/order is reserved. Therefore, this information is easily available with the Registry and Court Masters.

9. In any case, CIC had not asked the Hon'ble Supreme Court to create a compilation (if according to SC it doesn't exist) and furnish it to the respondent. CIC has only given a direction for future as to how SC can maintain its record in order to better serve the citizen's right to

information. This is a stautory power of the CIC under Section 19(8)(a)(iii) and (iv) of the RTI Act. Even de hors the said sub-section, the CIC as the guardian of the RTI Act is well within its right to direct the PIO and other officers of any public authority to maintain its records in manner that effectuates the people's fundamental right to know. Therefore, the Ld. Single Judge has rightly upheld the said direction of the CIC.

10. The issue of keeping judgments reserved was considered by the Hon'ble Supreme Court in Anil Rai vs State of Bihar (2001) 7 SCC 318, where several observations were made and several directions were passed that have a particular bearing on the instant case. The Hon'ble Supreme Court held:

> "*Before adverting to the merits of the appeal, I propose to deal with the shocking state of affairs prevalent in some High Courts as brought to our notice by the learned Counsel for the Appellants. The dismay picture depicted before us on the basis of the facts of these appeals is that a few Judges in some High Courts, after conclusion of the arguments, keep the files withheld with them and do not pronounce judgments for periods spread over years."*
>
> *"The prevalence of such a practice and horrible situation in some of the High Courts in the country has necessitated the desirability of considering the effect of such delay on the rights of the litigant public. Though reluctantly, yet for preserving and strengthening the belief of the people in the institution of the judiciary, we have*

decided to consider this aspect and to give appropriate directions."

"In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eye-brows, some time genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the Rule of Law."

"Under the prevalent circumstances in some of the High Courts, I feel it appropriate to provide some guidelines regarding the pronouncement of judgments which, I am sure, shall be followed by all concerned, being the mandate of this Court. Such guidelines, as for present, are as under:

(i) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the court officer concerned.

(ii) That Chief Justice of the High Courts, on their administrative side, should direct the Court Officers/ Readers of the various Benches in the High Courts to furnish every month the list of

cases in the matters where the judgments reserved are not pronounced within the period of that months.

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the concerned Chief Justice shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(iv) Where a judgment is not pronounced within three months, from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as deems fit in the circumstances."

11. There have been many occasions in SC in which judgments have been reserved more than a year, like in the Narco Analysis case, or in power of courts to order CBI investigation case, validity of Sec 377 IPC, and for months together in several others, as is well-known to advocates practicing in SC. This practice has been abhorred by many jurists and it is always held to be desirable that judgments are given in maximum two months of the conclusion of arguments. Judgments being reserved for a long time is also the reason of pendency and justice not being done as has been itself held by Hon'ble Supreme Court in Anil Rai judgment (quoted above). It is clear that the Appellant must be made to make available this information to effectuate the right to know of the litigants and of the general public.

12. Under these circumstances it is humbly submitted that the above appeal lacks merit and deserves to be dismissed. The respondent humbly submits that the orders of the Ld. CIC as well as of the Ld. Single Judge are correct both in law and the facts & circumstances of the case, and need no interference.

Dated: 27.01.2015 Prashant Bhushan

(Counsels for the Respondent No. 1)

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 495/2015

VIRENDRA YADAV ..... Petitioner
Through: Mr Divya Jyoti Jaipuriar, Adv.

versus

CENTRAL PUBLIC INFORMATION OFFICER (CPIO) ..... Respondent
Through: Mr Jasmeet Singh, CGSC with Mr Rajendra Sahu, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 19.01.2015

1. This writ petition is directed against the order dated 29.04.2014 passed by the Central Information Commission (in short CIC).

2. Evidently vide an application filed under the Right to Information Act, 2005 (in short RTI Act), dated 21.01.2013, the petitioner, sought information with regard to Chairpersons of Indian Bank Association (IBA), who were appointed to the said organization since 01.01.2000.

2.1 The said RTI application was filed with the Department of Financial Services, Ministry of Finance, Government of India. This information was denied by the CPIO of the said department vide a response dated 25.02.2013. The basis for rejecting the RTI application, was that, the information sought, did not rest with the said department and, therefore, it was suggested that the applicant may approach the IBA for seeking information, alluded to, in the RTI application.

3. The petitioner , preferred an appeal against the order of the CPIO which met the same fate and was, consequently, rejected vide order dated 08.04.2013. This is how the second appeal was preferred with the CIC. The CIC in its order provided briefly the following rationale in declining the relief sought for by the petitioner:

> "....6. The CPIO submitted that no information regarding the Indian Banking Association was held with the public authority and no regular meeting of the officials of the Department of Financial Services (on periodic basis) to be held with the Indian Banking Association were prescribed. The appellant had not specified information, i.e., any particular date/ name of the officer, who had held any such official meeting with the Indian Banking Association. Hence, it would not be possible to provide any information to the appellant..."
>
> (emphasis is mine)

3.1 Accordingly, the CIC accepted the stand of the CPIO of the concerned department that the information sought did not rest with it.

4. In the captioned writ petition, the order of the CIC has been assailed. The challenge is principally laid, on the ground, that the Department of Financial Services, Ministry of Finance could have taken recourse to provisions of Section 6(3) of the RTI Act and referred the petitioner to the department/ the ministry, which held the information.

5. A perusal of the petition would show that there is an averment to the effect that the CIC vide order dated 06.08.2008, held that, the IBA, was not a public authority, within the meaning of the RTI Act.

5.1 I have not been shown by the learned counsel for the petitioner any order of a superior court which has taken a contrary view, qua IBA. Therefore, a very interesting issue gets thrown up, which is this: Can

information pertaining to a particular entity which is declared, not be a Public Authority, within the meaning of a RTI Act, in proceeding taken out to ferret out information, be accessed via other entity (which is a public authority).

6. That apart, it has been pointed out by Mr Jasmeet Singh, learned counsel for the respondent, who appears on advance notice, that the CPIO, in a sense, has followed the procedure of Section 6(3) of the RTI Act, in as much as, it suggested the petitioner to approach the IBA for seeking the necessary information.

7. Learned counsel for the petitioner has, in order to buttress his submission, has drawn my attention to an office order dated 29.01.2013, issued by the very same department. He has referred me to serial no. 8, based on which it is suggested by him that the information sought for by the petitioner is available with the CPIO of the Department of Financial Services.

7.1 A bare perusal of an extract of the said order, which is set out below, would only show that it alludes information pertaining to dissemination of results and important information pertaining to studies on banking reforms.

> "..... Data Analyais: Reserve Bank of India Credit Policy – Busy Season – lack Season and selective credit control; financial sector assessment and sectoral credit analysis; Banking Statistics regarding bank deposits and advances, **Dissemination of results and important information relating to RBI, IBA, studies on banking reforms**; analysis of other international reports relevant to banking sector in India; analysis of Reports of Committee on Financial Sector Reform etc....."

7.2 Mr Jaipuriar, learned counsel for the petitioner, says that the above

extract shows that it also holds important information pertaining to IBA generally, including information related to the Chairpersons appointed to the IBA. To my mind, the extract does not read as suggested by the learned counsel for the petitioner. Notwithstanding the confusion created by unnecessary punctuation marks and manner in which the provision is drafted, the only sensible way to read it is the one indicated above by me.

7.3 This apart, what is notable is the fact that the CPIO of Department of Financial Services, in no uncertain terms, has said that the information sought is not available with him. I have no reason, to doubt, presently, the veracity of the stand taken by the CPIO, and that too, only on the basis of office order dated 29.01.2013.

8. At this stage, Mr Jaipuriar also seeks to place reliance on Section 2(f) of the RTI Act. On being queried, he candidly concedes that there was no averment made with regard to the provisions of Section 2(f) before the authorities below. There is, thus, no reference to provisions of Section 2(f).

8.1 Nevertheless, Mr Jaipuriar, based on the provisions of Section 2(f) says since, information means, '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 public authority, in this case, the Department of Financial Services, should be able to acess it from the IBA. This submission of Mr Jaipuriar, to my mind, begs the question. Once IBA is declared as an entiry which is not a public authority, the RTI Act cannot be used to access information from the IBA. Besides, the RTI Act, Mr Japiuriar has not referred me to any other law which the Department of Financial Services

can take recourse to seek information from IBA of the kind that the petitioner seeks.

9. The writ petition is, accordingly, dismissed.

RAJIV SHAKDHER, J

JANUARY 19, 2015
kk

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 24TH DAY OF OCTOBER 2014/2ND KARTHIKA, 1936

WP(C).No. 2261 of 2014 (G)

PETITIONER(S)/PARTY IN PERSON:

MANNATIL KUMAR,
89, JAWAHAR NAGAR, KOCHI 682 020.

BY ADV. SRI.MANNATIL KUMAR (PARY-IN-PERSON)

RESPONDENT(S):

1. **THE CENTRAL INFORMATION COMMISSIONER,**
   CENTRAL INFORMATION COMMISSION, ROOM NO 307, 2ND FLOOR
   'B' WING, AUGUST KRANTI BHAVAN, BHIKAJI CAMA PLACE,
   NEW DELHI 110 066.

2. **SHRI.K.S. MAHAJAN,**
   CENTRAL PUBLIC INFORMATION OFFICER,
   MINISTRY OF HUMAN RESOURCE DEVELOPMENT,
   DEPARTMENT OF HIGHER EDUCATION, SHASTHRI BHAVAN,
   NEW DELHI 110 001.

3. **SHRI R.A. SINGH,**
   FIRST APPELLATE AUTHORITY UNDER RTI,
   MINISTRY OF HUMANRESOURCE DEVELOPMENT,
   DEPARTMENT OF HIGHER EDUCATION, SHASTHRI BHAVAN,
   NEW DELHI 110 001.

R1 BY ADV. SRI.N.NAGARESH, ASG OF INDIA
R2 & R3 BY ADV. SRI.SUNIL JACOB JOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-10-2014, THE COURT ON 24-10-2014, DELIVERED THE FOLLOWING:

msv/

WP(C).No. 2261 of 2014 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE ORDER DATED 30-10-2013 IN CASE NO CIC/RM/A/2013/000592 OF THE CENTRAL INFORMATION COMMISSION.

EXHIBIT P2: TRUE COPY OF THE APPEAL DATED 13-07-2013 FILED BEFORE THE CENTRAL INFORAMTION COMMISSIONER.

EXHIBIT P3: TRUE COPY OF THE LETTER DATED 30-10-2013 FROM THE PETITIONER TO THE CHIEF INFORAMTION COMMISSIONER, CENTRAL INFORAMTION COMMISSION, NEW DELHI.

RESPONDENT(S)' EXHIBITS

NIL

/TRUE COPY/

P.S. TO JUDGE

msv/

A.MUHAMED MUSTAQUE, J.

~~~~~~~~~~~~~~~~~~~~~~~~~~

W.P.(C).No.2261/2014

~~~~~~~~~~~~~~~~~~~~~~~~~~

Dated this the 23rd day of October, 2014

J U D G M E N T

This writ petition is filed for the following reliefs:

> "(a) Issue a writ of certiorari or other appropriate writ, order or direction calling for the records leading to the issue of Ext.P1 (Order file No.CIC/RM/A/2013/000592 dated 30/10/2013 issued by the Central Information Commission New Delhi – Page 11), Annexure 6 of Ext.P2 (Letter F.No.1/1/2013/IFC dated 22/05/2013 of the Under Secretary & CPIO, Department of Higher Education, Ministry of Human Resource Development, New Delhi – Page 35) and Annexure 8 of Ext.P2 (Order F.No.DS (A)/RTI/2012 (A022) dated 18th June, 2013, issued by Shri R.A.Singh, Deputy Secretary (Admn.) & 1st Appellate Authority, Department of Higher Education, Ministry of Human Resource Development, New Delhi – page 37) and quash the same.
>
> (b) Direct the respondents to supply the information sought under Annexure 1 of Ext.P2, (Copy of RTI application dated 17/1/2013 filed by the petitioner before the Central Public Information Officer, Department of Higher

Education, Ministry of Human Resource Development, New Delhi – Page 25.

(c) Impose such penalty (as per provisions under S.20 of the RTI Act) as may be deemed appropriate in this case.

(d) Award costs of and incidentals to this petition and

(e) pass such other order or direction as deemed fit, just and proper by this Hon'ble Court in the facts and circumstances of the case."

2. The petitioner, a retired employee of the Cochin Shipyard Limited filed this writ petition challenging the order passed by the Central Information Commission, New Delhi. He submitted a representation dated 07/12/2012 to the then Hon'ble Union Minister for Human Resource Development, Dr.Shashi Tharoor. This representation is to highlight denial of legitimate growth opportunities of Cochin Shipyard Limited. Since the petitioner did not receive any response for the letter, petitioner sought information from the Public Information Officer under the Ministry of Human Resources Development. The request of

the petitioner is seen from Annexure-1 produced along with Ext.P2. This application was made on 17/01/2013. Petitioner received an information dated 08/02/2013 stating that as per the available records of office no such request has been received in that office. This is produced as Annexure-2 in Ext.P2. The petitioner sent a letter along with the communication received from the postal authorities confirming the delivery of the postal articles to Dr.Shashi Tharoor. Thereafter, petitioner received information from the Information Officer dated 22/05/2013, which is produced along with Ext.P2 as Annexure-6. It is stated in the above document that the request made by the petitioner is beyond the scope of responsibilities of the Hon'ble Minister of State. The petitioner, thereafter, filed an appeal before the first Appellate Authority. The First Appellate Authority found that the information has already been provided with respect to the available information to the petitioner. This order is produced as Annexure-8. Annexure-8 was challenged before the Central Information Commission. The petitioner was also heard through video conferencing. The Commission also found no reason to interfere with the response of the Information Officer and

other Appellate Authorities. It is challenging Ext.P1 order of the Central Information Commission, this writ petition is filed.

3. The Right to Information Act, 2005 is an enactment to provide information to the citizen in order to promote transparency and accountability of working of every public authority. The Act defines information under Section 2(f) which reads as follows:

> "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."

Going by the definition of "information" it is clear that any information available or that exists can be accessed by any person by a request for procuring information.

4. It seems that the petitioner wants to know the outcome of his representation. If no decision has been taken on the petitioner's representation, it cannot be provided to the petitioner. By making a request for obtaining information, an applicant under the Right to Information Act cannot expect a public authority to generate “information”. The information already available on the records has to be supplied to the petitioner. Seeking redressal of the grievance and obtaining information are different. As far as Right to Information Act is concerned what is expected to be provided is regarding the information that exists in available files. The nature of information sought for by the petitioner as seen from Annexure-1 is regarding nature of disposal of his representation. It can be responded by either stating that this was considered/not considered/what transpired on the file. If nothing has been acted upon such representation, it can be stated so. However, instead of providing information as to the outcome of such representation, the reply was given by the Public Information Officer stating that the representation is beyond the scope of responsibilities of the Minister of State. It seems reply

is given as though the Public Information Officer is responding to the representation. The petitioner has not sought redressal of his grievance under the Right to Information Act in respect of the representation submitted by him. It seems the authorities have not understood the very scope of seeking information under the Act. The Appellate Authority as well as the Central Information Commission failed to provide information sought for by the petitioner. The petitioner submits that this is a fit case where Section 20 of the Right to Information Act can be imposed. I am of the view that there is no *mala fide* intention on the part of the respondents in not providing the information. The petitioner failed to make out any such case. Therefore, the petitioner's request to initiate action under S.20 of Right to Information Act is declined. Accordingly, Ext.P1 is quashed. There shall be a direction to the second respondent to provide information sought by the petitioner under Annexure-1 of Ext.P2 within 30 days from the date of receipt of a copy of this judgment.

5. The writ petition is allowed as above. The petitioner is unnecessarily dragged to file this writ

petition. No counter has been filed by the respondents despite several opportunities given to them. Therefore, respondent Nos.2 and 3 shall pay costs to the petitioner which is quantified at Rs.3,000/-.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

ms

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 08.02.2012

% Judgment delivered on: 06.07.2012

+ W.P.(C) 2380/2010 & C.M. No. 4767/2010 (for stay)

DELHI INTEGRATED MULTI MODEL TRANSIT SYSTEM LTD.
..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr.Rajat Navet & Mr. Rajnish Gautam, Advocates.

versus

RAKESH AGGARWAL
..... Respondent

Through: Mr. Pranav Sachdeva, Advocate.

AND

+ W.P.(C) 2381/2010 & C.M. No. 4770/2010 (for stay)

DELHI INTEGRATED MULTI MODEL TRANSIT SYSTEM LTD.
..... Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate with Mr.Rajat Navet & Mr. Rajnish Gautam, Advocates.

versus

SACHIN SAPRA
..... Respondent

Through: Mr. Rohan Thawani, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petitions have been preferred under Article 226 and 227 of the Constitution of India, to assail the Common order dated 05.03.2010 passed by the Central Information Commission (hereinafter referred to as the "CIC") in Complaint no. CIC/SG/C/2009/001472+001312 & Appeal No. CIC/SG/C/2009/000341, whereby the CIC has held the Petitioner Company to be a "Public Authority" under the Right to Information Act, 2005 (hereinafter referred to as the "Act").

2. The facts leading to the filing of the present writ petitions are as follows:

2.1 The petitioner company was incorporated on 19.04.2006 as a Special Purpose Vehicle (SPV) by the Government of National Capital Territory of Delhi (hereinafter referred to as the "GNCTD"), for the purpose of implementing 'Integrated multi-modal transit Network Projects'. The initial paid up share capital of the petitioner company was Rs.7,30,39,000/- divided into 73039 equity shares of Rs.1,000/- each, and the same was entirely held by GNCTD.

2.2 On 04.07.2007, a Shareholder's Agreement (SHA) was entered into between the GNCTD and Infrastructure Development Finance Company (hereinafter referred to as the "IDFC"), wherein IDFC agreed to subscribe to the paid up share capital of the petitioner Company to the extent of Rs. 7,30,39,000/-. After the Subscription by IDFC to the equity shares of the petitioner Company, the shareholding of GNCTD and IDFC was 73039 shares each. Six shares were held by six Government nominees. This position continued till 13.10.2009. Thereafter, on 14.10.2009, 6 shares of the petitioner Company were subscribed by IDFC, making its shareholding 50% in the petitioner company, i.e. equal to that of the GNCTD.

2.3 The respondent in W.P. (C) in 2381/2010 vide e-mail dated 03.02.2009, addressed to the petitioner, sought details of CPIO/APIO, First Appellate Authority etc. of the petitioner as the same had not been provided for on the petitioner's website. The petitioner vide its response dated 17.02.2009 claimed that it was not a "Public Authority" within the meaning of the Act, and therefore it did not have a CPIO, APIO etc.

2.4 Being aggrieved by the said response, the respondent filed a complaint (referred to as Appeal No. CIC/SG/C/2009/000341)

before the CIC under Section 18 (1)(a) of the Act. Notice dated 29.07.2009 was issued to the Petitioner directing it to state whether it fulfilled any of the criteria laid down in Section 2 (h) of the Act. The petitioner vide its response dated 13.08.2009 stated that it did not meet any of the criteria.

2.5 The Respondent in W.P. (C) 2380/2010, as Secretary of 'NyayaBhoomi', filed an RTI application under the Act on 03.09.2009, and sought certain information from the petitioner Company. In reply to the said application, the petitioner company claimed that the petitioner did not fall within the definition of "Public Authority" in terms of Section 2(h) of the Act and advised the respondent to direct his application/questions to the Transport Department, GNCTD.

2.6 Aggrieved by the response, the respondent filed a complaint no. CIC/SG/C/2009/001312 dated 10.09.2009 under Section 18(1) of the Act before the CIC. The CIC issued notice dated 16.09.2009 to the petitioner, calling upon the petitioner to provide the information as sought by the respondent and sought an explanation from the petitioner for not supplying the information within the mandated time, upon its prima facie observation that the information has not been provided by the petitioner without

stating any reasons. The petitioner by its reply dated 05.10.2009 stated before the CIC that it was not a public Authority within the Act, and that the Act was not applicable to it.

2.7 In the meantime, the respondent (in W.P. (C) 2380/2010) filed another application dated 08.10.2009 seeking more information from the petitioner under the Act. Petitioner vide its reply dated 13.10.2009, advised the respondent to take up his request with the Transport Department, GNCTD, as the information sought was available with and belonged to the Transport Department, GNCTD.

2.8 In response to the petitioner's reply, respondent re-sent his application vide letter dated 14.10.2009, wherein it was alleged that the information as sought by him about the bus-clusters pertained to the petitioner and not to the Transport Department. It was also stated therein that the Respondent's application should rather have been transferred under Section 6 (3) of the Act to another public authority instead of being returned. Petitioner in its response dated 16.10.2009, informed the Respondent that his application has been returned since there was no Public Information Officer in the Petitioner Company for

the purpose of transferring his application to another public authority.

2.9 Aggrieved by the replies dated 13.10.2009 and 16.10.2009, respondent (in W.P. (C) 2380/2010) filed a second complaint before the CIC on 20.10.2009, which was registered as complaint no. CIC/SG/C/2009/001472, wherein notice was issued to the petitioner on 04.11.2009, directing the petitioner to appear before the CIC on 16.12.2009.

2.10 The CIC, with reference to Complaint no. CIC/SG/C/2009/001312 & Appeal No. CIC/SG/C/2009/000341, vide notice dated 09.11.2009 called upon the petitioner to give reasons as to why the petitioner was not a public authority when the Board of the petitioner comprised four Directors nominated by the GNCTD out of eight Directors. Petitioner clarified its position vide reply dated 23.11.2009. The CIC, thereafter, issued notice of hearing dated 18.12.2009 directing the parties to appear before it on 21.12.2009.

2.11 In Complaint no. CIC/SG/C/2009/001472, the petitioner appeared before the CIC on 16.12.2009 and submitted that it was not a public authority as it was not controlled by the appropriate government. The replies dated 05.10.2009 and 23.11.2009 filed

by the petitioner were taken on record and the matter was adjourned to 21.12.2009.

2.12 Eventually, on 03.03.2010, the parties appeared before the CIC and made their submissions.

2.13 The CIC by its order dated 05.03.2010 held that the petitioner company is controlled and substantially financed by the Government and is, thereby, a "Public Authority" under the Act. Consequently, it directed the petitioner to provide the information as sought by the respondent.

3. Being aggrieved by the said order of the CIC, the petitioner has preferred the present writ petitions.

4. Mr. Sandeep Sethi, learned senior counsel for the petitioner contended that the conclusions arrived at by the CIC that the petitioner was controlled and substantially financed by the Government is perverse and without any basis.

5. Mr. Sethi submitted that the CIC erred in holding that the petitioner company was substantially financed by the government without there being any evidence to that effect before it. He submitted that 'shareholding' and 'financing' are two different concepts, which cannot be compared. Government's shareholding in the petitioner

company being 50% would not, by itself, mean that the Petitioner is substantially financed by the GNCTD. It was further submitted that the petitioner company has not been given concessional land or other privilege, nor does it receive any grant or financial aid from the government. Merely because one of the ancillary or incidental objects of the petitioner is to receive grants from the government, the same does not, in any manner, make the petitioner company fall within the definition of "Public Authority" as defined under Section 2(h) of the Act. The petitioner submitted that it is a professionally managed company generating its own revenue and is paying salaries and other expenses out of the funds generated by it out of its business activities, and the Government does not provide any financial aid or assistance to the petitioner company.

6. Learned senior counsel contended that the CIC erred in holding that the GNCTD exercised significant control over the management of the petitioner company on account of 50% of the Directors of the petitioner company being GNCTD's nominees.

7. Mr. Sethi submitted that the said Directors are non-executive Directors and the only executive Director is the Managing Director, who is a nominee of the IDFC, and the substantial powers and control of the petitioner Company are vested with him. The Directors of the

Government are not issuing any directions with regard to the day-to-day affairs of the Company and are merely part time officers. It was submitted that the CIC erroneously brushed aside the difference between executive and non-executive directors, in coming to its finding that the petitioner company is a body controlled by the government.

8. Learned senior counsel submitted that in the absence of more than 50% stake in the petitioner company, or management control of the petitioner company with the GNCTD, the latter could not be held to be in 'control' of the petitioner company. It was submitted that the provisions of the Shareholder Agreement entered into between IDFC and GNCTD clearly demonstrate that the government is not in control of the petitioner company.

9. It was further contended that the petitioner does not discharge any public activity/function and/or provide public service to the general public for it to be brought within the purview of the Act. It was submitted that the petitioner company does not discharge any business activity on behalf of the government and that the petitioner company is totally a commercial organisation. Mr. Sethi submitted that the Comptroller and Auditor General (CAG) had itself recognised that the petitioner company had ceased to be a government company on

equity participation by IDFC and as such had discontinued audit of the accounts of the erstwhile SPV.

10. Learned senior counsel substantiated his argument by placing reliance on letter no. CAV/15-2006 dated 22.11.2007 of the 'Office of the Comptroller and Auditor General of India' issued to 'The Accountant General (Audit), Delhi' which states that the audit of the Petitioner company for the year 2007-2008 had been withdrawn as the Company ceased to be a Government Company on 01.08.2007.

11. Though, it appears that a plea of bias against the CIC, Mr. Shailesh Gandhi was raised before the Chief Information Commissioner, and is also pleaded in the writ petitions, no argument in support thereof was advanced before this Court at the time of hearing of this petition. Accordingly, the same is not being gone into by me.

12. Learned counsels for the respondents, on the other hand, contended that the CIC has correctly held the petitioner company to be a "public authority" as defined under section 2(h) of the Act as the petitioner company is controlled and substantially financed by the Government.

13. While placing reliance on the Judgment of this Court in ***Indian Olympic Association vs. Veeresh Malik & Ors.***, *W.P(C) No. 876 of 2007 decided on 07.01.2010,* wherein it was held that- what amounts

to “Substantial” financing cannot be straight-jacketed into a rigid formula of universal application, learned counsels for the respondents submitted that the percentage of funding for the purposes of “Substantially financed” is not “majority” funding. Even otherwise, it was submitted that the GNCTD holds 50% shareholding in the petitioner company and as such the petitioner is substantially financed by the GNCTD.

14. It was submitted that the concept of ‘shareholding’ cannot be separated from ‘financing’. Since each shareholder, i.e., GNCTD and IDFC, hold equal portions of the capital of the company, the GNCTD exercises authority and control over its affairs and the GNCTD has “substantially financed” the petitioner company.

15. Counsels for the Respondents submitted that on account of the fact that 50% of the Directors of the petitioner company are nominated by the GNCTD, the management of the company is significantly controlled by the Government. This is more so on account of the equal shareholding of the GNCTD in the petitioner company with that of IDFC. It was further submitted that the difference between executive and non-executive directors is not relevant for the present purposes. Reliance was placed on the definition of ‘Control’ as provided for in the SHA. It was pointed out that the Chairman is the nominee of the

GNCTD, and he is entitled to chair all meetings of the petitioner company.

16. Learned counsels for the respondents placed reliance on the SHA [Clauses 5.1, 5.2, 5.5, 5.6, 6(ii), 7.4 and 10.1] and the Articles of Association (AOA) of the petitioner company, to submit that the Government exercises significant control over the petitioner company. Reference is also made to Section 74(2) of Schedule I Table 'A' of the Companies Act, which provides that in case of equality of votes, the Chairman of the Board, if any, shall have a second or casting vote. It was pointed out that the Chairman is the nominee of the GNCTD, and he is entitled to chair all General Meetings of the Petitioner Company.

17. According to the respondents, as per Article III of the 'Memorandum of Association' (MOA), the main objects of the petitioner company are primarily the performance of public functions, which fortifies the fact that the petitioner company is a 'Public Authority'.

18. The counsels for the respondent placed reliance on the judgment of this court in ***National Stock Exchange vs. Central Information Commission***, *W.P. (C) No. 4748/2007 decided on 15.04.2010,* wherein the court took a similar view as taken by it in ***Indian Olympic Association*** (Supra), to further their submission that the petitioner company is a 'Public Authority' under the Act.

19. The petitioner in rejoinder submitted that the Chairman of the company has no voting rights. It was submitted that the CIC failed to appreciate that the term 'control' has not been defined under the Act and from the available definition of the term, it was evident that it meant either a stake in excess of 50%, or the management control of the company, both of which did not exist in favour of the appropriate government in the present case. To further his submission, Mr Sethi relied upon the following definition of the term 'control' as provided for in 'Words and Phrases' [Permanent Edition, Volume 9A, West Publishing Company]:

> *"The word "control" means subject to authority, direct, regulate, govern, and dominate. Madison Pictures V. Chesapeake Industries, 147 N.Y.S. 2d 50, 55."*

20. Learned senior counsel placed reliance on the balance sheet of the petitioner company, for the year ending 31.03.2010, to reiterate that the petitioner company is a professionally managed company generating its own revenue and is paying salaries and other expenses out of the funds generated by it in its business activities and that the Government does not provide any financial aid or assistance to the petitioner company.

21. It was submitted that the judgements relied upon by the respondent have been stayed by the Division Bench, and are pending

adjudication before the Division Bench of this Court and the same, therefore, cannot be relied upon by the respondents to counter the submission of the petitioner herein.

22. Section 2 (h) of the Act, as published in the Official Gazette, reads as under:

> *"**2**. In this Act, unless the context otherwise requires,—*
>
> *x x x x x x x x x x*
>
> *(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**;"* (Emphasis supplied).

23. The definition under consideration consists of two separate parts. The first part specifies what the expression means, and the second part, what it includes. The Parliament has expanded the meaning of

the expression “Public Authority” by adopting an inclusive definition of the said expression.

24. In the case at hand, it is not in dispute that the petitioner company does not fall within the first part of the definition of “public authority”. The question for determination is, whether the petitioner company falls within the second part of the definition i.e. in clause (i) thereof, i.e., whether it is a body owned, controlled or substantially financed directly, or indirectly, by funds provided by the appropriate Government.

25. The CIC by its impugned order has held the petitioner company to be a public authority on the ground that it is a body controlled and substantially financed by the Government.

26. To appreciate the meaning and scope of the terms “owned”, “controlled” and “substantially financed”, it would appropriate to examine and analyse them in the context of the Act, i.e. to say to interpret the terms in the setting in which they occur.

27. B.K. Mukherjee, J. in ***Darshan Singh and Others v. State of Punjab***, *AIR 1953 SC 83,* stated the rule, as under:

> *“Words and phrases occurring in a statute are to be taken not in an isolated or detached manner dissociated from the context, but are to be read together and construed in the light of the purpose and object of the Act itself.”*

28. To the same effect were the following observations of S.K. Das, J in ***Pandit Ram Narain v. State of U.P. & Others***, *AIR 1957 SC 18*:

> *"The meanings of words and expressions used in the Act must take their colour from the context in which they appear."*

29. Applying the same principle in ***Mangoo Singh v. The Election Tribunal, Bareilly and Others***, *AIR 1957 SC 871*, he again stated:

> *"When the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out the diverse meanings a word is capable of, according to lexicographers."*

30. In a latter decision in ***Kehar Singh v. State (Delhi Administration)***, *AIR 1988 SC 1883*, the Supreme Court observed:

> *"Words and Sections like men do not have their full significance when standing alone. Like men they are better understood by the company they keep."*

31. In light of the abovementioned pronouncements the terms "owned", "controlled" and "substantially financed" deserve to be interpreted in the context in which they occur in the Act.

32. The Act had been enacted with the object of ensuring greater and more effective access to information held by public authorities.

There was a need/requirement to make the Freedom of information Act, 2002 (which now stands repealed by the Act) more progressive, participatory and meaningful. The preamble to the Act, inter alia, 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."* (Emphasis supplied).

33. The Act, in recognition of the right to information vested in every citizen, seeks to create a mechanism to enable access to the information held by a public authority. One of the objectives is to contain corruption and hold Government and its instrumentalities accountable to the governed. Therefore, in each sphere of activity that the government and its instrumentalities indulge in, subject to the reasonable restrictions, the government and its instrumentalities are bound to provide the information, inter alia, with regard to their actions, performance, decisions, composition, incomes, expenditures etc. to the citizens.

34. A Division Bench of this Court in *LPA No. 501/2009* titled ***"Secretary General, Supreme Court of India vs. Subhash Chandra Aggarwal"***, dealing with the concept of 'Right to Information' under the Act observed as under:

> "*30. Information is currency that every citizen requires to participate in the life and governance of the society. In any democratic polity, greater the access, greater will be the responsiveness, and greater the restrictions, greater the feeling of powerlessness and alienation. Information is basis for knowledge, which provokes thought, and without thinking process, there is no expression. "Knowledge" said James Madison, "will forever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it is but a prologue to farce or tragedy or perhaps both". The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the*

pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world."

The Court, while explaining the importance and need of the Right, referred to the following observation of the Supreme Court in ***S.P. Gupta vs. Union of India,*** *1981 (Supp) SCC 87:*

"65. The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rules and, once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government - an attitude and habit of mind. But this important role people can fulfil in a democracy only if it is an open government where there is full access to information in regard to the functioning of the government."

After referring to a sea of judgments and scholarly excerpts, this Court held as follows:

"*60.* ***The decisions cited by the learned Attorney General on the meaning of the words "held" or "control" are relating to property and cannot be relied upon in interpretation of the provisions of the Right to Information Act. The source of right to information does not emanate from the Right to Information Act. It is a right that emerges from the constitutional guarantees under Article 19(1)(a) as held by the Supreme Court in a catena of decisions. The Right to Information Act is not repository of the***

right to information. Its repository is the constitutional rights guaranteed under Article 19((1)(a). The Act is merely an instrument that lays down statutory procedure in the exercise of this right. Its overreaching purpose is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and to help the governors accountable to the governed. In construing such a statute the Court ought to give to it the widest operation which its language will permit. The Court will also not readily read words which are not there and introduction of which will restrict the rights of citizens for whose benefit the statute is intended." (Emphasis Supplied)

35. In the aforesaid context, I shall now analyse the meaning and scope of the clause (i) occurring in the second part of the Section 2(h) of the Act, in so far as the same is relevant for the present purposes, and the submissions of the parties.

36. As per the clause, a body owned by the appropriate Govt. would be a "Public Authority". In case of a company, its ownership would arise by virtue of a stake in the share capital of the Company, i.e., by being a shareholder of the company. Ownership is a bundle of rights, which would include the right to control the article/entity owned; to deal with it in the manner the owner deems fit; to partake of its gains, or suffer its losses – as, in a business. In the present context, ownership of shareholding to the extent of 50% in the petitioner company would, inter alia, mean that the GNCTD would have an equal

right, as the IDFC, to partake of the profits of the company equally with IDFC in the form of dividends and to participate in all important decision making processes in the petitioner company. If there are any policy issues on which the two shareholders, i.e., IDFC and the GNCTD, differ- they would have to be resolved either by consensus, i.e. mutual agreement, or by a showdown at the general meeting of the petitioner company. Reference may be made at this stage to Clauses 5.1, 5.2 and 6.1 and 6(ii) of the SHA, which read as follows:

- Clause 5.1 of the SHA:

> *"The* ***Company shall be managed and controlled by the Board and the Board shall be responsible for the overall policies and objectives and activities of the Company****..." (Emphasis supplied)*

- Clause 5.2 of the SHA: (Similarly provided for in Article 118 of the AOA)

> *"The* ***Board shall comprise of*** *not less than 4 (four) directors and not more than 12 (twelve) directors. Unless otherwise agreed between the parties to this agreement,* ***GNCTD shall have right to nominate four (4) directors and IDFC shall have the right to nominate four 4 directors to the Board. There shall be one (1) independent director, to be appointed on mutual agreement between IDFC and GNCTD."*** *(Emphasis supplied)*

- Clause 6.1 of the SHA:

> ***"(i) No obligation of the Company shall be entered into, no decision shall be made and no action shall be taken by or with respect to the Company in relation to Fundamental Issues whether by way of resolution by circulation or at a meeting of the Board or any of the committees of the Board or the***

shareholders of the Company, unless such obligation, decision or action, as the case may be, is approved by the affirmative vote of all the Shareholders Directors. *Except for matters relating to Fundamental issues, all other resolutions and decisions of the Board shall be approved by simple majority of Directors present at the meeting. Provided, however, and in all cases, that no matter or resolution shall be placed before the general meeting of the shareholders of the Company unless such matter or resolution is discussed, deliberated and approved for placing before the shareholders by the Board."* (Emphasis supplied)

- Sub clause (ii) of clause 6 of the SHA:

  "(ii) The quorum for the meetings of the Board or any adjournment thereof shall require the presence of one-third (1/3) of the directors in office for the time being. ***No such quorum shall be said to be complete unless atleast one director representing each of GNCTD and IDFC is present at such meeting****... "*

37. In the case of a showdown it is the GNCTD, which has an upper hand. Reference may be made to Clauses 5.5 and 7.5(6) of the SHA, which read as follows:

- Clause 5.5 of the SHA: (Similarly provided for in Article 153 of the AOA)

  *"****The Company a non-executive Chairman appointed by the Board, who shall be the Chief Secretary, GNCTD, ex-officio****. The term of the Chairman shall be co-terminus with that of his term as the director of the Company.* ***In case Chairman is unavailable for a meeting, one of the directors nominated by the GNCTD on the board, present at that meeting may be appointed by the Board as a Chairman for that particular meeting.*** *" (Emphasis supplied)*

- Sub-clause (c) of Clause 7.5 of the SHA:

> *"**The Chairman of the Board shall preside as Chairman of the general meetings of the Company.**"*

38. As per Section 74(2) of Schedule I Table 'A' of the Companies Act, in case of a tie at a general meeting, the Chairman has a second or a casting vote, which clearly tilts the scales in favour of the GNCTD. The said provision reads as follows:

> *"In case of an equality of votes, the chairman of the Board, if any, shall have a second or casting vote."*

39. It is clear that while divesting its 50% stake in the petitioner company, the GNCTD clearly intended to, and indeed retained ultimate control by incorporating the above clauses in the SHA and AOA.

40. It is well-settled that the ultimate power in a company resides in its general body. It is the general body which has the right and the obligation to appoint the Directors on the Board to run the management of the company. The Board of Directors are answerable to the general body of members and the Directors can be removed by the General Body from the Board, by following the prescribed procedure under the Companies Act. As per clause 5.2, as extracted above, the number of Directors of GNCTD and IDFC is equal. Therefore, in the present context it cannot be said that either IDFC or the GNCTD is the absolute owner of the petitioner company. At the

same time, it cannot be said that neither is the owner. They are both joint owners of the petitioner company. In fact, in a closely held company like the petitioner, which has practically only two equal shareholders, the entity is in the nature of a partnership concern. Mutual trust, confidence and consensus is just as important, as in a partnership concern, in a company like the petitioner, as the lack of it can often result in a deadlock or breakdown situation.

41. The concept of "ownership" in the context of Clause (i) of Section 2(h) of the Act, in my view, is not an absolute ownership of the body concerned, by the appropriate Government. Keeping in view the object of the Act, i.e. to bring about transparency in the working of all Government bodies and other public authorities – which are having governmental control, i.e. they are not private entities, the expression *"body owned .... by the appropriate Government"* has to be given a wide meaning and interpretation. In my view, a 50% ownership of the shares of a company of the appropriate Government, coupled with the strategic control that follows such shareholding, and which has been specifically incorporated in the SHA and AOA, is sufficient to clothe the petitioner with the character of a public authority under the Act.

42. The legislature, keeping in view the object and purpose of the Act, did not restrict the ambit and reach of the expression “Public Authority” to bodies “owned” by the Government, and even included bodies which are “controlled” or “substantially financed” directly or indirectly by the funds provided by the Government. Therefore, even if the Government does not own a body, but controls or substantially finances it- then too, such a body would be deemed to a be a “Public Authority” for the purposes of the Act. The intent of the legislature was therefore not to assign a restrictive meaning to the expression “Public Authority”.

43. The term ‘control’ in common parlance denotes the ability to regulate, exercise power or influence over a subject matter. Control in relation to a body could be financial control, administrative control etc. As aforesaid, ownership necessarily implies a certain degree of control. Where there is ownership, there are some, if not all, elements of control. At the same time, control could also exist without ownership. It is for this reason that the Act expressly uses the term “Controlled” independent of the term “Owned”. ‘Control’ in the present context cannot be interpreted to mean absolute control, or the highest degree of control, that is to say a kind of deep and pervasive control. The term “controlled”, keeping in view the context in which it occurs has to be

construed liberally so as to facilitate the purpose and object of the Act and not defeat it.

44. However, it is also to be borne in mind that a Government in a democracy like India, frames policies and guidelines, makes laws, moulds actions and reactions, influences decision making of persons (real and juristic), and, thereby, exercises a certain degree of virtual control over the state and its constituents. Such virtual control cannot be misunderstood as, or rather equated to the term 'control' as found under clause (i) of the second part of Section 2(h) of the Act.

45. The process of decision making involves the choosing of one out of various available options. Where the appropriate Government is instrumental in the making of one choice over the other for a body/entity, it can be said that it has 'control' over the body/entity. 'Control' is that influence, which is attributable to the appropriate government by virtue of its role or position in the body. Such role should be ascribed to it, expressly or impliedly, either by the law or by the constitution of the body itself, for example, in case of a company- by its MOA, AOA etc. To assume the existence of control otherwise, merely on account of the prevailing state of affairs, would tantamount to taking an extreme position, which was never intended.

46. Therefore, to determine whether or not the petitioner company herein is "controlled" by the appropriate Government i.e., the GNCTD, it would be necessary to examine the role or position of the GNCTD in the petitioner company by reference to the SHA and AOA. Some of the relevant provisions contained therein have already been taken note of above. A few others of relevance are reproduced below:

- As per clause 5.6 of the SHA: (Similarly provided for in Article 144(a) of the AOA)

  > *"The Company shall have a Managing Director and Chief Executive Officer appointed by the Board, who shall be nominee of IDFC. Subject to the provisions of the Act,* ***the terms and conditions of CEO shall be as stipulated by the Board.****"* (Emphasis supplied)

- As per clause 6.2 of the SHA:

  > *"(i) The Company shall if required, constitute a committee(s) of the Board whose composition, powers and terms of reference shall be decided by the Board from time to time. The committee(s) shall be subject to and be under the supervision of the Board.* ***Each of the Shareholders shall have the right*** *to nominate its nominees to the each of the committee(s).*
  >
  > *(ii) Unless otherwise agreed to by each of the parties to this agreement,* ***no quorum of the meeting of any such committees shall be said to be complete unless atleast 1 (one) nominee of GNCTD and IDFC is present at such meeting of the committee****..."* (Emphasis supplied)

- As per clause 7.4 of the SHA:

  > *"Unless specifically waived in writing by the respective party,* ***a valid quorum for meeting of the Shareholders/members shall be deemed to constituted only if, an authorised representative***

each of GNCTD and IDFC are present at the beginning and throughout such meeting*…"* (Emphasis supplied)

- As per clause 10.1 of the SHA:

  *"**GNCTD hereby irrevocably undertakes to grant or assist the Company** in obtaining all necessary approvals and permits required for implementation of the objectives of the Company and this Agreement and to issue and caused to be issued such Government orders, notifications and the like to enable the company perform its obligations under its Agreement and/or the agreements in respect of management of Funds entrusted to it by GNCTD. "* (Emphasis supplied)

- As per clause 12.2 of the SHA:

  *"Upon notice to the Company and/or the Operating Companies, **the Shareholders and its authorised representatives** (such as employees, directors, shareholders, lawyers, accountants or other professional advisors) **shall have the right to** (a) visit and inspect the properties of the Company and/or the Operating Companies; (b) access and review the books, corporate and financial records and financial statements of the Company and/or the Operating Companies; and (c) discuss the business and finances of the Company and/or the Operating Companies with officers of the Company and/or the Operating Companies."* (Emphasis supplied)

- As per clause 12.3 of the SHA:

  *"**The Company shall furnish or cause to be furnished promptly to a share holder all such reports and information as it shall reasonably request concerning** (i) the financial statements and audit referred to in this Article 10; (ii) audited financial statements and auditors report of each of the funds under management of the Company; and (iii) any other matters relating to their respective investments in the Company. **The Company shall, upon request by the Shareholder, consult with the Shareholder on any of these matters.**"* (Emphasis supplied)

- As per Article 87B of the AOA:

> *"Except as otherwise provided in the Act, every resolution to be passed at a general meeting (including any adjourned General Meeting) with respect to matters relating to Fundamental Issues, specified below,* ***shall require the affirmative vote of the authorised representative of each of the shareholder****..."* (Emphasis supplied)

Similarly as per Article 158A of the AOA:

> *"Except as otherwise provided in the Act, every resolution to be passed at a Board meeting (including any adjourned Board Meeting) with respect to matters relating to Fundamental Issues, specified below,* ***shall require the affirmative vote of the authorised representative of each of the shareholder****..."* (Emphasis supplied)

47. In view of the aforementioned provisions, it is abundantly clear that the GNCTD (being a shareholder to the extent of 50%; and comprising half of the Board of Directors) exercises substantial control over the petitioner company. The above clauses leave no manner of doubt that the GNCTD, while divesting its 50% stake in the petitioner company, continued to retain the right to keep itself abreast with all the on-goings in the company, and the right to have its say and to influence the decision making process in all important matters of the company. While the day to day management may have been vested with the officers/Directors nominated by the IDFC – so as to bring about a professional management, firstly, they are responsible and

answerable to the GNCTD/their nominee directors and, secondly, the overall supervision and control is retained equally by the GNCTD. In the eventuality of a showdown, the GNCTD has the last word.

48. The argument of the petitioner that the Directors nominated by the GNCTD are non-executive Directors, whereas those nominated by the IDFC are executive or functional directors – is neither here nor there. Merely because the Directors nominated by the GNCTD on the Board of Directors of the petitioner company are non-executive Directors, it does not mean that they have no role to play, or responsibility to share, in the decision making process of the Board. They are entitled to, and do participate in the Board meetings and are entitled to raise issues and even obstruct or oppose any move proposed by the Directors nominated by IDFC, if they are so instructed by the GNCTD, or if they are of the opinion that the same may not be in the overall interest of the company, or of the shareholder GNCTD – whom they represent on the Board of the petitioner company. They perform a higher duty of participating in policy making, and, therefore, discharge a higher responsibility than the routine and mundane day-to-day tasks, which are left to be performed by others. Mere lack of day-to-day responsibility on the shoulders of the nominee Directors of GNCTD does not dilute their powers, responsibilities and privileges as Directors of the petitioner company.

49. The term “controlled” is to be interpreted liberally keeping in view the object of the Act. If the interpretation advanced by the petitioner to the term ‘control’ were to be adopted, it would defeat the purpose of the Act. What is required to be seen is: whether by virtue of the constitution of the body, the appropriate government is in a position to regulate, or exercise power or influence over the affairs of the body. If so, as in the present case, then the body in question is deemed to be “controlled” by the appropriate government for the purposes of the Act.

50. For the aforesaid reasons, the submission of the petitioner that in the absence of more than 50% stake in the petitioner company or the absence of day-to-day management control of the petitioner company by the GNCTD, the latter could not be held to be in ‘control’ of the petitioner company- also has no merit. Even otherwise, this submission of the petitioner is untenable in view of the definition of the term ‘control’ as found in the SHA, which reads as under:

> *“**“Control”** shall mean with respect to any Person, the ability to direct the management or policies of such Person, directly or indirectly, whether through the ownership of shares or other securities, by contract or otherwise, **provided** that in all event the direct or indirect ownership of or the power to direct the vote of fifty percent (50%) or more of the voting share capital of a Person **or** the power to control the composition of the board of directors of a Person shall be deemed to constitute control of that Person*

(the expressions "Controlling" and "controlled" shall have the corresponding meanings)"

51. It is clear from the said definition that power to control the composition of the Board of Directors shall be deemed to constitute control. In the present case, it is not in dispute that the half of the Board of Directors shall be nominated by the GNCTD and, as such, it controls the composition of the Board. Consequently, the petitioner company is "controlled" by the GNCTD.

52. For the reasons stated above, the petitioner company in the present case, as held by the CIC in its impugned order, is "controlled" by GNCTD under Clause (i) of the second part of Section 2(h) of the Act.

53. The expression "Substantially financed" would also have to be construed in the context in which it occurs. I may refer to the decision dated 03.04.2009 of the Kerala High Court in ***Thalappalam Service Co-operative Bank Ltd. v. Union of India (UOI) and Ors.***, *W.P. (C.) No. 18175 of 2006,* wherein it was observed as under:

> *"**The word "substantial" has no fixed meaning. For the purpose of a legislation, it ought to be understood definitely by construing its context.** Unless such definiteness is provided, it may be susceptible to criticism even on the basis of Article 14 of the Constitution. See Shree Meenakshi Mills Ltd. v. A.V. Viswanatha Sastri (A.I.R. 1955 S.C. 13 at page 18). **The***

word substantial means-of or having substance: being a substance: essential: in essentials: actually existing: real: corporeal, material: solid and ample: massy and stable: solidly based: durable: enduring: firm, stout, strong: considerable in amount: well-to-do: of sound worth. *See the Chambers 20th Century Dictionary. In fact, the concept "substantial" has been understood in different shades and applied contextually. In relation to Section 100 of the Code of Civil Procedure, it was held that a substantial question of law means a question of law having substance, essential, real, important. It was understood as something in contradistinction to-technical, of no substance or consequence, or merely academic. See Santhosh Ilazari v. Purushottam Tiwari [(2001) 3 S.C.C. 179]. "Substantial interest" in the context of the Income Tax Act was found to require a contextual construction, having regard to the succeeding expressions which enumerated what substantial interest really meant. See R. Dalmia v. C.I.T. [(1977) 2 S.C.C. 467], "Substantial portion of such goods", an expression occurring in the Customs Act, was understood to mean substantial portion of the goods, that have been imported keeping in view the quantity as well as the value of the goods that have been imported. See India Steemship Co. Ltd. v. Union of India [(1998) 4 S.C.C. 293].* ***Such a spectrum of substantial wisdom essentially advises that the provision under consideration has to be looked into from the angle of the purpose of the legislation in hand and the objects sought to be achieved thereby, that is, with a purposive approach. What is intended is the protection of the larger public interests as also private interests. The fundamental purpose is to provide transparency, to contain corruption and to prompt accountability. Taken in that context, funds which the Government deal with, are public funds. They essentially belong to the Sovereign, "We, the People". The collective national interest of the citizenry is always against pilferage of national wealth. This includes the need to ensure complete protection of public funds. In this view of the matter, wherever funds, including all types of public funding, are provided, the word "substantial" has to be understood in contradistinction to the word "trivial" and where the***

> ***funding is not trivial to be ignored as pittance, the same would be "substantial" funding because it comes from the public funds. Hence, whatever benefit flows to the societies in the form of share capital contribution*** *or subsidy, or any other aid including provisions for writing off bad debts, as also exemptions granted to it from different fiscal provisions for fee, duty, tax etc.* ***amount to substantial finance by funds provided by the appropriate Government, for the purpose of Section 2(h) of the RTI Act.****"*

54. From the aforementioned observations, two key elements of the expression "Substantially financed" emerge. Firstly, the meaning and scope of the term "Substantial", as occurring in the Act, has to be construed in contradistinction to the term "trivial"- that is to say it should not have small value/proportion/percentage so as to be insignificant; and, Secondly, the meaning and scope of the term "finance" i.e., financial benefit could be in the form of share capital contribution or subsidy, or any other form including provisions for writing off bad debts, as also exemptions granted to the body from fee, duty, tax etc- for the purposes of Section 2(h) of the Act. I find myself in respectful agreement with the first of the aforesaid conclusions of the Kerala High Court. With regard to the second, I may only say that I am not confronted with the proposition which has been so widely stated by the Kerala High Court, and I am only concerned with a case of equity contribution by the GNCTD in the petitioner company.

55. In the present case, the petitioner company had been initially incorporated/ established by the GNCTD. The equity share capital of the Company, before GNCTD entered into the SHA with IDFC, had been fully subscribed to and paid-up by the GNCTD. Even after having entered into the SHA with IDFC, GNCTD's share capital contribution continues to be 50%, which is significant and therefore "Substantial" for the purposes of the Act.

56. The petitioner's contention that GNCTD's shareholding in the petitioner company would not, by itself, mean that the company is substantially financed- has no merit. The activity of financing as generally understood entails the provision of finance, i.e. money to an enterprise, so as to allow it to run its business operations or undertake a business expansion or diversion exercise. Financing could either be by way of equity participation in the business enterprise or by way of advancement of a loan on terms and conditions with a view to secure the investment made by the financier. When the finance is provided by way of a loan, the financier seeks to secure the loan by requiring the borrower to furnish securities, indemnities, undertakings, sureties and guarantees, etc. The financer is generally not concerned whether the business of the enterprise is profitable or not, so long as its finance is protected, secured and punctually serviced. In such form of

financing the investor/financier is only looking to returns on investment in the form of interest income.

57. However, when a financier provides the finance by picking up an equity stake in the enterprise, he participates in the business of the enterprise and is directly interested in the financial well-being of the enterprise. He takes the risks which come with the business of the enterprise. His returns on investment come not from interest income, but from the gain the in the invested capital, i.e. by capital gains. Therefore, by its very nature, investment made by way of capital infusion is far more obtrusive than investment made by way of a loan vis-à-vis the enterprise concerned.

58. In the present case, the position, historically speaking, is that the GNCTD held 100% equity in the petitioner company. It is IDFC which later invested and infused funds to pick up equity share equal to that of the GNCTD. However, even after the capital infusion by IDFC, the GNCTD continues to remain invested in the petitioner company to the extent of 50%. This clearly constitutes financing of the enterprise of the petitioner company and it is not trivial. Rather it is substantial.

59. Merely because, the petitioner company is not receiving financial aid or assistance in the form of debt from the government, and the salaries and other expenses of the petitioner are being paid out of the

funds generated by its business would not lead to the conclusion that the petitioner company is not "Substantially financed" by the Government.

60. It is to be borne in mind that when a Government substantially finances a body, it uses public money and as such- the financing has to be in the larger interest of the public. It is for this reason that a citizen has a right to obtain information about such bodies which have received substantial financing from the Government.

61. Reliance placed on the view taken by the CAG does not advance the petitioner's submission. The CAG was not concerned with, and not competent to determine whether the petitioner is a public authority under the Act. The communication issued by it was relevant only from the point of view – whether it should carry out the audit of the accounts of the petitioner.

62. The submission of the petitioner that the decision of this Court in ***National Stock Exchange*** (supra) cannot be relied upon by the respondent as it has been stayed by the Division Bench which has dealt with the appeal from this decision, is neither here nor there. Firstly, I have examined the facts of the present case on its own merits and in the facts of this case, I am of the view that the petitioner is a public authority. No reliance need to be placed on the aforesaid

decision to arrive at the conclusion which I have arrived at. Secondly, the stay of the operation of this decision only means that inter-parties the decision may not be relied upon and this decision does not constitute a binding precedent till so long as the stay order continues. However, that does not preclude another Court from independently evolving the same principles as have been laid down in this decision.

63. For the reasons, as stated above, I hold the petitioner company to be "Substantially financed", for the purposes of the Act.

64. In view of the aforementioned observations, I find no infirmity with the decision of the CIC holding the petitioner company to be a "Public Authority" under the Act.

65. I find no reason to interfere with the impugned order. The present petitions are accordingly dismissed. The respondent shall be entitled to costs quantified at Rs.10,000/- in each of the petitions.

66. Interim orders stand vacated.

(VIPIN SANGHI)
JUDGE

JULY 06, 2012
***BSR*/SR**

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 867/2013

ARMY WELFARE HOUSING ORGANISATION ..... Appellant

Through: Ms. Jyoti Singh, Senior Advocate with

Ms. Tinu Bajwa and Mr. Yasraj Yadav,

Advocates.

versus

ADJUTANT GENERALS BRANCH and ORS ..... Respondents

Through: Mr. Rajeeve Mehra, ASG with

Mr. Ankur Chibber, Ms. Richa Kapoor,

Mr. Aashish Gumber and Mr. Aditya

Malhotra, Advocates for respondents

No.1 and 2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

O R D E R

19.11.2013

CAV. 1028/2013

Issue notice to caveator by all modes including dasti, returnable for 09th December, 2013.

CM Appl. 18174/2013 (exemption) in LPA 867/2013

Allowed, subject to just exceptions.

LPA 867/2013 and CM Appls. 18172-18173/2013

List the matter on 09th December, 2013.

CHIEF JUSTICE

MANMOHAN, J

NOVEMBER 19, 2013

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **Date of Decision: 16.01.2012**

% **W.P.(C) 12210/2009**

NORTHERN ZONE RAILWAY EMPLOYEES CO-OPERATIVE THRIFT AND CREDIT SOCIETY LTD ..... Petitioner

Through: Mr.S.K.Bhaduri & Mr.K.Kumar, Advs.

versus

CENTRAL REGISTRAR COOPERATIVE SOCIETY AND ORS ..... Respondents

Through: Mr.Anuj Aggarwal with Mr.Gaurav Khanna, Advs. for R-1 & 2.
Mr.Abhishek Yadav, Adv. for R-4.
Ms.Vibha Mahajan Seth, Adv. for R-6 & 7.

AND

% **W.P.(C) 13550/2009**

NORTHERN ZONE RAILWAY EMPLOYEES CO-OPERATIVE THRIFT AND CREDIT SOCIETY LTD ..... Petitioner

Through: Mr.S.K.Bhaduri & Mr.K.Kumar, Advs.

versus

CENTRAL INFORMATION COMMISSION AND ORS ..... Respondent

Through: Mr.Anuj Aggarwal with Mr.Gaurav Khanna, Advs. for R-1 & 2.
Mr.Abhishek Yadav, Adv. for R-2.
Ms.Vibha Mahajan Seth, Adv. for R-4

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (Oral)

1. These are two petitions, preferred by the Northern Zone Railway Employees Co-operative Thrift and Credit Society Limited (in short 'NZRE'), to assail two orders, dated 15th June, 2009 (in W.P.(C) No. 12210/2009) and dated 22nd June, 2009 (in W.P.(C) 13550/2009) passed by the CIC, whereby the learned CIC has, inter alia, held that the petitioner is a 'public authority' within the meaning of Section 2(h) of the Right to Information Act, 2005 (in short 'RTI Act'), and on that basis, issued directions to the petitioner and imposed penalty on the petitioner.

2. The queriests in these cases raised various queries relating to the petitioner, upon Northern Railway. In those proceedings, wherein the petitioner was not a party and was not noticed at all, the learned CIC has taken a view that the petitioner is a public authority. For this purpose, the CIC has relied upon an earlier order dated 14th July, 2008 passed in case no. CIC/OK/A/2008/00211 wherein also, the respondent/public authority before the CIC, was Northern Railway. In the said order dated 14th July, 2008 the CIC had observed as follows:-

> "……During the hearing, the Respondents admitted that the NZRE was a Society of the Railway Employees and that deductions made from the employees salaries towards the payment of premium of LIC policies was sent to them. Moreover, the land on which the office of the NZRE was located was given to them by the Railways (this would amount to indirect funding) and the Railways issued free passes to the Members for attending the meetings. In fact, there was a close coordination between the NZRE and the Railway authorities. Under the circumstances, the Commission fails to understand as to how the NZRE can take a stand they were not a public authority – though they may function in an autonomous manner.
>
> 7. Accordingly, the Commission directs the NZRE to provide to the Applicant the information asked for. Infact, it seems strange that the NZRE should hold an LIC policy and not divulge its contents when the policy holder needs the detail thereof. If thereof, directs the NZRE to open up all the files and records regarding the LIC policy held by them of the employees concerned. This they should do by 5 August 2008."

3. It appears that this order was also passed by the CIC without notice to or hearing the petitioner.

4. The first submission of learned counsel for the petitioner is that the CIC should not have ruled on the status of the petitioner as being a "public authority", when the case of the petitioner was that it was not a "public authority" within the meaning of Section 2(h) of the RTI Act, without notice to, and granting hearing to the petitioner. I fully agree with this submission

of the learned counsel for the petitioner, as an order, which has a bearing on the status, rights and obligations of a party qua the RTI Act, could not have been passed without even complying with the basic principles of natural justice, which are embedded and engrained in the RTI Act. On this short ground, the conclusion drawn by the learned CIC that the petitioner is a "public authority" within the meaning of Section 2(h) of the RTI Act cannot be sustained, and is liable to be set aside.

5. I would have considered remanding the case back to the CIC for determination of the said issue afresh after granting an opportunity to the petitioner and the other parties to put forward their case, but the parties have made detailed submissions on the said legal aspect before me. The submissions of the parties are premised on documents placed on record, and the said issue is a legal issue. I have heard them at length and, consequently, I proceed to consider the said submissions and decide the issue as to whether the petitioner is, or is not, a public authority.

6. The submission of Mr.Bhaduri is that the petitioner is a society which has been constituted with the object to promote the interests of all its members to attain their social and economic betterment through self help and mutual aid in accordance with the cooperative principles. The members of the petitioner association are employees of Northern Railway. The

functions of the petitioner society, as set out in the petition are the following:-

(ii) Functions

The object of the Society shall be to promote the economic interest of the members. In furtherance of the above objects, the society may undertake any or all the following:

> (a) To raise funds by means of issuing shares, acceptance money on compulsory deposit or otherwise from members.
> (b) To lend money to share-holder at interest.
> (c) To undertake welfare activities particularly for the members and employees and their children for the promotion of their moral, educational and physical improvement.
> (d) To own lands, building or to take them on lease or rent for the business of the Society and residential quarters for the staff of the Society.
> (e) To open Branches within the area of operat5ion of the society subject to the approval of the General Body.
> (f) To undertake other measures designed to encourage in the members the spirit and practice of thrift and mutual help.
> (g) To do all such things as are incidental or conducive to the attainment of any or all the above objects.
> (i)The Society shall help, maintain and promote the aims and object of the following funds, the rules of the working of which shall be framed by the General Body from time to time.
> (1) The "Share holder Death Cum Retirement Benefit Funds"
> (2) The "Share holder relief funds".

(3) The "Staff Welfare Funds."
(4) The "Building Fund."
(ii) Such other funds as may be considered necessary by the General Body from time to time,
(h) To raise funds from the members through Saving Accounts and Fixed Deposits with the approval of General Body."

7. The petitioner has made a categorical averment that it does not receive any financial assistance or help from the government. The petitioner society is neither owned nor funded, nor controlled by the State. It is also not the case of either of the parties that in the management of the petitioner society, the Railways have any direct or indirect role to play. On this basis, it is urged that the petitioner is not a "public authority" within the meaning of Section 2(h) of the RTI Act.

8. The petition is opposed by the respondents and, in particular, by the queriest. Learned counsel for the queriest Ms.Vibha Mahajan Seth submits that the members of the petitioner society are all Railway employees and deductions are directly made from their salaries, which are transmitted to the petitioner for being invested in LIC policies etc. She has also drawn the attention of the Court to Chapter XXIII of the Indian Railway Establishment Manual (Vol.-II) which deals with the aspect of Co-operative Societies. It is argued that Clause 425 of the said manual provides that special facilities

shall be provided to cooperative societies by the Railway, which are categorized as (i) Consumer Co-operative Societies and (ii) Co-operative Credit Societies Consumer Co-operative Societies are those which are engaged in retail trade to provide the needs of their members. She submits that the petitioner is a Co-operative Credit Society. Clause 2321 of the said manual provides for special casual leave and special passes to railway servants who are the members of the Managing Committee of such societies. In the case of Co-operative Credit Societies, special casual leave may be allowed as per actual requirement upto a maximum of 30 days in a calendar year. Under Clause 2323 it is provided that the co-operative societies shall adopt the model bye-laws framed by the Railway Board in consultation with the Registrar of Co-operative Societies concerned. The petitioner co-operative society is provided with premises by the Railways under Clause 2340, which provides that such societies shall be provided with accommodation on reasonable rent. The manner of fixation of such rent is also provided under Clause 1960 of the said manual. It is argued that the Railways have, in fact, not recovered any rent at all from the petitioner society for the accommodation provided to it.

9. Ms. Vibha Mahajan Seth further submits that under Section 2 of the Multi-State Co-operative Societies Act, 2002, the said Act shall apply to,

inter alia, all co-operative societies, with objects not confined to one State which were incorporated before the commencement of the said Act. She submits that the petitioner being a co-operative society with objects not confined to one State, the Multi State Co-operative Societies Act, 2002 is applicable to the petitioner society. It is argued that under Section 2(h) of the RTI Act a public authority means any authority or body or institution of self-government established or constituted, inter alia, *"by any other law made by Parliament"*.

10. She submits that there is no requirement of registration of a co-operative society under the Multi State Co-operative Societies Act, 2002 and by force of Section 2(a), the said Act is applicable to the petitioner society. Consequently, it can be said that the petitioner is a body which has been established or constituted by a law of Parliament and is, therefore, a public authority. She also places reliance on an order passed by the CIC in the case of Food Corporation of India Employees Co-operative Credit Society Limited in File No. CIC/PB/C/2007/00397/LS dated 18.03.2009 wherein the same view has been taken by the CIC.

11. She further submit that under Section 61 of the Multi State Co-operative Societies Act, 2002 the Central Government or the State Government, on receipt of a request from a Multi State Co-operative

Society, with a view to promote co-operative movement, may subscribe to the share capital of a Multi-State Co-operative Society or give loans or make advances to the said society. Financial assistance in various other forms can also be provided to a multi-state co-operative society.

12. The expression "public authority" is defined in Section 2(h) of the RTI Act 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;

13. For an authority or body or institution to be classified as a public authority under clause (b) of Section 2(h), what is necessary is that the authority, body or institution is established or constituted by a law made by Parliament. Consciously, the Parliament has not used the expression "*under any other law made by Parliament*". Therefore, the authority or body or

institution should be created by, and come into existence by the statute framed by the Parliament, and not under the statute so framed. For example, a company is constituted under the Companies Act. It cannot be said that a company is constituted "by a law made by Parliament". For it to be classified as an authority or body or institution under clause (b) or Section 2(h), it should be a statutory corporation.

14. Admittedly, the petitioner is not a statutory corporation as it is a cooperative society stated to have been constituted in the year 1960. It is not relevant whether it was constituted under the Cooperative Societies Act, 1912 or under any other law relating to any cooperative society in force, or in pursuance of the Multi State Cooperative Societies Act, 1942 (MSCS Act) or not, since it is not in dispute that it is a cooperative society. All that Section 2(a) of the Multi State Cooperative Societies Act, 2002 purports to do, is to state to which class of cooperative societies the said act would "apply". Section 2(b) states that the said Act "shall apply to" Multi-State Cooperative Societies "registered or deemed to be registered **under this Act**….."[See Section 2(b)]

15. It is also not the case of the contesting respondents that the petitioner society receives any funds or financial aid from the Government. Even if the petitioner society is provided some facilities in the nature of

accommodation on a reasonable rent or rent free accommodation, and its office bearers are provided casual leaves or special passes for travel on the railways to attend the affairs of the cooperative society, the same cannot be said to be a provision of "substantial finance" by the appropriate government, i.e. the Central Government to the petitioner cooperative society. Firstly, these facilities are provided to the office bearers, and not the petitioner society. Secondly, the respondents have not been able to show that the said facilities and amenities provided by the Central Government/Railways forms a significant fraction of the funds generated by the petitioner or the budget of the petitioner.

16. The petitioner is stated to be an organization of 72,000 railway employees, who contribute to the funds of the petitioner on a regular basis for being invested in schemes of LIC etc. There is no reason to accept that the amenities/facilities provided by the railways to the petitioner cooperative society translates into a "substantial finance" when compared to the revenues and budgets of the petitioner cooperative society. The method of collection of contributions is wholly irrelevant. That is only a mechanism evolved to enable smooth and punctual transmission of the subscription of the railway employees. It has no bearing on the issue at hand.

17. It is not even shown that the model bye laws in any way vest the

Central Government/Railways with any direct or indirect control in the functioning, and in the organization of the petitioner cooperative society. The mere adoption of the model bye laws as prescribed by the railways is, therefore, of no consequence. The adoption of the model bye laws appears to be insisted upon, only to ensure that the funds entrusted to the petitioner cooperative society by its members is properly utilized and are not defaulted or dissipated.

18. The mere fact that the petitioner comes within the purview of MSCS Act also makes no difference to the status of the petitioner in relation to the RTI Act. If the submission of learned counsel for the respondents/querists were to be accepted, it would mean that every cooperative society to which the MSCS Act applies would, ipso facto, qualify as a public authority. This position cannot be accepted.

19. The enabling provision contained in Section 61 of the MSCS Act, which enables the Central and State Governments to provide aid to such multi state cooperative societies in one or the other way, specified in the said section by itself cannot lead to the inference that the petitioner is a public authority. For it to fall within the said definition, the respondent should have established that the Central Government or the State Government have, as a matter of fact, either subscribed to the share capital of the petitioner

cooperative society; or given loans and made advances to the petitioner; or guaranteed repayment of principal and payment of interest on debentures issued by the petitioner society, or like, which amounts to "substantial finance".

20. Unless and until, the said aid qualifies to be termed as "substantial finance", when looked at in the light of the overall financial dealings and budget of the petitioner, the grant of aid under Section 61 of the MSCS Act would not be sufficient to clothe the cooperative society with the character of a public authority.

21. The earlier decision of the CIC in the case of Food Corporation of India throws no light on the subject, as it does not disclose any reasons. In fact, the petitioner has pointed out that in various other cases, the CIC rejected the applications for disclosure of information, simply on the ground that the multi state cooperative society was not a public authority within the meaning of the RTI Act.

22. For all the aforesaid reasons, the finding returned by the learned CIC that the petitioner is a public authority is quashed, and it is held that the petitioner is not a public authority, in the light of the aforesaid discussion. However, in case the petitioner does receive substantial finance from the appropriate Government, or is otherwise controlled by the appropriate

Government at any time in future, the said character may undergo a change.

23. As aforesaid, the queries were directed to, in all these cases, the Northern Railway. In respect of various queries, pertaining to which the Northern Railways itself had the information and should have provided the information, it forwarded the queries to the petitioner instead. Such conduct of the Northern Railway was not in accordance with the provisions of the RTI Act. For instance, it is for the Northern Railway to disclose as to how many passes it had issued to the officer bearers of the cooperative society in terms of its aforesaid manual. This information would be available with the Railways, as it pertains to the actions and conduct of the Railways. Similarly, it is for the Northern Railways to explain as to what action it has taken on the complaints made against the office bearers of the petitioner association, as the complaints were made to the Northern Railways and not to the petitioner, and the action was also required to be taken by the Northern Railways.

24. So far as the impugned orders direct disclosure of information by the Northern Railways, the same are sustained. The imposition of fine on the petitioner cannot be sustained, since it proceeds on the assumption that the petitioner is a public authority.

25. Accordingly, these petitions are disposed of with a direction that the

matters be again placed before the learned CIC to decide the appeals afresh in the light of the aforesaid decision.

26. Let the parties appear before the learned CIC on 22.02.2012.

VIPIN SANGHI, J

JANUARY 16, 2012
mb

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 1856/2010 & CMs 3713, 5390, 5682/2010

Reserved on: July 16, 2010
Decision on : July 27, 2010

INDIAN INSTITUTE OF BANKING AND FINANCE ..... Petitioner
Through: Mr. N.K. Kaul, Senior Advocate with Mr. Sanjay Bhatt and Mr. Kishan Rawat, Advocates.

versus

MUKUL SRIVASTAVA ..... Respondent
Through: Mr. Tej Bahadur Verma, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT
27.07.2010

1.The short question is whether the Indian Institute of Banking & Finance, the Petitioner herein, is a `public authority' within the meaning of Section 2(h) of the Right to Information Act, 2005 ('RTI Act').

2. The facts in brief are that the Respondent Mukul Srivastava, an employee of the Punjab National Bank, enrolled with the Petitioner Institute and appeared for the Junior Associate of the Indian Institute of Bankers ('JAIIB') examination conducted by it under the old syllabus in December 2003. Although, he passed in the "Single Basic

Accountancy" paper in 2004, he could not clear the remaining subjects under the old syllabus till December 2005. Even under the revised syllabus he could not complete the examination by December 2007. He enrolled afresh for the first block of two attempts for JAIIB examination in May 2008. He remained absent in all three examinations in May and December 2008. The Respondent took the on-line examination for the paper on "Legal Aspects of Banking" on 2nd December 2007. By a letter of that date, he requested the Petitioner for 5 grace marks. The Petitioner replied on 29th December 2007 stating that the said request could not be acceded to. He then approached the Minister of State for Finance, Government of India with a similar request. This letter was forwarded to the Petitioner. It was replied to on 28th February 2008 reiterating that as per the rules of the examination, candidates were not entitled to any grace marks. This was followed by a legal notice and a consumer complaint filed by the Respondent with the District Consumer Forum, New Delhi.

3. In the above background, the Respondent sent a letter dated 24th February 2009 to the Petitioner under the RTI Act seeking information about all the examinees who had appeared for the JAIIB examination on 18th November 2007 and their respective answer sheets. In reply to the above letter, the Petitioner informed the Respondent that the Petitioner was not a public authority under the RTI Act. Thereafter the Respondent approached the Central Information Commission ('CIC').

4. By the impugned order dated 9th February 2010, the CIC held that the Petitioner was a public authority and directed it to appoint a Central Public Information Officer ('CPIO') within 30 days and provide the information sought for, to the Respondent within the same period.

5. The summary of the order of the CIC is as under:

(i) The policy making and the executive bodies of the Petitioner Institute "are substantially manned by the senior executives of the Public Sector Banks and the bulk of its finances also come directly or indirectly from those banks."

(ii) The services of the Petitioner "are largely subscribed to and enjoyed by the Public Sector Banks and their employees."

(iii) There was "a very close relationship between the Public Sector Banks" and the Petitioner "almost verging on mutual dependence".

(iv) The Petitioner, "a Non-Governmental Organisation, being substantially financed by the Public Sector Banks directly and indirectly is nothing but a public authority".

6. Apart from the above, the CIC observed that the holding of examinations and setting standards for the banking sector was a public service, even if the participants had to pay a fee for taking such an examination. According to the CIC, in this respect, the Petitioner was no different from the Central Board of Secondary Education, the

Institute of Chartered Accountants of India, the Institute of Cost and Works Accountants of India, etc. Consequently, it was held that apart from fulfilling the condition of "substantial financing as stipulated in Section 2(h)(d)(ii)", the Petitioner "also performs public service covering a vast section of population". Consequently, it was concluded that the Petitioner is a public authority under Section 2(h) of the RTI Act.

7. While directing notice to be issued to the Respondent on 18th March 2010, this Court stayed the impugned order. The Respondent appeared through counsel and filed an application being CM No. 5390 of 2010 for directions. Learned counsel for the Respondent submitted that the same should be treated as the Respondent's reply. With the consent of both the parties, the petition was taken up for final hearing.

8. This Court has heard the submissions of Mr. N.K. Kaul, learned Senior counsel appearing for the Petitioner and Mr. Tej Bahadur Verma, learned counsel appearing for the Respondent.

9. There appears to be no dispute on the fact that the Petitioner Institute is a non-governmental organization. Therefore, in order to ascertain if it is a public authority, it is Section 2(h)(d)(ii) of the RTI Act that requires to be referred to. The said provision reads as under:-

> "2(h) "public authority" means any authority or body or institution of self-government established or constituted,
>
> -
>
> (a)…

(b)…

(c)…

(d) by notification issued or order made by the appropriate Government,

and includes any –

(i)…

(ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government."

10. The question for determination, as correctly formulated by the CIC, is whether the Petitioner is "substantially financed directly or indirectly by funds provided by the appropriate Government?"

11. The Petitioner was first incorporated as the Indian Institute of Bankers under the Indian Companies Act, 1913 on 4th April 1928 and its initial subscribers included the Bank of India and the Imperial Bank of India. The present Governing Council of the Petitioner consists of a President, two Vice Presidents and 18 Members, majority of whom are from public sector banks. One of the main activities of the Petitioner is to conduct examinations for banking personnel. Passing in these examinations is a pre-condition for career promotion in public sector banks. Therefore, a majority of the candidates who appear in these examinations are from public sector banks. The member banks and financial institutions give an annual subscription to the Petitioner Institute and those appearing in the examination pay a fees to the Petitioner for the service that it provides.

12. What appears to have weighed with the CIC is that the subscription received by the Petitioner from its member banks and the fees collected by it from the candidates appearing in the examinations conducted by it tantamounts to "substantial financing directly or indirectly by the appropriate Government". S.2(h)(d)(ii) of the RTI Act as it reads is unambiguous. The substantial financing of the Petitioner directly or indirectly has to be by "the appropriate Government" and not by any other public authority.

13. It is possible that the member banks, for instance, the State Bank of India ('SBI'), is itself a public authority. However, `substantial financing' by the SBI would itself not make the Petitioner a `public authority'. It would have to be shown that the appropriate Government itself directly or indirectly finances or has financed the Petitioner.

14. It is nobody's case, and certainly not that of the Respondent, that there is any substantial financing directly or indirectly of the Petitioner by the appropriate Government. Counsel for the Respondent repeatedly referred to the total amount of subscription fee received from the members of the Petitioner Institute and submitted that this amount was substantial enough for the Court to come to the conclusion that the Petitioner is a public authority. This submission, in the considered view of this Court, is misconceived. The mere subscription received by the Petitioner from its members, some of whom may be public authorities within the meaning of Section 2(h) of

the RTI Act and the fees collected by it from the candidates who take the examinations conducted by it, cannot as such constitute "substantial financing" by the "appropriate government". That is the mandate of the statue. If the arguments of the Respondent were to be accepted then Section 2(h)(d)(ii) should permit substantial financing directly or indirectly through funds provided by "a public authority". However, as the statue reads, such substantial financing has to be by "the appropriate Government". It is not possible to read into Section 2(h)(d)(ii) of the RTI Act words that do not exist.

15. For the aforementioned reasons, this Court is not able to concur with the impugned order of the CIC dated 9th February 2010 which is hereby set aside. The writ petition is allowed, but in the circumstance, with no order as to costs.

16. Writ petition and the pending applications are accordingly disposed of.

S. MURALIDHAR, J

JULY 27, 2010
ak

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 1384/2012

INSTITUTE OF BANKING PERSONNEL

SELECTION ..... Petitioner

Through Mr R. Sudhinder and Mrs Prerana

Amitabh, Advocates.

versus

THE REGISTRAR, CENTRAL INFORMATION

COMMISSION AND ORS ..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

15.10.2014

The controversy involved in the present petition is whether the petitioner is a public authority within the meaning of Section 2 (h) of the Right to Information Act, 2005 (hereinafter referred to as ?the Act?).

The petitioner is stated to be a non-governmental organization and in this view would not fall within the definition of public authority unless the petitioner is found to be substantially financed directly or indirectly by funds provided by the appropriate government.

The petitioner, essentially, conducts examination with respect to

the banking industry and obtains subscription from various banks. The petitioner also charges fees from examinees. A Single Judge of this Court in the case of Indian Institute of Banking and Finance vs Mukul Srivastava: W.P. (C) 1856/2010 decided on 27.07.2010 had held that Indian Institute of Banking and Finance, the petitioner therein, was not a public authority. The learned counsel for the petitioner states that the petitioner?s position is identical to that of Indian Institute of Banking and Finance including the functions performed by the petitioner.

Apparently, the CIC has not considered the aforesaid decision of this Court which, it is contended, would cover the controversy in issue. In the circumstances the impugned order dated 09.01.2012 passed by the CIC is set aside and the matter is remanded to CIC to consider it afresh after giving an opportunity to the petitioner be heard and in the light of the decision of this Court in Mukul Srivastava (Supra).

The writ petition is disposed of with the aforesaid direction.

VIBHU BAKHRU, J

OCTOBER 15, 2014

pkv

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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 10.03.2015

+ **W.P.(C) 1041/2013**

SUBHASH CHANDRA AGRAWAL ..... Petitioner

versus

OFFICE OF THE ATTORNEY GENERAL OF INDIA ..... Respondent

AND

+ **W.P.(C) 1665/2013**

R.K. JAIN ..... Petitioner

versus

OFFICE OF THE ATTORNEY GENERAL OF INDIA ..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Pranav Sachdeva and Mr Syed Musaib in W.P.(C) 1041/2013.
Mr Rajveer Singh and Mr J.K. Mittal in W.P.(C) 1665/2013.

For the Respondents : Mr Jasmeet Singh, CGSC with Ms Kritika Mehra for UOI in W.P.(C) 1041/2013.
Mr Vikram Jetly, CGSC for UOI in W.P.(C) 1665/2013.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The point in issue in these petitions, is whether the Office of Attorney General of India is a 'public authority' within the meaning of section 2(h) of the Right to Information Act, 2005 (hereafter the 'RTI Act')?

2. The petitioners impugn an order dated 10.12.2012 (hereinafter referred to as the 'impugned order') passed by the Central Information Commission (hereafter 'the CIC') holding that the office of Attorney General of India (hereinafter referred to as the 'AGI') is not a Public Authority under Section 2(h) of the RTI Act. The petitioner in W.P.(C) No.1665/2013 has also challenged a letter dated 29.01.2013 issued by the office of AGI refusing the information sought for by the petitioner.

3. Briefly stated, the relevant facts leading to the present petitions are as follows:-

3.1 Shri R.K. Jain, the petitioner in W.P.(C) No.1665/2013 filed an application dated 07.01.2013 with the office of AGI, seeking information under the RTI Act. In response to the said application, the Office of AGI returned the petitioner's application under the cover of its letter dated 29.01.2013, stating that as per the full Bench decision of the CIC, the AGI is not a "public authority". Shri R.K. Jain has, therefore, challenged the impugned order dated 10.12.2012 and also prayed that a direction be issued to the respondent to provide the information as sought for by him.

3.2 Subhash Chandra Agrawal, the petitioner in W.P.(C) No.1041/2013 filed an application dated 15.11.2011, addressed to the CPIO office of the AGI, seeking certain information under the RTI Act. It is asserted that the said office of the AGI declined to accept the said application; the speed post envelope containing the said application was returned with the remark "There is no CPIO in AG's Office". Aggrieved by the same, the petitioner filed a complaint under Section 18 of the RTI Act, with the CIC, on 02.12.2012. The petitioner also requested that a direction be issued to the

Office of the AGI to respond to the petitioner's application dated 15.11.2011.

4. By the impugned order dated 10.12.2012, the CIC rejected the complaint filed by the petitioner in W.P.(C) No.1041/2013 by holding that AGI was not a "Public Authority" within the meaning of Section 2(h) of the Act. The CIC was of the opinion that the AGI was only a person and could not be considered as an "authority" and, therefore, fell outside the sweep of Section 2(h) of the RTI Act.

5. The CIC referred to the following passage from the decision of the Supreme Court in ***Som Prakash Rekhi v. Union of India and Anr.***: **(1981) 1 SCC 449** to conclude that AGI was not an authority:-

> "27. Control by Government of the corporation is writ large in the Act and in the factum of being a Government company. Moreover, here, Section 7 gives to the Government company mentioned in it a statutory recognition, a legislative sanction and status above a mere Government company. If the entity is no more than a company under the Company law or society under the law relating to registered societies or cooperative societies you cannot call it an authority. A ration shop run by a cooperative store financed by government is not an authority, being a mere merchant, not a sharer of State power. 'Authority' in law belong to the province of power: 'Authority (in Administrative Law) is a body having jurisdiction in certain matters of a public nature.' Therefore, the 'ability conferred upon a person by the law to alter, by his own will directed to that end, the rights, duties; liabilities or other legal relations, either of himself or of other persons' must be present ab extra to make a person an 'authority'. When the person is an 'agent or instrument of the functions of the State' the power is public. So the search here must be to see whether the Act vests authority, as agent or instrument of the State, to affect the legal relations of oneself or others."

6. The petitioners assail the decision of the CIC and contend that the office of the AGI is established by virtue of Article 76 of the Constitution of India and, therefore, AGI would be answerable to the people of India. It was further contended that the right to information is a fundamental right under Article 19(1)(a) of the Constitution of India and, therefore, the RTI Act must be interpreted in furtherance of the said fundamental right.

7. The petitioners further referred to the decision of the Supreme Court in ***B.P.Singhal v. Union of India***: **(2010) 6 SCC 331** to contend that the AGI holds a public office. It was further contended that apart from acting as a lawyer for the Government of India, the AGI also has certain other privileges and functions; under Article 88 of the Constitution of India, the AGI has the right to take part in the proceedings of the Parliament. The AGI also performs certain statutory duties under the Contempt of Courts Act, 1971.

8. The respondent disputes the contentions urged by the petitioners. It is submitted on behalf of the respondent that the AGI is a standalone counsel of the Government of India and is in a *sui generis* position under the Constitution of India. It is contended that the functions performed by AGI neither alter the rights of any person nor bind the Government of India; therefore, the AGI could not be construed as an "authority". The learned counsel for the respondent referred to the decision of the Supreme Court in ***Sukhdev Singh v. Bhagatram***: **(1975) 1 SCC 421** in support of his contention that the term "authority" refers to the power to alter the 'relations' or rights of others. And, none of the functions of AGI belong to the realm of authority. He also referred to Rule 5 of the Law Officer

(Conditions of Services) Rules, 1987 (hereafter 'the said Rules') which provides for the duties of a Law Officer. He submitted that none of the duties to be performed by the AGI could render the AGI as an 'authority'.

9. The learned counsel for respondent also emphasized that the AGI does not have the necessary infrastructure to support the applicability of the RTI Act inasmuch as, the AGI is a single person office and, therefore, would have to act as a CPIO as well as the Appellate Authority. Since the same is not feasible, the AGI cannot be held as 'Public Authority'.

10. Section 2(h) of the RTI Act defines "Public Authority" and reads as under:-

> "(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;"

11. Article 76 of the Constitution of India provides for the appointment of the Attorney General for India and reads as under:-

> "**76. Attorney-General for India**.—(1) The President shall appoint a person who is qualified to be appointed a Judge of the Supreme Court to be Attorney-General for India.
>
> (2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from

time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine."

12. In view of the aforesaid, it cannot be disputed that the office of Attorney General for India is established under the Constitution of India. The conditions of service of the AGI are governed under the said Rules which have been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. By virtue of Rule 2(d) of the said Rules, the expression 'Law Officer' includes the AGI. Rule 5 of the said Rules provides for the duties of a Law Officer and reads as under:-

"5. Duties - It shall be the duty of a Law Officer –

(a) to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time, be referred or assigned to him by the Government of India.

(b) to appear, whenever required, in the Supreme Court or in any High Court on behalf of the Government of India in cases (including suits, writ petitions, appeal and other proceedings) in which the Government of India is concerned as a party or is otherwise interested;

(c) to represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution; and

(d) to discharge such other functions as are conferred on a Law Officer by or under the Constitution or any other Law for the time being in force."

13. Rule 6 of the said Rules provides for the entitlement of leave and Rule 7 of the said Rules prescribes the remuneration, fee and allowances payable to the Law Officers. By virtue of Rule 7(2)(d) of the said Rules, the AGI is also entitled for sumptuary allowance in addition to other fees and allowances. Rule 9 of the said Rules provides for the perquisites that a Law Officer is entitled to and reads as under:-

"9. Perquisites — (1) The services of personal staff, office accommodation and telephones at the office and residence of a Law Officer shall be provided by the Government of India free of cost.

Provided that a Law Officer shall be liable to make payment for the telephone Balls, other than the telephone calls for official purposes, made from his residential telephone, if they exceed such number of telephone calls or such charges for telephone calls in respect of the residential telephone as the Government of India may, from time to time, determine in this regard;

"Explanation — For the purpose of this rule " Personal staff' means: -

(i) in the case of Attorney General and Solicitor General - a Principal Private Secretary in the appropriate grade, a stenographer and a jamadar;

(ii) in the case of Additional Solicitor General - a Private Secretary in the appropriate grade, a stenographer and a jamadar".

(2) A Law Officer would be provided by the Government of India suitable residential accommodation on payment of usual rent fixed by the Government from time to time."

14. By virtue of Rule 8 of the said Rules, certain restrictions are placed on a Law Officer and the said Rule reads as under:-

> "8. Restrictions- (1) A Law Officer shall not -
>
> (a) hold briefs in any court for any party except the Government of India or the Government of a State or any University, Government School or College, local authority, Public Service Commission, Port Trust, Port Commissioners, Government aided or Government managed hospitals, a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956), any Corporation owned or controlled by the State, any body or institution in which the Government has a preponderating interest;
>
> (b) advice any party against the Government of India or a Public Sector Undertaking, or in cases in which he is likely to be called upon to advise, or appear for, the Government of India or a Public Sector Undertaking;
>
> (c) defend an accused person in a criminal prosecution, without the permission of the Government of India; or
>
> (d) accept appointment to any office in any company or corporation without the permission of the Government of India;
>
> (e) advise any Ministry or Department of Government of India or any statutory organization or any Public Sector Undertaking unless the proposal or a reference in this regard is received through the Ministry of Law and Justice, Department of Legal Affairs."
>
> (2). Where a Law Officer appears or does other work on behalf of bodies of Union of India such as the Election Commission, the Union Public Service Commission etc. he shall only be entitled to fees on the scales mentioned in clauses (c) of sub-rule (1) of rule 7."

15. Article 88 of the Constitution of India expressly provides that *"every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote."*

16. In addition to acting as legal advisor and performing duties of a legal character that may be assigned, the AGI is also obliged to discharge the functions as may be conferred under any law for the time being in force.

17. By virtue of Section 15 of the Contempt of Courts Act, 1972, the Supreme Court may take an action for criminal contempt on a motion made by the AGI or the Solicitor General. Thus, the AGI also has the right to move a motion in case of a criminal contempt, before the Supreme Court.

18. The AGI is also an *ex officio* member of the Bar Council of India and is also considered as a leader of the Bar.

19. It is apparent from the above that the role of the AGI is not limited to merely acting as a lawyer for the Government of India as is contended by the respondent; the AGI is a constitutional functionary and is also obliged to discharge the functions under the Constitution as well as under any other law.

20. Although, it cannot be disputed that AGI is a constitutional functionary, the point in issue is whether he can be termed as an "authority". The respondent has relied heavily on the decisions of the Supreme Court in ***Sukhdev Singh*** *(supra)* and ***Som Prakash Rekhi*** *(supra)* to contend that the AGI cannot be considered as an authority since the office of Attorney General of India does not have the power *to alter, by his*

own will directed to that end, the rights, duties; liabilities or other legal relations, either of himself or of other.

21. I am unable to accept the aforesaid contention, for the reason that the term "authority" as used in the opening sentence of Section 2(h) of the Act cannot be interpreted in a restrictive sense. The expression "authority" would also include all persons or bodies that have been conferred a power to perform the functions entrusted to them. Merely because the bulk of the duties of the AGI are advisory, the same would not render the office of the AGI any less authoritative than other constitutional functionaries. There are various bodies, which are entrusted with 'staff functions' (i.e. which are advisory in nature) as distinct from 'line functions'. The expression "authority" as used in Section 2(h) cannot be read as a term to exclude bodies or entities which are, essentially, performing advisory functions.

22. In my view, the expression "authority" as used in Section 2(h) of the Act would encompass any office that is conferred with any statutory or constitutional power. The office of the AGI is an office established under the Constitution of India; the incumbent appointed to that office discharges functions as provided under the Constitution. Article 76(2) of the Constitution expressly provides that the AGI would perform the duties of a legal character and also discharge the functions conferred on him under the Constitution or any other law in force. Indisputably, the appointee to that office is, by virtue the constitution, vested with the authority to discharge those functions.

23. A Coordinate Bench of this Court in ***IFCI Limited v. Ravinder Balwani***: **(175) 2010 DLT 84** had expressly held that *"Given the fact that*

there is a specific definition of what constitutes a 'public authority' for the purposes of the RTI Act, there is no warrant for incorporating the tests evolved by the Supreme Court in Pradeep Kumar Biswas for the purposes of Article 12 of the Constitution is likely to be a 'public authority' under the RTI Act, the converse need not be necessarily true. Given the purpose and object of the RTI Act the only consideration is whether the body in question answers the description of a 'public authority' under Section 2(h) of the RTI Act. There is no need to turn to the Constitution for this purpose, particularly when there is a specific statutory provision for that purpose."

24. I respectfully concur with the aforesaid view that reference to the definition of an authority under Article 12 of the Constitution is not necessary in determining the scope of Section 2(h) of the RTI Act. The expression "authority" as used under Section 2(h) of the RTI Act, also necessarily takes colour from the context of the said Act. An office that is established under the Constitution of India would clearly fall within the definition of Section 2(h) of the RTI Act. Even in common parlance, the AGI has always been understood as a constitutional authority.

25. The decisions of the Supreme Court in ***Sukhdev Singh*** *(supra)* and ***Som Prakash Rekhi*** *(supra)* are rendered under Article 12 of the Constitution of India and it may not be apposite to apply them for interpreting Section 2(h) of the RTI Act. The question before the Supreme Court in ***Sukhdev Singh*** *(supra)* was whether certain statutory corporations should be considered as "State" under Article 12 of the Constitution of India. In ***Som Prakash Rekhi*** *(supra)*, the Supreme Court was concerned with the issue whether The Bharat Petroleum Corporation Ltd., a

Government Company, was "State" under the constitution. The Supreme Court held that certain corporation/ companies could be considered as 'other authorities' under Article 12 of the Constitution as they acted as instrumentality of the State. One of the reasons that persuaded the Supreme Court to take this view was the functions that were performed by the Corporations in question. In ***Sukhdev Singh*** *(supra)*, the Supreme Court observed that *"a public authority is a body which has public or statutory duties to perform and which performs those duties and carries out its transaction for the benefit of the public and not for private profit"*.

26. In ***Som Prakash Rekhi*** *(supra)*, the Supreme Court referred to law lexicon or British India (1940) by P. Ramanatha Aiyar and noted that 'authority' is a body having jurisdiction in certain matters of public nature.

27. It is apparent from the above that the public nature of the activities being carried on by the statutory corporations and the Government companies, in question persuaded the Courts to hold them as 'other authorities' under Article 12 of the Constitution of India. It is not disputed that the functions of the AGI are also in the nature of public functions. The AGI performs the functions as are required by virtue of Article 76(2) of the Constitution of India. In ***B.P. Singhal*** *(supra)*, a Constitution Bench of the Supreme Court held the office of the AGI to be a public office. In this view also, the office of the AGI should be a public authority within the meaning of Section 2(h) of the RTI Act.

28. It was contended that the nature of information or advice rendered by the AGI was not amenable to disclosure under the RTI Act for several reasons; first of all, it was contended that the said information is privileged.

Secondly, it was emphasized that advice is rendered on files which are subsequently returned. Thus, the information may not be available for disclosure under the RTI Act. In this regard, it cannot be disputed that if information sought for falls within the exceptions as listed in Section 8 of the Act, there would be no obligation to disclose the same. This aspect has not been examined by the CIC nor urged before me and, therefore, I do not propose to address the same.

29. It has been contended that there would be a practical difficulty as the office of the Attorney General is only a skeletal office which only consists of the appointee and the appointee's is personal staff. In my view, this cannot be considered as a reason for excluding the applicability of the Act on a public authority.

30. In view of the aforesaid, the impugned order is set aside and the matter is remanded to the CIC to consider the other contentions urged by the petitioners before the CIC. Since the only reason indicated for denying the information to Shri R.K. Jain was the CIC's impugned order, the AGI is directed to reconsider the application filed by Shri R.K. Jain.

31. The petitions are, accordingly, disposed of.

VIBHU BAKHRU, J

MARCH 10, 2015
RK

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 12.03.2015

+ **W.P.(C) 6946/2011 & CM No.15943/2011**

HARDICON LTD ..... Petitioner

versus

MADAN LAL ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Dinkar Singh.
For the Respondent : None.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns a decision dated 21.04.2011 (hereafter the 'impugned order') of a Full Bench of the Central Information Commission (hereafter the 'CIC'). The CIC, by a majority opinion, held the petitioner to be a public authority within the meaning of Section 2(h) of the Right to Information Act, 2005 (hereafter 'the RTI Act'). The controversy to be addressed in the present petition is limited to the question whether the petitioner is a public authority as defined under Section 2(h) of the RTI Act.

2. Briefly, stated the relevant facts are as under:-

2.1 The respondent filed an application dated 27.01.2010 under the RTI Act, seeking certain information from the petitioner. The petitioner declined to give the information as sought for by the respondent on the ground that the petitioner was not a 'public authority' under the RTI Act. This led the respondent to file a complaint before the CIC. The CIC, by a

majority of four members to one, held that the petitioner was a public authority within the meaning of Section 2(h) of the RTI Act.

2.2 Admittedly, the petitioner is a public company incorporated under the Companies Act, 1956. The petitioner was promoted by various financial institutions and nationalized banks with the twin objectives of facilitating overall industrial development of the country by catering to the technical consultancy needs of the industry. Admittedly, the petitioner company was incorporated as various banks and financial institutions were availing the services of technical consultants for various purposes including for appraising the projects of borrowers/proposed borrowers. Initially, the petitioner company was known as Haryana Industrial Consultants Ltd; subsequently, it was renamed as Hardicon Ltd.

3. The constituent shareholding pattern of the petitioner is as under:-

> "At the hearing held before the Commission on 08/04/2011, the Counsel for the Respondent provided the shareholding pattern of Hardicon, which has been reproduced as follows:

S. No.	**Name of the Shareholder**	**Number of Shares**	**Value**	**Percentage**
1.	IFCI Limited	2600	2,60,000	26
2.	Small Industries Development Bank of India	1250	1,25,000	12.5
3.	ICICI Bank Limited	1250	1,25,000	12.5
4.	Haryana State Industrial & Infra. Development Corporation Limited	800	80,000	8
5.	Haryana Financial Corporation	800	80,000	8
6.	Delhi Financial Corporation	800	80,000	8
7.	Haryana State Small Industries & Export Corporation Limited	700	70,000	7

8.	Punjab National Bank	650	65,000	6.5
9.	Oriental Bank of Commerce	500	50,000	5
10.	State Bank of India	250	25,000	2.5
11.	Central Bank of India	100	10,000	1
12.	UCO Bank	100	10,000	1
13.	Bank of India	100	10,000	1
14.	Union Bank of India	100	10,000	1
	Total	**10,000**	**1,000,000**	**100”**

4. The above shareholding pattern indicates that 38.5% of the equity capital of the petitioner company is held by IFCI Ltd. and ICICI Bank Ltd. The balance 61.5% equity is held by public sector banks/undertakings. The CIC was of the view that as over 61% of the equity of the petitioner was subscribed by various banks and financial institutions which were funded by the Government, the petitioner too was indirectly funded by the appropriate Government. It was held that the equity subscription by public sector banks and corporations amounted to an indirect financing by the appropriate Government.

5. The petitioner disputes the aforesaid view and contends that the Public Sector Undertaking cannot be substituted or be considered analogous to an appropriate government. The learned counsel for the petitioner contended that subscription of equity by public sector enterprises did not amount to substantial financing by an appropriate government. It was further pointed out that the petitioner had not received any financial assistance except the equity subscription from its shareholders.

6. It is further contended that investment by Public Sector Undertakings in a capital market is a part of their commercial activity as distinguishable from financing by an appropriate Government. Therefore, equity participation in commercial ventures by Public Sector Undertakings could not be construed as substantial financing by an appropriate Government.

7. The expression 'Public Authority' is defined under Section 2(h) of the RTI Act as under:-

> "(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;"

8. The Supreme Court in the case of ***Thalappalam Service Cooperative Bank Ltd. and Others v. State of Kerala and Others*****: (2013) 16 SCC 82** had referred to the aforementioned definition and held as under:-

> "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. …."

9. The Court had further held that the categories as mentioned under Section 2(h) of the RTI act were exhaustive and exhausted all categories of public authorities. The Supreme Court explained that there was no scope to enlarge the aforesaid definition by including any other category or class of entities which did not specifically fall within the following categories:-

(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.

(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.

10. In view of the aforesaid, the principal question to be addressed is whether the petitioner is, owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate Government.

11. Insofar as the ownership of the petitioner is concerned, the petitioner is an incorporated entity and its constituents are several independent entities; thus, the petitioner cannot be stated to be owned by the central government. It is also not the respondent's case that the petitioner is a body indirectly owned by an appropriate government.

12. Insofar as the control of the petitioner is concerned, it is not the case of the respondent that the petitioner is indirectly controlled by an appropriate government. Analysis of the shareholding pattern of the petitioner indicates that 18% of its shares are held by nationalized banks, namely, Punjab National Bank, Oriental Bank of Commerce, State Bank of India, Central Bank of India, UCO Bank, Bank of India and Union Bank of India. Although, substantial capital of the said banks is held by the Central Government, it is also true that a significant capital is held by other shareholders including public at large as well as Institutional Investors. These banks do not exercise majority control over the petitioner as they are only minority shareholders. 12.5% of the share capital of the petitioner is held by Small Industries Development Bank of India (SIDBI). SIDBI's shares are held by several banks and insurance companies. Even if it is assumed that the Central Government holds indirect interest in SIDBI and consequently in the petitioner, nonetheless, the aggregate equity interest of nationalized banks and SIDBI together does not constitute a majority equity interest in the petitioner. Indisputably, this indirect holding cannot be construed as extending pervasive control over the petitioner.

13. Admittedly, IFCI Ltd. and ICICI Bank Ltd. are not Public Sector Enterprises. These entities hold 38.5% of the equity capital of the

petitioner. The Haryana State Industrial and Infra. Development Corporation Ltd. and Haryana Financial Corporation together holds 16% of the outstanding equity capital of the petitioner. Admittedly, the Central Government does not exercise any direct or indirect control over these two entities which are mainly controlled by the State Government of Haryana. The remaining 8% shares of the petitioner are held by Delhi Financial Corporation, which is also not under the direct control of the Central Government. In the aforesaid facts, it is not possible to conclude that the central government exercises a pervasive control or that it has the power to control the appointment of the Board of Directors of the petitioner through its other entities. The State Government of Haryana also does not have such pervasive control as the state corporations also do not hold majority shares in the petitioner company. It is, thus, apparent that neither the private entities nor the public sector enterprises can independently exercise substantial control over the petitioner company. The Articles of Association also provide for special rights to IFCI Ltd to nominate one third of the number of directors as a lead institution provided a specified percentage of shares are held by IFCI Ltd along with other institutions.

14. The next question to be examined is whether the petitioner is substantially financed by the appropriate Government. In my view, this question must also be answered in the negative as there is no material to indicate that the petitioner has been indirectly funded by the appropriate Government. Undoubtedly, the Central Government has substantially funded the nationalized banks. However, it is equally true that the said banks have been funded to a significant extent by other shareholders.

Concededly, the petitioner has been promoted by its shareholders as a commercial entity to render consultancy services on a commercial basis. The petitioner is, clearly, a joint commercial venture by several entities.

15. The CIC held that as 61.5% of equity of the petitioner was subscribed by government owned entities and the same would meet the criteria of substantial financing by an appropriate Government. I find it difficult to agree with the said conclusion. Admittedly, the Government – whether it be State Government or Central Government – has not provided any direct funding to the petitioner. The question whether the entity has been indirectly financed is to be determined on the facts of each case. In this case, there is no material to indicate any flow of funds from any government to the petitioner. In order to hold that an entity has been indirectly financed by an appropriate Government, first of all, it is necessary to find that the Central Government has parted with some funds for financing the authority/body; and secondly, the said funds have found their way to the authority/body in question. The link between the financing received by an entity and an appropriate Government must be clearly established.

16. In this case, there is no material to indicate that any of the funds received by the petitioner owed their source to either the Central Government or the State Government. The constituent shareholders of the petitioner are independent entities and whose source of funds are not limited to the Central Government/State Government. Although, substantial part of equity of nationalized banks is held by the Government, the sources of funds available to the bank are not limited to the Government alone.

Banks receives substantial deposits as a part of their business. In addition, the banks also generate substantial income from their commercial activities. Such funds are also deployed by banks by lending and investing in other entries. Since the funds received by the petitioner by way of subscription to its equity cannot be traced to any Government. The conclusion that the government has indirectly provided substantial finance to the petitioner is not sustainable.

17. In view of the above, the petition is allowed and the impugned order is set aside. The petition and the application stand disposed of. No order as to costs.

VIBHU BAKHRU, J

MARCH 12, 2015
MK/RK

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 02.03.2015

+ W.P.(C) 6751/2013

SUBHASH CHANDRA AGRAWAL ..... Petitioner

versus

INDIAN FARMERS FERTILISER COOPERATIVE LTD. & ANR. ..... Respondents

AND

+ W.P.(C) 824/2014

DR. M HAROON SIDDIQUI ..... Petitioner

versus

INDIAN FARMERS FERTALISER COOPERATIVE LTD. & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Ramesh K. Mishra for Mr Prashant Bhushan in W.P.(C) 6751/2013.
Mr Prashant Chandra Sen with Ms Ankita Saikia and Mr Rohit Kumar in W.P.(C) 824/2014

For the Respondent : Mr Arvind Nigam, Sr. Advocate with Mr Rajiv Bansal, and Mr Aman Nandrajog for IFFCO.
Mr Vikram Jetly, CGSC for UOI in W.P.(C) 6751/2013.
Mr Sanjeev Narula (CGSC) and Mr Ajay Kalra for UOI (R-2 & R-3) in W.P.(C) 824/2014.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petitions impugning a common order dated 05.08.2013 (hereafter 'impugned order') passed by the Central

Information Commission (CIC) holding that the respondent - Indian Farmers Fertiliser Cooperative Limited (hereafter 'IFFCO') is not a 'Public Authority' within the meaning of Section 2(h) of the Right to Information Act, 2005 (hereafter the 'Act').

2. The relevant facts pertaining to W.P.(C) No.6751//2013 are that the petitioner - Subhash Chandra Agrawal, filed an application dated 20.01.2011 under the Act with IFFCO seeking various information. By a letter dated 03.02.2011, IFFCO rejected the said application stating that IFFCO has no government equity and IFFCO is not a 'public authority' under Section 2(h) of the Act. On 31.03.2013, the first appeal filed by Subhash Chandra Agarwal against the letter dated 03.02.2011 was also rejected. Thereafter, Subhash Chandra Agarwal filed a second appeal (No.CIC/SS/A/2011/001245) before the CIC against the order dated 31.03.2013.

3. Subhash Chandra Agrawal also filed an application dated 20.01.2011 under the Act with the Department of Agriculture and Co-operation seeking various information. By a letter dated 24.02.2011, the Department of Agriculture and Co-operation transferred the said application to IFFCO. On 04.03.2011, the first appeal filed by Subhash Chandra Agarwal against the letter dated 24.02.2011 was also transferred by the Department of Agriculture and Co-operation to the Appellate Authority of IFFCO. Thereafter, Subhash Chandra Agrawal filed a second appeal (No.CIC/SS/A/2011/001246) before the CIC against the order dated 04.03.2011.

4. The relevant facts pertaining to W.P.(C) No.824/2014 are that the petitioner - Dr. M. Haroon Siddiqui, filed applications dated 18.05.2010 and 22.05.2010 under the Act with IFFCO seeking various information. On 02.06.2010, IFFCO rejected the said applications contending that it was not a 'public authority' within the meaning of Section 2(h) of the Act. On 08.07.2010, the appeal filed by Dr. M. Haroon Siddiqui challenging the refusal of information was rejected by the First Appellate Authority of IFFCO. Thereafter, Dr. M. Haroon Siddiqui filed a second appeal (No.CIC/SS/A/2011/001565) before the CIC against the order of First Appellate Authority dated 08.07.2010.

5. The CIC, by the impugned order dated 05.08.2013, rejected all three aforementioned second appeals filed by the petitioners and held that IFFCO is not a public authority under the Act. The CIC observed that IFFCO is not substantially financed and controlled by the appropriate government.

6. Thus, the issue to be addressed is whether IFFCO is substantially financed and/or controlled by the appropriate government so as to fall within the sweep of Section 2(h) of the Act.

Submissions

7. The petitioners contended that IFFCO is a public authority within the meaning of Section 2(h) of the Act as according to them, IFFCO is controlled and substantially financed by the Central Government. It was contended that the Government has exhaustive powers under the Multi-State Cooperative Societies Act, 2002 (hereafter the 'MSCS Act') for taking over management and control of Multi-State Cooperative Societies

and as IFFCO is a Multi-State Cooperative Society, the Government exercises substantial control by virtue of the MSCS Act. The petitioners relied on the decision of this Court in ***Krishak Bharti Cooperative Ltd. v. Ramesh Chander Bawa*: (2010) 118 DRJ 176** in support of their contention. In particular, the learned counsel referred to paragraph 59 of the said judgment which read as under:-

> **"59.** Just as the right to vote of the 'little' citizen is of profound significance in a democracy, so is the right to information. It is another small but potent key in the hands of India's 'little' people that can 'unlock' and lay bare the internal workings of public authorities whose decisions affect their daily lives in myriad unknown ways. What was said of the working of a government in a democracy in *S.P. Gupta* v.*Union of India*, 1981 Supp SCC 87 should hold good for the working of a multi-state Co-operative society too. The Court there said (SCC, p. 453):
>
> > "In a government of 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 public functionaries."
>
> In the context of the working of multi-state co-operative societies, which by their very nature facilitate participatory decision-making through a network of elected bodies at different levels, the opening up of their working to public scrutiny through the RTI Act can only be in their best interests. Instead of shying away from, the RTI Act, large multi-state co-operative societies like KRIBHCO, NCCF and NAFED should view it as an opportunity."

8. It was further contended that IFFCO also fell within the administrative control of the Ministry of Chemicals and Fertilizers, Department of Fertilizers. In support of this contention, the petitioners relied on the Government of India (Allocation of Business) Rules, 1961.

The Second Schedule to the said Rules provides for distribution of subjects amongst departments and it is expressly indicated that *"Administrative responsibility for fertilizers production units in the cooperative sector, namely, Indian Farmers Cooperative Limited (IFFCO), Krishak Bharti Cooperative Limited (KRIBHCO)"* fall with the Department of Fertilizers.

9. It was next contended that several constituent members of IFFCO are units which are controlled and funded by State Government and are public authorities. It was further stated that the Board of Directors of IFFCO also constitute nominees of the Central Government and, therefore, the Central Government exercises direct control over IFFCO, through its nominees.

10. The petitioners also submitted that IFFCO is substantially funded by the Central Government. It was argued that the infrastructure of IFFCO was directly funded and aided by the Central Government, which had subscribed to majority of its initial share capital. In addition, it was asserted that large amount of subsidies are paid by Central Government to IFFCO; the Central Government had released following subsidies to IFFCO:-

> *"(a) For indigeneous P&K Fertilizers – Rs. 5935.22 Crores in 2010-11; Rs. 5968.28 Crores in 2011-12; Rs. 4489.78 Crores in 2012-13.*
>
> *(b) For imported P&K Fertilizers – Rs. 2962.37 Crores in 2010-11; Rs. 2104.61 Crores in 2011-12 and Rs. 1998.94 Crores in 2012-13.*
>
> *(c) For indigeneous Urea – Rs. 2924.15 Crores in 2010-11; Rs. 3385.49 Crores in 2011-12 and Rs. 3873.56 Crores in 2012-13.*
>
> *(d) For import of Urea – Rs. 5935.22 Crores in 2010-11; Rs. 5968.28 Crores in 2011-12 and Rs. 4489.78 Crores in 2012-13."*

11. The petitioners further stated that in addition to the general subsidies, a sum of ₹1680 crores had been released to IFFCO as 5 units of IFFCO were sponsored under the Corporation Sponsored Scheme for Agricultural Marketing and inputs. The petitioners relied upon the report of the National Cooperative Development Corporation (hereafter 'NCDC') for the year 2012-13 in support of this contention.

12. The learned counsel for the petitioners urged that an authority would not cease to be a public authority by mere repatriation of the equity as long as potential for being so controlled or substantially financed in future existed. He referred to Section 61 of the MSCS Act to show that the central government had the potential to control such societies in future. He argued that the Central Government provided land, building and other infrastructure facilities at concessional rates to IFFCO, without which IFFCO would struggle to exist. He argued that "control" or "substantial finance" need not necessarily be in *presenti*. Reliance was placed on the decision of a coordinate bench of this Court in ***Krishak Bharti*** *(supra)* in support of this contention**.** He further submitted that the subsidies provided by the central government were substantial and material in nature and in absence of such subsidies the core function of manufacturing and distribution of fertilizers by IFFCO would not be feasible. Further, IFFCO is directly financed by its members which are state owned cooperative societies.

13. The learned counsel for respondents controverted the submissions made on behalf of the petitioners. It was stated that the share capital subscribed by the Central Government was returned by IFFCO in 2004 and

as such the Central Government did not hold any shares of IFFCO. It was further submitted that all functional Directors of IFFCO were appointed by the Board of Directors of IFFCO and other Directors were appointed by its shareholders. The Central Government neither appoints any Directors on the Board of IFFCO nor exercises any management control. The respondents also disputed that a sum of ₹1680 crores was granted to IFFCO by NCDC. It was asserted that a sum of ₹1680 crores, as indicated in the report of NCDC, was a cumulative amount of interest bearing working capital loan/term loan which was provided to IFFCO over a period of 50 years. And, IFFCO had repaid this loan in full along with interest.

14. Although it was not disputed that the IFFCO received large amount of subsidies from Central Government, it was submitted that the said subsidies were, essentially, subsidies granted to farmers as a part of the efforts of the Government to control prices of fertilizers. It was submitted that such subsidies could not be considered as providing substantial financing to IFFCO. The respondents relied upon the decision of the Supreme Court in ***Thalappalam Ser. Coop. Bank Ltd. and Ors. v. State of Kerala and Ors.*: (2013) 16 SCC 82** in support of their contention that general subsidies would not constitute substantially financing a body for the purposes of Section 2(h) of the Act.

Reasoning and conclusion

15. Section 2(h) of the Act, which defines public authority, reads as under:-

> "(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. The Supreme Court in ***Thalappalam*** *(supra)* had expressly held:-

> "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. …."

17. The Supreme Court held that the above definition is exhaustive and the categories of authorities referred to in Section 2(h) of the Act exhaust all entities/bodies that could be considered as public authorities. It was held that the former part of Section 2(h) of the Act was concerned with the following categories:-

> "(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."

And, the later part of Section 2(h) of the Act embraced 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."

18. Undisputedly, IFFCO does not fall within the former part of Section 2(h) of the Act. Thus, the only question to be examined is whether IFFCO falls within the later part of Section 2(h) of the Act; that is, whether IFFCO is a body owned, controlled or substantially financed by an appropriate government and/or it is a non-governmental organisation substantially financed by funds provided by an appropriate government?

19. The first issue to be addressed is whether IFFCO is controlled by an appropriate Government. IFFCO was registered as a Cooperative Society under the MSCS Act on 03.11.1967 and its registration was sponsored by NCDC. Subsequently, the Central Government, Ministry of Petroleum and Chemicals issued a letter of intent to IFFCO for setting up a fertilizer plant at Kandla. Apparently, the Co-operative League of U.S.A had informed the Government of India that American Cooperatives had shown interest in collaborating with Cooperatives in India for establishing a Fertiliser Plant in India. Thereafter, the Government of India requested US Aid for sending a team of expert for preparing a project report on the location, size, type of production, process and investment required for establishing a fertilizer

plant in the cooperative sector. Pursuant to this request, a team had visited India in June/July 1967 and, subsequently, a report was presented by International Cooperative Development Association recommending establishment of a fertilizer plant in the cooperative sector. The fertilizer plant was to be funded by equity from cooperative members; equity from the Government of India; loan from the Government of India and financing agency; and foreign currency loan from US Aid. It is not disputed that at the material time IFFCO was controlled by the Central Government. The members of the Board of Directors as well as the Chairman had been nominated by the Central Government and IFFCO's venture was substantially funded by the Central Government.

20. Concededly, the equity subscribed by the Central Government was retired in 2004. As a consequence of the same, central government ceased to have any equity in IFFCO. Insofar as the Board of Directors in IFFCO is concerned, the Bye-laws of IFFCO provide that the Board of Directors of IFFCO would comprise of not more than twenty-one directors, excluding functional and Co-opted Directors. Out of the above, ten directors would be elected from the direct delegates of Cooperative Marketing Federations which fulfill the specified criteria and eight directors would be elected by the general body of IFFCO. Bye-law 34(iii) provides for appointment of directors by the Central Government reads as under:-

> "(iii) Not more than three persons to be nominated by the Central Government based on equity share capital held by the Central Government i.e. one person if the equity share capital is less than 26%, two persons if the equity share capital is 26% or more but less than 51%; and three persons if the equity share capital is 51% or more of the total issued share capital;"

21. In addition to the above, the Bye-laws also provide for co-opting experts and professionals on the Board of Directors.

22. Since the Central Government has ceased to hold any shares in IFFCO, it may not be entitled to appoint any Director on the Board of IFFCO. It is apparent from Bye-law 34, which relates to constitution of the Board of Directors of IFFCO, that the Central Government exercises little control insofar as the constitution of the Board of Directors is concerned.

23. The Supreme Court in ***Thalappalam*** *(supra)* observed that the expression "controlled" under Section 2(h)(d)(i) of the Act must be of a substantial nature. The court held as under:-

> **"44.** 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. The 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. The 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 Cooperative Societies Act.

> **45.** 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-à-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."

24. As explained by the Supreme Court, the control exercised by an appropriate Government must be qualitatively different from regulatory powers as may be conferred under statutes under which the entities/bodies are incorporated. Undisputedly, incorporated entities are required to comply with the statute under which they are incorporated. The supervisory and regulatory control exercised by authorities under such enactments is primarily to ensure compliance with the concerned statutes. For example, companies incorporated under the Companies Act, 1956 are required to comply with the provisions of the statute and under Section 408 of the said Act, the Central Government has the power to appoint directors in the interest of the company, its shareholders or public interest. However, such power is exercised if it is found that the affairs of a company are being conducted in a manner oppressive to any member(s) of the company or prejudicial to the interest of the company or public interest. Clearly, such powers are only to ensure that the affairs of the company are conducted in a manner, which is compliant with the provisions of law. As held by the Supreme Court in ***Thalappalam*** *(supra)*, existence of such powers of regulation and supervision would not mean that a body is controlled by an appropriate government. In the context of Section 2(h)(d)(i) of the Act, control would mean a pervasive control which includes the power to conduct the affairs of a body and the ability to influence and determine its

course. Such control is qualitatively different from mere supervisory and regulatory control. In this view, IFFCO cannot be considered as an authority controlled by an appropriate government.

25. Although, it was contended that some of the constituent members of IFFCO are public authorities and are controlled by state governments, there is no material on record to determine, whether State governments indirectly control IFFCO or that the constituent members of IFFCO are instrumentalities of State Government.

26. The CIC considered the question whether IFFCO was controlled by the central government and concluded as under:-

> "We are, however, not inclined to accept this argument. Suffice to say that the powers conferred on the Central Registrar or the Central Government are merely regulatory powers. They do not establish control of the Central Govt. or the Central Registrar on the functioning of IFFCO. Moreover, the Central Registrar/Central Govt. cannot exercise powers in an arbitrary manner at their sweet will. These powers can be exercised only on the fulfillment of certain preconditions, as spelled out in these sections. Viewed in this light, we do not find any merit in this argument and reject the same.
>
> 47. As regards the powers exercisable by the Central Govt. u/s 122 and 123 of MSCS Act, suffice to say that these powers are available to the Central Govt. only when it has 51% paid up share capital in the Society. As noted herein before, the Central Govt. has remitted its stakes in IFFCO in 2004 and thus, these provisions have become irrelevant.
>
> 48. Let us now consider the issue of the alleged control of the Central Government on IFFCO by virtue of the composition of its Board of Directors. Suffice to say that Central Govt. can nominate three Directors subject to its stakes in the equity share capital. The Central Govt. had majority stakes in the equity

> share capital before 2004 but it remitted its stakes in that year. Consequently, these [sic] is no Central Govt. appointee in the Board of Directors. Coming to the question of nomination of representatives of Apex Cooperative Marketing Federations in the Board of Directors of IFFCO, suffice to say that it would be erroneous to presume that the nominees of Federations would always be serving officers of the Central Govt. Even private individuals can be nominated by the Federations. This argument, therefore, does not help the appellant's case."

27. I find no infirmity with the aforesaid view.

28. The next question to be addressed is whether IFFCO is substantially financed by an appropriate Government. Although, it was asserted that a sum of ₹1680 crores had been provided as a grant by NCDC to IFFCO, the same has been disputed and it has been affirmed on behalf of IFFCO that the said amount only represented loans which had been repaid with full interest. There is no reason to doubt this statement made on behalf of IFFCO. Although, IFFCO was established by the funds provided by the Central Government, it was asserted that the said funds had been returned and the equity has been re-purchased. It was also asserted that IFFCO had paid substantial dividends to the Central Government on the equity subscribed by the Central Government.

29. There is also no material to indicate that the equity was repaid at less than the fair value which would indicate that certain residual value due to the Central Government remain imbedded in the undertaking of IFFCO.

30. The petitioners had contended that IFFCO would not cease to be a public authority even if the equity was repatriated. The petitioners relied on

the decision of a Coordinate Bench of this Court in ***Krishak Bharti*** *(supra)*, in support of their contention.

31. The above observations cannot be read to mean that in all cases where an entity has ceased to be financed or controlled by an appropriate Government, the body would continue to be a public authority. I am unable to subscribe to the view that a body would continue to be a public authority even though it is not controlled or substantially financed by an appropriate government. In my view, the language of Section 2(h) of the Act does not support this interpretation. However, even if it is assumed that in certain cases where an entity is owned or substantially controlled by an appropriate government, temporary cessation of such control may not result in the body ceasing to be a public authority under Section 2(h) of the Act, IFFCO would not be a public authority. This is so because there is no reason to believe that the Central Government has withdrawn its financial support and equity for a temporary period and there is a potential for Central Government to introduce substantial finances in IFFCO in future; there is also no indication that the Central Government has the potential to take-over control of IFFCO or is likely to do so in future.

32. The only remaining issue to be addressed is whether disbursement of fertilizer subsidies would render the recipient a public authority within the meaning of Section 2(h)(d) of the Act. It cannot be disputed that in certain cases where large subsidies are provided for support of a body, the same may render the body as a public authority within the meaning of Section 2(h)(d)(i) of the Act. This would certainly be the case where initiatives of appropriate government(s) are implemented by bodies/entities, which are

funded by the government by way of subsidies or grants. In such cases, the body financed would be an instrumentality of the government for undertaking such initiatives. However, in cases where subsidies are provided under a general scheme to reduce the costs of products, the same would be qualitatively different from the subsidies or grants provided for financing a particular body, which is acting as an extension of the state for implementing its programme. The fertilizer subsidies are not such subsidies. In substance and in effect, fertilizer subsidy is provided to the consumers of fertilizers i.e. the farmers by ensuring that the price of fertilizers is below its cost of production/import. Subsidy is provided to fertilizer producers as well as fertilizer importers based on the quantum of fertilizer sold. The quantum of fertilizer subsidy is directly related to the quantum of fertilizer sold; every bag of fertilizer indicates the amount of subsidy adjusted in the price of that bag.

33. In my view, fertilizer subsidies would not amount to substantially financing a body as contemplated under Section 2(h)(d)(i) of the Act, for the reason that subsidy is not for support of any particular organization but is available to all manufacturers or importers who manufacture the specified fertilizers. Thus, the object of such subsidy is not to support any organization, but to subsidize the sale price of fertilizers for the benefit of the consumers; the fertilizer manufacturers and importers are only the means of transmitting such subsidy.

34. The CIC had examined the above aspects and held as under:-

> "54. In view of the above, we are of the opinion that subsidy is being given to IFFCO and other fertilizer manufacturers for meeting the difference between the cost of production and the

sale price fixed by the Central Govt. The subsidy cannot be equated with outright grants. We are, therefore, inclined to reject the contention of appellants herein that grant of subsidy amounts to direct financing of IFFCO.

55. It has also been vehemently argued before us that the ratio of Delhi High Court judgement in Krishak Bharathi Cooperative Limited (KRIBHCO) vs. Ramesh Chandra Bawa applies in the present case. We are inclined to think otherwise. On a careful perusal of the aforesaid judgement, we find that KRIBHCO was held to be public authority primarily for the reason that the share capital of the Central Govt. in KRIBHCO was 48.38% of the total paid up share capital of KRIBHCO at the relevant time. However, this is not the case in the matter in hand. The Central Govt. does not have any stakes, let alone controlling stakes in IFFCO. Hence, the ratio of KRIBHCO does not apply in the present case.

56. In this context, appellant Shri S.C.Agrawal has extracted a para from the aforesaid judgement to buttress the argument that as IFFCO was substantially financed by the Central Govt. before 2004, it does not cease to be so as there is potential of it being substantially financed in future. We are not inclined to accept this argument as there are too many 'ifs' in it. To put it differently, this argument is conjectural in nature in as much as IFFCO may or may not be substantially financed by the Central Govt. in future. On the other hand, we are inclined to accept the argument of IFFCO that once an entity has ceased to be a public authority it cannot be deemed to be a public authority unless there is a substantive change in the factual matrix. It may be pertinent to mention that a number of PSUs were divested by the Central Govt. not too long ago but they cannot be deemed to be public authority unless there is evidence of control or substantial financing by the appropriate Govt. In the factual matrix of the case, it is evident that the Central Govt. has no share capital in IFFCO as of now. Nor has it nominated any Director in the IFFCO's Board of Directors.

57. From the above discussion, it clearly emerges that IFFCO is a Multi State Cooperative Society registered under MSCS

> Act. The Central Govt. had high financial stakes in the paid up share capital till 2004 but remitted its capital in that year and does not have any stakes at present. It is, no doubt, true that IFFCO is getting huge amount of subsidy from the Central Govt. but, in our opinion, it is not unique to IFFCO; subsidy is also being given to private sector players. The provisioning of subsidy is to keep the sale price of fertilizers low in the open market so as to keep it within the reach of farmers. Subsidy is not a grant. It is only a mechanism to pay the difference between the cost of production and the sale price of fertilizers. We, therefore, hold that subsidy cannot be construed as substantial financing of IFFCO. We also come to the conclusion that statutory provisions mentioned herein above, conferring certain powers on the central Registrar/Central Govt. are regulatory in nature and do not establish control of the Central Govt. over IFFCO. In view of the above discussion, we have no hesitation in coming to the conclusion that IFFCO is not a public authority u/s 2(h) of the RTI Act. The appeals are, therefore, dismissed."

35. I concur with the aforesaid view and find that no interference with the impugned order is warranted. The petitions are, accordingly, dismissed. No order as to costs.

VIBHU BAKHRU, J

MARCH 02, 2015
RK

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 4596/2007

Reserved on: 2nd August 2010
Decision on: 17th August 2010

IFCI LTD. ..... Petitioner
Through: Mr. Dinkar Singh and
Mr. Bharatshree, Advocates.

versus

RAVINDER BALWANI ..... Respondent
Through: Mr. Shyam Moorjani with
Mr. Deepak Goel, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1. Whether reporters of local paper may be allowed to see the judgment? No
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the digest? Yes

JUDGMENT
17.08.2010

1. Is the Industrial Finance Corporation of India Ltd. ('IFCI Ltd.') a 'public authority' within the meaning of Section 2(h) of the Right to Information Act, 2005 ('RTI Act')? That is the question that arises for consideration in this writ petition, which challenges an order dated 31st May 2007 passed by the Central Information Commission ('CIC'). The CIC answered the question in the affirmative.

2. A complaint was made by the Respondent before the CIC stating

that the Petitioner IFCI Ltd. had not published particulars on its website nor appointed Central Public Information Officers ('CPIOs') which it was required to do in terms of Section 4, Section 5(1) and 5(2) of the RTI Act respectively, on account of which information available with the IFCI Ltd. concerning the complaints made to it was not able to be accessed. In response to the said complaint, the Petitioner IFCI Ltd. took the stand that it was not a public authority within the meaning of the RTI Act.

3. In the appeal before it, the CIC framed two questions: first, whether an institution established under a law, would cease to be a public authority once that law was repealed? And second, whether in this case the shareholding by government can be treated as substantial finance? The first question was answered by holding that IFCI Ltd. was "established" under the Industrial Finance Corporation (Transfer of Undertaking and Repeal) Act, 1993 ('the 1993 Act') which was an Act made by Parliament. In answering the second question, the CIC noted that IFCI Ltd. "admitted in the hearing and in the written submission that the GOI owned/controlled banks/FI equity in IFCI is 23.53% as on 31-3-2007." Further, it clarified that "funds need not be directly provided to constitute substantial finance to a body. In this case it stands admitted that indirect finance of 23.53% exists, which cannot be construed to be insubstantial." Thus, it held IFCI Ltd. to be a public authority within the definition prescribed under Section 2(h)(d)(i) of the RTI Act.

History of IFCI Ltd.

4. A brief enumeration of the history of IFCI Ltd. is necessitated to appreciate the issue that arises in the present petition. The IFCI was established as a statutory corporation in 1948 by the enactment of the Industrial Financial Corporation of India Act, 1948 ('the 1948 Act'). It was the first developmental financial institution set up as a statutory corporation under an Act of Parliament to pioneer institutional credit to medium and large scale industries.

5. The Parliament enacted the 1993 Act which was deemed to have come into force on 1st October 1992. Under Section 2(b) of the 1993 Act, "Company" means "the Industrial Finance Corporation of India Ltd., to be formed and registered under the Companies Act, 1956." Under Section 2(c), the "Corporation" means the Industrial Finance Corporation of India established under Section 3(i) of the Industrial Finance Corporation Act, 1948. Section 3 of the 1993 Act states, "(o)n such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be transferred to, and vest in, the Company, the undertaking of the Corporation." The other provisions concerned the general effect of the vesting of the undertaking in the company, tax exemptions, officers and other employees of the Corporation etc.

6. Section 11 of the 1993 Act reads as follows:

> "11. (1) On the appointed day, the Industrial Finance Corporation Act, 1948 shall stand repealed.

(2) Notwithstanding the repeal of the Industrial Finance Corporation Act, 1948, the Company shall, so far as may be, comply with the provisions of sections 33, 34, 34A, 35 and 43 of the Act so repealed for any of the purposes related to the annual accounts of the Corporation."

7. The effect of the above enactment of 1993 was that IFCI was incorporated as a company under the Companies Act, 1956 by virtue of the above statute. The other peculiar feature of the 1993 Act was that notwithstanding the incorporation of IFCI Ltd. under the Companies Act, Sections 33, 34, 34A, 35 and 43 of the 1948 Act continue to be applicable in terms of Section 11(1) of the 1993 Act. Of these, Sections 34(4), 34(6), 34(7), 35(3), 43(1) and 43(3) are significant, and read as under:

"34(4). The Central Government may in consultation with the Development Bank at any time issue directions to the auditors requiring them to report to it upon the adequacy of measures taken by the Corporation for the protection of its shareholders and creditors or upon the sufficiency of their procedure in auditing the affairs of the Corporation, and may at any time enlarge or extend the scope of the audit or direct that a different procedure in audit be adopted or direct that any other examination be made by the auditors if in its opinion the public interest so requires.

…

34(6). Without prejudice to anything contained in the proceeding sub section, the Central Government may, at any time, appoint the Comptroller and Auditor General of India to examine and report upon the accounts of the Corporation and any expenditure incurred by him in connection with

such examination and report shall be payable by the Corporation to the Comptroller and Auditor General of India.

34(7). Every audit report shall be forwarded to the Central Government and the Government shall cause the same to be laid before both House of Parliament.

…

35(3). The Reserve Bank and the Development Bank within five months of the close of the financial year a statement in the prescribed form of its assets and liabilities as at the close of that year together with a profit and loss account for the year and a report of the working of the Corporation during the year, and copies of the said statement, account and report shall be published in the Official Gazette and shall be laid before Parliament.

…

43(1) The Board may, with the previous approval of the Development Bank make and by notification in the official Gazette regulations not inconsistent with this Act and the rules made there under, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

…

43(3) Every regulation made under this Section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the

> regulation should not be made the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

8. It is apparent that notwithstanding the fact that the IFCI Ltd. was incorporated as a company under the Companies Act by virtue of Section 11 of the 1993 Act, the provisions of the 1948 Act, which talk of control by the Central Government over the affairs of the IFCI Ltd., continue to apply. In terms of sub-clause (7) of Section 34, the audit reports of IFCI Ltd. are to be forwarded to the Central Government which will cause it to be laid before the Parliament. In terms of Section 35(3), the statement of accounts and the annual report of IFCI Ltd. are required to be published in the Official Gazette by the Central Government and laid before the Parliament. Sub-section (3) of Section 43 requires any modification in the regulations to be approved by both the Houses of the Parliament. This makes IFCI Ltd. very different from any other company registered under the Companies Act.

Submissions of Counsel

9. The main thrust of the argument of Mr. Dinkar Singh, the learned counsel for the Petitioner was that the expression "public authority" under Section 2 (h) RTI Act had to be interpreted in *pari materia* with "other authorities" under Article 12 of the Constitution of India. It was submitted that insofar as the IFCI Ltd. does not answer the test of an 'authority' within the meaning of Article 12 of the Constitution on

applying the tests laid down by the Supreme Court in ***Pradeep Kumar Biswas v. Indian Institute of Chemical Biology 2002 (5) SCC 111***, it would not be a public authority for the purposes of the RTI Act. Second, it was submitted that the Petitioner is not a body established or constituted by a law made by the Parliament. Since the 1948 Act stood repealed by the 1993 Act, the Petitioner was like any other company incorporated under the Companies Act. In other words, with the repeal of the 1948 Act, IFCI Ltd. was no longer a company incorporated by an Act of Parliament but was one incorporated 'under' an Act of Parliament. Therefore it did not satisfy the requirement of Section 2(h)(b) of the RTI Act. It was submitted that the erstwhile assets of the predecessor of IFCI Ltd. were transferred to and vested in a new company called the Industrial Finance Corporation of India Limited, subsequently named as IFCI Ltd. Consequently, IFCI Ltd. ceases to be a body established by a statute.

10. Thirdly, it is submitted by Mr. Dinkar Singh that for the purposes of Section 2(h)(d), the appropriate government, i.e., the Central Government had to issue a notification notifying IFCI Ltd. to be a public authority within the meaning of Section 2(h) of the RTI Act. Since it had failed to do so, the Petitioner was not a public authority. Fourthly, it is submitted that the IFCI Ltd., was not substantially financed by the Central Government. It is pointed out that the Central Government holds no shares whatsoever in the Petitioner. 76% of the shares are subscribed by private companies including public financial institutions, private banks, cooperative banks and mutual funds. The

balance 24% is subscribed by scheduled commercial banks and national insurance companies etc. It is further submitted that in terms of Clause 122 read with 124 of the Articles of Association of the IFCI Ltd., the number of directors shall not be less than 3 or more than 15 excluding the government directors and debenture directors. It is submitted that the Government of India could at the most appoint two directors on the Board of the Petitioner. It is maintained that the Petitioner is purely a commercial organization and the government has neither a functional nor organizational/administrative "deep and pervasive" control over the day-to-day affairs of the Petitioner. Relying on the judgment in ***Ramana Dayaram Shetty v. International Airport Authority of India AIR 1979 SC 1628***, it is submitted that since there is no pervasive control of the Petitioner by the Central Government, it is not an authority within the meaning of Article 12 of the Constitution and therefore not a 'public authority' under Section 2 (h) of the RTI Act.

11. Mr. Shyam Moorjani, learned counsel for the Respondent on the other hand submitted that at the time of the conversion of the Petitioner into a public limited company under the Companies Act, assets worth Rs. 9060 crores stood vested in it by virtue of the 1993 Act. It is pointed out that once a body comes into existence by virtue of a central enactment, in this case the 1948 Act, it does not cease to be a public authority within the meaning of Section 2(h)(b) of the RTI Act only because it has been converted into a public limited company subsequently. It is further submitted that in this case it is the 1993 Act

which actually brought about the transformation and, therefore in one sense, the Petitioner in its present structure, is also an entity that has been created by a central enactment.

12. Referring to Section 2(h)(d)(i) RTI Act, Mr. Moorjani submitted that the extensive financial control over the affairs of the Petitioner by the Central Government was evident from the manner in which the Central Government rescued it from bankruptcy. A reference is made to the Annual Report of the IFCI Ltd. for the year ending 31st March 2008 which shows that the 33.22% of the equity capital of the Petitioner is held by public sector banks, financial institutions and insurance companies. They formed the single largest bloc of shareholders of the Petitioner. In other words, the extent of shareholding held by government controlled or government owned organizations was indicative of indirect substantial financing. It is pointed out that the government owned companies held preferential shares of Rs. 263.84 crores for a period of 20 years in the IFCI Ltd. and had acquired a preferential right to vote under Section 87(2)(b) of the Companies Act. Optional Convertible Debentures (OCDs) to the extent of Rs. 923 crores were held by the Government of India. These were convertible at par into equity shares at the option of the government any time up to 2023. It is further pointed out that a total sum of Rs. 5220 crore towards grants has been communicated to the IFCI Ltd. by the Ministry of Finance. Out of this, Rs. 2409 crore was released by the Government of India between 2002-03 to 2006-07 directly from the Union Budget. Further budgetary provision of Rs.

433 crore has been made in respect of the grants to be given by the Central Government in the Union Budget for 2008-09. The entire amount is to be released during a ten years period, i.e., up to 2011-12.

13. Thirdly, Mr. Moorjani pointed out that under Section 4A of the Companies Act, the Petitioner was a 'public financial institution', a status that has been recently affirmed by the Division Bench of this Court in its judgment dated 9th July 2010 in W.P.(C) 7097 of 2008 (***Finite Infratech Ltd. v. IFCI***). It is pointed out that the Petitioner had, in that case, argued contrary to its stand in the present case. There IFCI Ltd. had submitted, and which submission was accepted by the Division Bench, that notwithstanding the 1993 Act, it continues to be a public financial institution.

14. In response to the third submission, counsel for the Petitioner dissociated from the submissions made on behalf of the IFCI Ltd. before this Court in the ***Finite Infratech Ltd.*** case and stated that it arose in a very different context. He maintained that the release of Rs.2409 crores to IFCI Ltd. by the Government of India to meet the liabilities of the IFCI Ltd. was not substantial financing. He submitted that the funds of the IFCI Ltd. came from the bond holders and not from the Government of India. Although earlier the Government of India had guaranteed the bonds issued by the Petitioner, it no longer continues to do so. Reliance was placed on the judgment in ***Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain (1976) 2 SCC 58*** to urge that the privatization of the Petitioner

brought about by the 1993 Act resulted in the Petitioner no longer being a statutory corporation.

IFCI Ltd. is a body 'established' and 'constituted' by an Act of Parliament

15. This Court would first like to note that for the purposes of Section 2(h) of the RTI Act, two distinct submissions were made in support of the plea that IFCI Ltd. is a 'public authority'. One relates to Section 2(h)(b) RTI Act and the second relates to Section 2(h)(d)(i) RTI Act.

16. Section 2(h) of the RTI Act reads as under:

> "2. 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 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;"

17. There is a clear distinction made by the legislature between bodies that have been 'established or constituted' 'by or under the Constitution' and bodies that that have been 'established or constituted' 'under' a central or state enactment. In other words

where the body is not one falling under Section 2 (h) (d) (a) of the RTI Act, then to come within the purview of Section 2 (h) (d) (b) RTI Act, it is not enough that it is established or constituted 'under' a central or state enactment. It has to be established or constituted 'by' such enactment. Take the Companies Act. Every public or private limited company is established (or 'incorporated') under that enactment. However, that would not make them 'public authorities' for the purposes of the RTI Act only on that score. It would have to be shown that they have been established or constituted 'by' a central or state enactment.

18. At this juncture, this Court would like to deal with the submission of the learned counsel for the Petitioner that the test for determining whether a body is a 'public authority' for the purposes of the RTI Act is no different from the test for determining whether a body is an 'authority' for the purposes of Article 12 of the Constitution. Given the fact that there is a specific definition of what constitutes a 'public authority' for the purposes of the RTI Act, there is no warrant for incorporating the tests evolved by the Supreme Court in ***Pradeep Kumar Biswas*** for the purposes of Article 12 of the Constitution. While it is possible that an authority within the meaning of Article 12 of the Constitution is likely to be a 'public authority' under the RTI Act, the converse need not be necessarily true. Given the purpose and object of the RTI Act the only consideration is whether the body in question answers the description of a 'public authority' under Section 2 (h) of the RTI Act. There is no need to turn to the Constitution for

this purpose, particularly when there is a specific statutory provision for that purpose. Even for the purposes of Section 2(h)(d) (i) or (ii) RTI Act for determining if the body is "owned", "controlled" or "substantially financed" directly or indirectly by the appropriate government the Article 12 tests, which talk of "deep and pervasive" control or "dominance", are not helpful.

19. Reverting to the case on hand, IFCI Ltd. in its earlier form was initially brought into existence or 'established' by a central enactment, i.e., the 1948 Act. Later, when on account of the changes in the financial sector, coupled with the continued decline in the availability of concessional funds from the Government of India and the Reserve Bank of India, it became necessary for the predecessor of IFCI Ltd. to raise finances from the market, it was unable to do so on account of the provisions of the 1948 Act. In the Statement of Objects and Reasons of the 1993 Act after noting that it was necessary to respond to the needs of a fast changing financial system it was thought necessary "to **establish** a new company under the Companies Act 1956 to which the entire undertaking, business and functions of IFCI as well as the assets and liabilities and the staff of IFCI will be transferred on such day as will be notified by the Central Government." Consequently, Section 2 (b) of the 1993 Act states that "Company" means "the Industrial Finance Corporation of India Ltd., **to be formed and registered** under the Companies Act, 1956." There can be no doubt that but for the 1993 Act the IFCI Ltd. in its present

form would not have come about. In other words, IFCI Ltd. in the present form is a creature of the 1993 Act having been created by the 1993 Act. Further, as already noticed, the added peculiar feature is that even while the 1993 Act converts the Petitioner into a company under the Companies Act, it retains the applicability of certain provisions of the 1948 Act, which have been extracted hereinbefore. These provisions underscore the extensive control of the Central Government over the affairs of the IFCI Ltd.

20. The peculiar character of the IFCI Ltd. with reference to both the 1948 Act and the 1993 Act, both of which are Acts made by the Parliament, makes the IFCI Ltd. answer the description of a 'public authority' within the meaning of Section 2(h)(b) of the RTI Act. Consequently, this Court concurs with the view of the CIC that the IFCI Ltd. is a public authority since it has been brought about in its present status as a result of the joint operation of the 1948 Act and the 1993 Act in the circumstances noticed hereinbefore.

IFCI is a public authority within the meaning of Section 2(h)(d)(i) RTI Act as well

21. Before examining whether IFCI Ltd. is a 'public authority' within the meaning of Section 2(h)(d)(i) RTI Act, this Court would like to deal with the submission of the learned counsel for the Petitioner that without a notification by the central government under Section 2(h)(d) IFCI Ltd. cannot be said to be a 'public authority'. This submission is, in the considered view of this Court, based on a misreading of the

provision. The words "and includes" starting from the left margin (as the provision is published in the official gazette) indicates that the categories that follow those words are separate categories that expand the scope of the earlier clauses (a) to (d). In other words, a body might be a 'public authority' even if there is no notification to that effect by the central government as long as it satisfies the requirement of Section 2(h)(d) (i) or (ii).

22. For the purposes of Section 2(h)(d)(i) RTI Act, the question that arises is whether the IFCI Ltd. is a body that is "controlled" by the central government (which is the appropriate government) or "substantially financed" "directly or indirectly by funds provided by" the central government? For the reasons set out hereafter, this Court answers the question in the affirmative.

23. The word "financed" is qualified by the word "substantially" indicating a degree of financing. It must be shown that the financing of the body by the government is not insubstantial. The word 'substantial' does not necessarily connote 'majority' financing. **Black's Law Dictionary** (6th Edn.) defines the word 'substantial' as being "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." 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; sold; 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. In the context of the RTI Act it would be sufficient to demonstrate that the financing of the body by the appropriate government is not insubstantial.

24. In ***Indian Olympic Association v. Veeresh Malik*** [judgment dated 7th January 2010 in W.P. (C) No. 876 of 2007] the learned Single Judge of this Court was examining whether the Indian Olympic Association, the Sanskriti School and the Organising Committee Commonwealth Games 2010, Delhi were 'public authorities' under the RTI Act. While answering that question in the affirmative, it was held as under (para 58):

> "This court therefore, concludes that what amounts to "substantial" financing cannot be straight-jacketed into rigid formulae, of universal application. Of necessity, each case would have to be examined on its own facts. That the

> percentage of funding is not "majority" financing, or that the body is an impermanent one, are not material. Equally, that the institution or organization is not controlled, and is autonomous is irrelevant; indeed, the concept of non-government organization means that it is independent of any manner of government control in its establishment, or management. That the organization does not perform – or pre-dominantly perform – "public" duties too, may not be material, as long as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. To the extent of such funding, indeed, the organization may be a tool, or vehicle for the executive government's policy fulfillment plan."

25. The Respondent has placed on record a copy of the Annual Report 2007-08 of the Ministry of Finance, Government of India. It states that the Banking Division of the Ministry of Finance "looks after issues relating to Public Sector Banks and administers policies having a bearing on the working of banks and term lending Financial Institutions such as the NABARD, SIDBI, NHB, IIFCL, EXIM Bank, IFCI, IDFC, IIBI etc."

26. Among the main functions of the Banking Division are "legislative and administrative work relating to All India Financial Institutions, appointment of Chief Executives of Financial Institutions, appointment of Chairman, and Members of Board for Industrial and Financial Reconstruction (BIFR), etc." Under the chart showing the organizational set up of the Department of Financial Services, there is one Joint Secretary for Institutional Finance in respect of the "matters relating to IIFCL, IFCI, IDFC, IBI, Exim Bank." Para 6.4 of the

Report reads as under:

> "**6.4 Industrial Finance Corporation of India Limited (IFCI)**
>
> Industrial Finance Corporation of India (IFCI) is the first Development Financial Institution of India set up in 1948 as a Statutory Corporation under an Act of Parliament to pioneer institutional credit to medium and large scale industries. It was converted into a Public Limited Company on July 1, 1993. The Govt. of India does not have any shareholding in IFCI.
>
> During the year 2006-07, IFCI continued to focus on recoveries from existing loan assets and reconstructing of remaining high cost liabilities. IFCI sanctioned short term loans of Rs.1,050 crore and disbursed Rs.550 crore during 2006-07 to top performing and highly-rated corporates and banks. Further, during the 9 months period ended on December 31, 2007, IFCI sanctioned short term loans of Rs.1,500 crore and disbursed Rs.2000 crore of the previous year. Cumulatively, up to December 31, 2007, IFCI had made aggregate sanctions of Rs.48,712 crore to 4,872 projects and disbursed Rs. 47,139 crore. In respect of North-Eastern Region, including Sikkim, cumulatively, up to December 31, 2007, IFCI has sanctioned and disbursed an aggregate sum of Rs.328 crore to 61 projects.
>
> During the year 2006-07, IFCI earned a net profit of Rs.898 crore as compared to a net loss of Rs.74 crore in the previous year. The accumulated loss as on March 31, 2007 stood at Rs.836 crore. The improved performance was largely due to higher recoveries from Non Performing Assets and consequent reversal of provisions/write-off and also lower cost of funds. During the current financial year 2007-08, IFCI has made a net profit of Rs.1,063 crore for

> the 9 months ended on December 31, 2007 against a net profit of Rs.230 crore during the corresponding period of the previous year. Further, as at December 31, 2007, IFCI, having complied with RBI's Regulatory Capital Adequacy Norm at 10% contemplates to start new business to top rated corporates."

27. The extent of financial control over the IFCI Ltd. by the Government of India is plain from the above passage in the Annual Report of the Ministry of Finance. The Respondent has also placed on record a copy of the letter dated 29th January 2004 written by the Director (EA & IF-I) Department of Economic Affairs (Banking Division) of the Ministry of Finance to the Chairman-cum-Managing Director of the IFCI Ltd. with regard to the restructuring and bailout of the IFCI Ltd. The said letter is instructive, and reads as under:

> "Dear Shri Singh,
>
> With the model of Development Banking coming under strain, the future of financial institutions has been occupying the attention of the Government for some time. Narsimhan Committee II and Khan Working Group have recommended that Development Financial Institutions (DFIs) be converted either into banks or into NBFCs. The Government have had to step in from time to time to bail out IFCI from bankruptcy. The Government of India contributed Rs. 400 crore as part of a capital infusion package in 2001 and yet again committed to provide Rs. 5220 crore over ten years as a part of the package to restructure the liabilities to IFCI. Out of this, Rs. 2096 crore has already been released. Operationally, however, no headway could be made in recovery of NPAs or hiving off the bad assets.

2. The matter has been deliberated at length in Government. It is felt that IFCI does not appear to have long term sustainability on a stand alone basis. It appears that the only viable course of action is to merge IFCI with a large Public Sector Delhi based Bank with which the IFCI has operational and financial synergy. In this context the option of merger with Punjab National Bank may be contemplated by the Board of IFCI. A note on the subject, bringing out how the merger could be of useful, is attached. I shall be grateful, if you would kindly have the issue taken up with the Board for favourable action in the matter.

With best regards,

Yours sincerely
--sd--
(Atul Kumar Rai)"

Shri VP Singh
CMD, IFCI
New Delhi

28. Annexed to the letter is the detailed plan of the government's financial support through the restructuring package. The above communication was followed by the speech of the Finance Minister on 3rd February 2004 in Parliament during the presentation of the Interim Budget 2004-05 in which he informed that the IFCI "will be restructured through transfer of its impaired assets to an Asset Reconstruction Company and merger with a large public sector bank. Both these institutions, the IDBI and IFCI, should be functional in the new financial year after their transformation."

29. It is plain that but for the intervention of the Government of India,

the IFCI would not have been able to be restructured. Also placed on record are the minutes of the meeting of the stakeholders of the IDBI and IFCI held in New Delhi on 26th November and 2nd December 2002 by the Director (EA & IF-I) Department of Economic Affairs (Banking Division) of the Ministry of Finance which shows that several decisions have been taken to squeeze the outstanding liability of the IFCI. Para 9 of the proceedings reads as under:

> "9. As a part of the restructuring process, the stakeholders also decided the following:
>
> i) A Group comprising representatives from IDBI, SBI, PNB and Bank of Baroda may be constituted to monitor the cash flows and approve the outflows of IFCI for at least the next six months.
>
> ii) IFCI may prepare a business plan and communicate the same to the lenders inviting their suggestions immediately.
>
> iii) A meeting under the chairmanship of Joint Secretary (IF) may be convened on a monthly basis to monitor performance of IFCI."

30. The above is further evidence of the fact that even in 2002 the monitoring of the performance of the IFCI was being undertaken by the Government of India.

31. A copy of the letter dated 1st March 2006 from the Office of the Director General of Audit to the Chief Executive Officer of the IFCI Ltd., calls for further information from the IFCI Ltd. on the loan grants worth Rs. 2412 crore released to the IFCI pursuant to the

sanctions of the Ministry of Finance, the utilization of such grants and so on. There can be no manner of doubt that there is extensive control of the Central Government over IFCI Ltd.

32. The facts narrated hereinbefore show that the entire bailout package for the IFCI has been devised, monitored and controlled even till now by the Central Government. Providing more than 5000 crores of rupees to the IFCI Ltd. for its bailout cannot but be considered as 'substantial financing' by the Central Government. The holding of OCDs of Rs. 522 crores by the Central Government, which has not been denied by the Petitioner, is another pointer to the substantial financing of the IFCI Ltd. Consequently, this Court finds merit in the contention that there is both "control" and "substantial financing" of the IFCI Ltd. by the Central Government and therefore answers the description of a 'public authority' under Section 2(h)(d)(i) of the RTI Act.

IFCI Ltd. is a public financial institution under Section 4A Companies Act

33. The third aspect is that whether the Petitioner is a public financial institution within the meaning of the Companies Act. This is important from the perspective of Section 2 (h) (d) (i) of the RTI Act since a public financial institution in terms of Section 4A of the Companies Act connotes control by the Central Government.

34. In ***Finite Infratech Ltd.***, the question that arose was whether the

Petitioner was a "financial institution" within the meaning of Section 2(1)(m) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') and whether, if it had ceased to be such an institution, the proceedings initiated by it under the SARFAESI Act against the Petitioner in that case, i.e., ***Finite Infratech Ltd.*** before the Debt Recovery Tribunal, were not maintainable. In those proceedings, the IFCI Ltd. urged that it in fact continued to remain a public financial institution. The argument of the borrower was that since on the date of the institution of the recovery proceedings, the Central Government did not hold any shares (although it did on the date on which the notice under Section 13(2) of the SARFAESI Act was issued), it was not a public financial institution within the meaning of Section 2(1)(m) of the SARFAESI Act. This submission of the borrower was negatived by the Court. This is encapsulated in para 21 of the judgment, which reads as under:

> "21.Let us now consider the second condition stipulated in the proviso to Section 4A(2) of the Companies Act that no institution in which the Central Government holds or controls less than 51% of the paid up share capital of such institution, can be specified as a public financial institution. There is no doubt and it is an admitted position that as on the date on which the notification was issued, this condition stood satisfied. The Central Government did hold or control more than 51% of the paid up share capital of IFCI Limited. It has already been mentioned above that as on 15.02.1995, though the Central Government by itself did not hold any shares in IFCI Limited, it controlled 53.98% of the paid up share capital through institutions such as IDBI, LIC, GIC, UTI, SBI and other public sector banks and subsidiaries. It

is also true that on the date on which the notice under Section 13(2) of the said Act was issued and on subsequent dates, the Central Government neither held nor controlled more than 51% of the paid up share capital of IFCI Limited. This means that the said condition does not continue to be satisfied, though on the date on which the notification was issued, the condition with regard to ownership and control of shareholding was satisfied. An argument was made by Mr. Sibal that the said condition with regard to shareholding was not only a condition precedent but also a condition subsequent and subsisting. His contention was that the moment this condition was not no longer satisfied, IFCI Limited would lose its status as a public financial institution. On first impression, this may be an attractive argument. But, if it were to be accepted, it would perhaps lead to a chaotic situation. An example would illustrate. Suppose at one point of time the Central Government had 55% shareholding in such an institution. Suppose further that ten days later, the Central Government sold of 10% of its holding and another ten days later, the Central Government restored its shareholding to 55%. In such a situation, if the argument of the learned counsel for the petitioner was to be accepted, the notification would be valid till such time the Central Government held 55% shares, then, ten days later it would become invalid because the shareholding dropped to 45% and again a further ten days on, the notification would again become valid because the Central Government would then hold 55% shares in the said institution. Such a fluctuation or flip-flop in the status of the institution is certainly not contemplated by the provisions of Section 4A(2) apart from the fact that it would lead to a very chaotic situation. Therefore, we are in agreement with the submission made by the learned counsel

> for the respondents that the validity of the notification from the standpoint of shareholding would have to be examined as on the date on which the notification under Section 4A(2) of the Companies Act is issued. The condition with regard to the government owning or controlling not less than 51% of the paid up share capital of an institution is, in our view, merely a condition precedent for the purposes of examining the status of the institution as a public financial institution and for the purposes of determining the validity of the notification under Section 4A(2) of the Companies Act, 1956. It is open to the Central Government, at any subsequent point of time to 'de-notify' an institution as a 'public financial institution' if it deems fit."

35. While interpreting the words "established or constituted by or under any Central Act", occurring in the proviso to Section 4A (2) of the Companies Act, the Division Bench held that "an institution constituted by or under any Central Act could have reference to a company which, though formed and registered subsequently under the Companies Act, was conceived and contemplated under a Central Act such as the Repeal Act of 1993." Consequently, it was concluded that "IFCI Limited would have to be regarded as a public financial institution under Section 4A of the Companies Act. As a consequence, it would be a financial institution under Section 2(1)(m)" of the SARFAESI Act. This Court therefore held that even though the Central Government subsequently ceased to hold shares in IFCI Ltd., its essential character as a public financial institution would remain.

36. The above judgment reinforces the submission of the Respondent

that the Petitioner satisfies the requirements of Section 2(h)(d)(i) of the RTI Act.

37. Consequently the impugned order of the CIC is affirmed, and the writ petition is dismissed with costs of Rs. 10,000/- which will be paid by the Petitioner to the Respondent within four weeks.

S. MURALIDHAR, J

AUGUST 17, 2010
akg

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON: 23.04.2009
PRONOUNCED ON: 07.01.2010

WP (C)No.876/2007

INDIAN OLYMPIC ASSOCIATION ……. PETITIONER

Through : Mr. Harish Malhotra, Sr. Advocate with Mr. Lovkesh Sawhney, Advocate

Vs.

VEERESH MALIK & ORS. …….. RESPONDENTS

Through : Mr. P.P. Malhotra, ASG with Mr. Dalip Mehra and Mr. Rajiv Ranan Mishra, Advocates for UOI.
Mr. Sushant Kumar with Mr. Abhinav Verma, Advocate for Resp-1

WP(C) No.1212/2007

SANSKRITI SCHOOL …….. PETITIONER

Through : Mr. Raju Ramchandran, Sr. Advocate, Sr. Advocate with Mr. Shridhar Y.Vhitale and Mr. Mrigank Prabhakar, Advocates

Vs.

CENTRAL INFORMATION COMMISSION …….. RESPONDENT

Through : Mr. Ravi Varma and Mr. Milind Jha, Advocates
Mr. K.K. Nigam, advocate

WP(C) No.1161/2008

ORGANISING COMMITTEE COMMONWEALTH GAMES 2010, DELHI ……. PETITIONER

Vs.

UNION OF INDIA ..... RESPONDENT

Through : Mr. P.P. Malhotra, ASG with Mr. Dalip Mehra and Mr Rajiv Ranjan Mishra, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1.	Whether the Reporters of local papers may be allowed to see the judgment?	Yes
2.	To be referred to Reporter or not?	Yes
3.	Whether the judgment should be reported in the Digest?	Yes

HON'BLE MR. JUSTICE S.RAVINDRA BHAT

%

1. The present judgment will dispose of three writ petitions filed by the Indian Olympic Association (the petitioner in W.P. 876/2007, hereafter referred to as "the IOA"), the Sanskriti School, petitioner in W.P. 1212/2007, (hereafter referred to as "the school") and the Organizing Committee of the Commonwealth Games, 2010, Delhi (petitioner in W.P. 1161/2008, hereafter referred to as "the Games Committee"). The common question involved is as to the applicability of the Right to Information Act (hereafter referred to as "the Act"), with broad reference to whether the writ petitioners are "Public Authorit(ies)" within the meaning of the term under Section 2(h) of the said Act.

Petitioners' facts and contentions:

WP 876/2007

2. Briefly the facts of the case in W.P. 876/2007, filed by the IOA are that the IOA is the apex body in the field of Olympic sports in the country and a society registered under the Indian laws. It is an autonomous body controlled and supervised by the International Olympic Committee. The first respondent applied for information from the Central Government, addressing a letter to the Central Public Information Officer (CPIO), seeking particulars relating to the hierarchy of the authorities set-up under the Act, status of the latest audited accounts of the IOA for the years 2004-05, 2005-06 and all

particulars of expenses incurred by the IOA in connection with the visits by anyone to Melbourne or any other destination in connection with the Commonwealth Games, from 1st January, 2006 to 15th April, 2006. Not receiving the reply of the kind he expected, the first respondent/information applicant approached the third respondent (referred to as "the CIC") with a complaint. The petitioner, and second respondent (referred to as "the Central Government"), made submissions as to the maintainability of the proceedings before the CIC.

3. The petitioner contends that it is completely autonomous from the governmental authorities and relies upon specific provisions of the Olympic Charter, particularly, Chapter 4, which defines the mission and role of National Olympic Committees; Clauses-31(3); (4)(1); 8(1)(1.1)(1.2); Clause 32(4)(7), 7.1, 7.2, 7.3, 7.4, 7.5, 7.6 and 9.4. It is contended that a composite reading of these conditions, which are uniformly applicable to all National Olympic Committees, such as the IOA reveal that every such National Olympic Committee is autonomous and has to guard its independence from any attempts to control its functioning or against any attempts at imposing outside regulatory measures. The said provisions, relied upon, read as follows:

> ***"31 Mission and Role of the NOCs****
>
> *…3. The NOCs have the exclusive powers for the representation of their respective countries at the Olympic Games and at the regional, continental or world multi-sports competitions patronized by the IOC.*
>
> *4. …..*
>
> *1. The NOCs must work to maintain harmonious and cooperative relations with appropriate governmental bodies; they must also contribute effectively to the establishment of programmes for the promotion of sport at all levels. As sport contributes to education, health, the economy and social order, it is desirable for the National Olympic Committees to enjoy the support of the public authorities in achieving their objectives. Nevertheless, the NOCs shall preserve their autonomy and resist all pressures of any kind, including those of a political, religious or economic nature that may prevent them from complying with the Olympic Charter.*

…….

8. In order to fulfill their mission, the NOCs may cooperate with governmental or non-governmental bodies. However, they must never associate themselves with any activity, which would be in contradiction with the Olympic Charter.

1. Apart from the measures and sanctions provided in case of infringement of the Olympic Charter, the IOC may, after having heard an NOC, suspend it or withdraw its recognition from it.

1.1 If the activity of such NOC is hampered by the effect of legal provisions or regulations in force in the country concerned or by acts of other entities within such country, whether sporting or otherwise;

1.2 If the making or expression of the will of the national federations or other entities belonging to such NOC or represented within it is hampered by the effect of legal provisions or regulations in force in the country concerned or by acts of other entities within such country, whether sporting or otherwise.

32. Composition of the NOCs

4. Governments or other public authorities shall not designate any members of an NOC. However, an NOC may decide, at its discretion, to elect as members representatives of such authorities.

Bye-law to Rules 31 and 32.

7. NOCs which cease temporarily or permanently to be recognized by the IOC thereupon lose all rights conferred upon them by the IOC including, but not limited to, the rights;

7.1 to call or refer to themselves as "National Olympic Committee"

7.2 to use their Olympic emblems.

7.3 to benefit from the activity of Olympic Solidarity.

7.4 To take part in activities led or patronized by the IOC (including regional games);

7.5 To send competitors, team officials and other team personnel to the Olympic Games.

7.6 To belong to any association of NOCs.

….

9.4 seek sources of financing which will enable them to maintain their autonomy in all respects. The collection of funds must however, be accomplished in accordance with the Olympic Charter and in such a manner that the dignity and independence of the NOC are not harmed."

4. The IOA alludes to a specific declaration by the International Olympic Committee, known as the "AOMORI Declaration". The said resolution was made by the General Assembly of the Olympic Committee, which, keeping with the spirit of the Charter, regarding the autonomy of every National Committee resolved that any attempt at outside control or violation of rules of the Olympic Charter would result in withdrawal of recognition of that National Olympic Committee by the international body. IOA reiterates that there is no Central Government representation in its bodies; its Executive Committee and elected office-bearers enter into arrangements with public or private organizations for furtherance of the Charter and the IOA's objectives, independent of any control of outside agencies.

5. IOA submits that its funding is five-fold, which includes, in the first instance, funding by the International Olympic Committee; Olympic Committee of Asia; secondly, funding through sponsorship; thirdly, annual subscription, if received from members; fourth, International Solidarity Funds and lastly, through miscellaneous receipts; through donations etc. IOA contends that all these aspects were submitted to the CIC, which was informed that the Central Government or its agencies give limited assistance to the players who participate in international events. Even there, the IOA says that it manages to raise funds through sponsorship to meet additional needs of the players; it funds the bills for travelling, boarding, lodging of the national team whenever participation in international tournaments or events or coaching camps that take place abroad. Such financial assistance keeps varying and is dependent upon the concerned sporting events of the year. The IOA states that it does not receive financial assistance of a particular kind or a fixed sum every year and that such funding is contingent or event-based. The IOA submits that travelling expenses for the tickets of sports persons are paid by the

Central Government directly to the travel agents, who issue the tickets directly to the players and such persons. The IOA also does not bear other incidental expenses but prepares the estimate for boarding, lodging and other travel related miscellaneous expenses, which are forwarded to the Central Government, which then, in turn, sanctions 85% of such expenses, after sanction-money is deposited into the IOA account and directly remitted to the service provider/hotel etc. As regards coaching camps, the Central Government reimburses the concerned National Sports Federations for the expenses incurred, or directly makes payments to the players. All funds received from or disbursed by the Central Government are duly accounted for and subject to scrutiny by the Comptroller and Auditor General of India, who addresses the public concern for appropriate utilization and accounting of the amounts.

6. It is contended that completely ignoring these salient aspects, the CIC, by its impugned order dated 28.11.2006, brushed-aside IOA's objections and decided that it was a public-authority and thus obliged to comply with the provisions of the Act.

7. The relevant part of the impugned order of CIC reads as follows:

> *"8. In the present case, in terms of Olympic Charter, IOA has the exclusive powers for the representation of India at the Olympic Games and at the regional, continental or multi sports competitions patronized by the IOC. In other words, the main function of IOA is to act as the nodal agency for participation of Indian sports contingents in various international sports events. Whether the Government provides substantial funds either directly or indirectly to IOA to discharge its functions is the issue for consideration. The term "Substantially financed" is not defined in the RTI Act. When a term is not defined in an Act, the normal rule is to find the definition of the term in a relatable statute or legislation and apply the same. In the present case, as submitted by the Ministry, CAG conducts the audit of IOA and therefore, it would be appropriate to apply the definition given in Section 14(1) of CAG Act-1971 for the term "substantially financed". According to this Section, when the loan or grant by the government to a body/authority is not less than Rs 25 lakhs and the amount of such loan or grant is not less than 75% of the total expenditure of that body/authority, then such body/authority shall be deemed to be substantially financed by such grants/loans. Direct funding could be by way of cash grants, reimbursement of expenses etc., and indirect*

funding could be meeting the expenses directly or in kind. The learned counsel for IOA did not challenge the details given by the Ministry of financial assistance given to IOA by the Government, from which it is clear that substantial funding not only for IOAs discharging its function but also towards construction of its building has been provided by the Government. I have also perused the annual accounts of IOA for the year 2003-04. In that year, of the total expenditure incurred of Rs.392 lakhs, the financing by the Central and State governments, either by way of grants or otherwise is found to be of about Rs 320 lakhs constituting roughly to 80%% of the expenditure. Thus, not only the financing by the Government is more than Rs.25 lakhs but the same constitutes more than 75% of the expenditure of IOA. I do not have the details of the government financing for earlier years, but considering the fact that, as submitted by the Ministry that the audit of IOA is being conducted by CAG, IOA must have been substantially financed by the Government in those years also. This would indicate that without the financial assistance of the Government, IOA is unlikely to be able to discharge its functions under the Olympic Charter. Therefore, since IOA is found to be substantially financed either directly or indirectly by the funds provided by the Government, I have no hesitation to hold that it is a public authority governed by the provisions of the RTI Act. IOA has contended that that in terms of Olympic Charter, IOA cannot be under the control of the Government or bureaucrats. Just because, it is a public authority in terms of RTI Act, it neither becomes a governmental organization nor can be treated to be under the control of the Government. Therefore the said contention is misplaced. The object of RTI Act is to bring transparency and since IOA discharges public function in the sense, that it is the nodal agency through which alone citizens could participate in international sports, it should have no hesitation to keep its functions transparent. Being a public authority in terms of RTI Act, does not, and cannot, in any way compromise its position or functioning in relation to the Olympic Charter.

9. Accordingly I direct IOA to publish details as required in terms of 4(b) of RTI Act and also to designate CPIO and AA within a month from the date of this Decision. It will also furnish the information sought by the Complainant by the same date. Ministry of Sports shall ensure compliance of this Decision"

8. The IOA contends that the impugned order is unsustainable because it is not a public authority within the meaning of the terms under Section 2(h) of the Act. It relies upon its constitution, submitting that its members have no connection with any public body and are drawn on purely individual basis. Its administrative mechanism and management are the result of independently-held elections and that the membership is

drawn from National Sports Associations or Federations whose games are included in the Olympic Commonwealth, Asian and South-Asian Federation Games' programs. The voting is exclusively from amongst the members indicated in Clause-XI of the Constitution. The powers and duties of the office-bearers and other functionaries are also specifically mentioned. The IOA disciplines its members and office-bearers- for which there is a separate and autonomous code; the list of members who constitute the IOA are detailed in the Constitution. The IOA next contends that there is no element of state or public control in regard to its constitution, establishment or functioning. It argues that there is no suggestion of its performing any statutory or public functioning that can be a matter of concern to the people at large.

9. As far as IOA's funding, utilization of the amounts received and audited or accounting controls are concerned, the IOA relies upon copies of auditor's reports and audited statements of accounts for the periods 01.04.1995 to 31.03.1996, 01.04.1996 to 31.03.1997, 01.04.1997 to 31.03.1998, 01.04.1998 to 31.03.1999, 01.04.1999 to 31.03.2000, 01.04.2000 to 31.03.2001, 01.04.2001 to 31.03.2002, 01.04.2002 to 31.03.2003, 01.04.2003 to 31.03.2004, 01.04.2004 to 31.03.2005. Pointing to the contents of these reports, it submitted that the income generated is through affiliation and membership fees, interest on fixed deposits and saving deposits, sponsorship and royalty etc. It is pointed that there is no fixed percentage or pattern in regard to the amounts received from government or government agencies and as to the characteristics, the same is not financed, let-alone substantially financed - the satisfaction of which criteria only could possibly apply provisions of the Act to the IOA. It is reiterated by the learned counsel that the IOA is independent and autonomous and a close scrutiny of the audited reports, copies of which are placed on record, disclose that the funds received from the government were for specific performances and must have been directly remitted to the concerned parties, which provided services such as air-travel, ticketing, boarding, transport etc. An objective analysis of the pattern of income and expenditure would reveal that IOA is not dependent on the Central Government largesse or funds; it is

autonomous; neither its membership nor its management or office-bearers are subject to government control and importantly, the Central Government has no say in its affairs. Learned counsel points out that the executive or governing council of the IOA or its functionaries do not comprise of any Central Government or public agency representative so far as to remotely suggest that IOA performs any functions of a public character of the kind that would attract provisions of the Act.

W.P. 1161/2008

10. The Commonwealth Games Committee, in W.P. 1161/2008 impugns the Office Orders of the Ministry of Sports and Youth Affairs, Central Government, dated 01.11.2007 and 28.11.2007, declaring it to be a public authority, as defined under the Act. The Committee was registered as a society on 10.02.2005 by the Registrar of Societies, Govt. of NCT of Delhi. Its Charter is to organize/conduct the Commonwealth Games, 2010; assigned or allocate to the IOA, which is an affiliate of the Commonwealth Games Federation.

11. Like the IOA, the Games Committee asserts that it is an autonomous and independent society, having no connection with the Central Government or any statutory body. The Commonwealth Games, 2010 was allotted to the IOA by the Commonwealth Games Federation by a resolution of its General Assembly in Jamaica. To effectuate this, the IOA signed a host city agreement dated 13.11.2007 to which the Commonwealth Games Federation, the IOA, the Central Government and the Govt. of NCT of Delhi were parties and signatories. It is contended that the role and duty of each party as well as their obligations are set-out in detail in that contract. The Games Committee states that sometime in April-May 2007, the applicant, i.e. Team One Network Communications approached it under the Act, seeking some information. The Games Committee refused to entertain the application under the Act, stating that it was not a public authority. Team One ("the information applicant") then approached the Central Government, which, by its

letter, dated 29.05.2007 wrote to the Games Committee, stating that it is governed by the provisions of the Act, and enumerated the following reasons:

(1) That the Games Committee had entered into a "Host-city" contract (hereafter "the contract") to which the Central Government was one of the signatories;

(2) Decisions pertaining to appointment of Chairperson and composition of the Games Committee Society were taken by a Group of Ministers (GoM) set-up by the Central Government, which is providing substantial upfront funds and has also undertaken to meet the shortfall between revenue and expenditure of the Games Committee.

This letter was responded by the Games Committee on 20.06.2007, contesting each reason and further arguing that it was not covered by the Act and that it was not a public authority. As regards its creation, the Games Committee relied upon Article 27(C) of the Constitution of the Commonwealth Games Federation and the Resolution dated 01.11.2004 by the General Assembly of the IOA, (which is, in turn, an autonomous body and an affiliate of the International Olympic Committee). The Games Committee also relies upon the IOA's arguments that the latter is autonomous and is only subjected to control by the International Olympic Committee.

12. The Games Committee claims that it owes its existence to Article 27(C) of the Constitution of the Commonwealth Games Federation, which obliges the IOA to create another body like it. Reference is made to recital D of the host-city contract, which reads as follows:

> *"D. IOA will in accordance with Article 27(C) of the Constitution and with the approval of the CGF delegate the Organization of the Games to the OC which, while working in partnership with the IOA, will also be directly responsible to the CGF.""*

13. The Committee also relies upon other Articles or provisions of the Contract, to say that Article 3, which lists the role, responsibility of the respondent, does not authorize it to constitute it and, rather emphasizes that the Central Government has to provide the

support to the Committee, and the IOA in the manner provided in the Host City Contract. It is said that Article 3 of the Host City Contract does not place any responsibility on the respondent in terms of establishing, managing, supervising or being accountable for acts of the petitioner in any manner. The Committee submits that as owner of the Games, the contract binds it and IOA only for the organization and conduct of the Games.

14. It is also stated that the Host City Contract is very particular in providing separate roles and responsibilities on each of the signatories' vis-à-vis the organization of the Games without altering or diluting their respective basic character or legal status and it nowhere empowers the respondent to encroach upon the field specifically reserved for the Games Committee. It is thus submitted that the Games Committee is completely autonomous in its role and functioning. The responsibilities of the Central Government under Article 3 of the Host-city contract do not empower it to constitute the Committee; it is emphasized that it has to provide support as agreed upon.

15. The Games Committee states that it has its own Board in accordance with its Memorandum and Rules, comprising of 15 members out of which two members each are nominated by the Central Government and the Govt. of NCT of Delhi and the rest are independently drawn from the IOA, National Sports Federations affiliated to it and so on. Similarly, it is emphasized that the Chairman of the Games Committee is not government-appointed, but nominated by Resolution of the IOA. The space for the Games Secretariat is rented by it; the Games Committee Chairman is empowered to recruit employees to conduct its affairs. The Committee has its autonomous administration and official guidelines which are put in place; the procedures for recruitment are not in any way connected with the Central Government regulations or rules. It is submitted that the Games Committee only has charge of ownership of the Games and not all the physical assets or infrastructure put in place or existing, that is used for such purpose. Article 37 of the Host-city contract provides for a mechanism for distribution of the surplus; it provides that such an amount will be paid to the Commonwealth Games Federation and the IOA.

16. The Games Committee states that it has been sanctioned budgetary support by the Central Government in the form of a repayable loan, with interest- from the surplus revenue generated by it. It is claimed that the Games Committee is revenue-neutral and that contrary to commercial arrangements which the Central Government has with it, all other stakeholders are provided budgetary support for creating infrastructure through grants. The Games Committee places particular emphasis on the submission that its arrangement is a commercial one, such as where any Company or Society is beneficiary to amounts released that are repayable with interest. For this purpose, it relies upon certain loans issued by the Central Government. It is argued that the Committee had requested for waiver of interest on loan and that the Central Government agreed to these by its decision dated 11.10.2007, stating that interest could be paid only from the surplus, out of the receipts from the Games.

17. The Games Committee submits that the returnable loan is not the only source of funds to enable its functioning but that it has the ability to raise funds from the corporate sector through sponsorship, from banks, by applying for loans etc. The Games Committee Society is not in any manner a Society receiving any financial grant and that the mere assurance held out by the Central Government, would not constitute it as a public authority under the Act. The Committee emphasizes that the involvement of the Central Government and the Govt. of NCT of Delhi is only with a view to popularize the games scheduled in the year 2010, and not in any manner with the intention of controlling its conduct or the affairs.

18. It is argued that the Central Government's stand about the applicability of the Act would result in cessation of independence of the Committee and subject it to additional burdens, thus hampering the work of creating efficient mechanisms for the conduct of games in the city of Delhi. The Games Committee further argues that it is not meant to be a permanent body set-up in order to provide expertise for the conduct of the Games and any surplus generated – after the repayment of the loan etc. would revert to the IOA and the Commonwealth Games Federation. The absence of any government, Central

Government or public agency control it clarifies that the Central Government or any other public authority under its control never contemplated that the Games Committee would be subject to provisions of the Act or any such statutory control as would flow if the stand taken in the impugned orders/communications is upheld.

19. The Games Committee argues that in the absence of a notification under Section 2(h), as such is the case, it cannot be held to be a public authority and therefore, be subjected to the rigors of the Act, such as placing certain information in the public domain, scrutiny by the general public through information applications, appointment and maintenance of Public Information Officers and appellate bodies etc, which would strain its functioning and ultimately tell on the efficiency of its basic task and functioning. It is contended that the host city contract and other arrangements entered into with the Central Government and the Govt. of NCT of Delhi provide adequate mechanism for accountability and scrutiny of the amounts used from the funding or loan received by governmental authorities; such authorities are free to query the Games Committee in this regard. Thus, the applicability of the Act is impinged as an unfeasible proposition, besides being unwarranted on a plain construction of its provisions. The Games Committee also submits that the expression "substantially financed" should in any case be construed as provided under Section 14 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 (hereafter called "the CAG Act"). The Explanation to Section 14 (1) of that Act reads what is meant by a body being "substantially financed" in the following terms:

> *"Explanation: Where the grant or loan to a body or authority from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in a financial year is not less than rupees twenty-five lakhs and the amount of such grant or loan is not less than seventy-five percent of the total expenditure of that body or authority, such body or authority shall be, deemed, for the purposes of this sub-section, to be substantially financed by such grants or loans as the case may be."*

W.P. 1212/2007

20. The school is aggrieved by an order of the CIC, dated 23-1-2007, declaring it to be a public authority. The facts here are that one Ms. Manju Kumar, the respondent in the petition ("information-applicant") sought particulars about funding to the school by various government departments, details of wards of children of parent(s) belonging to Central Government Services (IAS, IFS, IRTS etc.) and of those belonging to Defence Forces, studying (in the school) who were admitted, for the period March 2006, and those children admitted to the school without holding any entrance test, for March to July, 2006, etc, by her application dated 11-7-2006. The school replied on 26-7-2006, through its principal (who has deposed in support of the petition) that it was an unaided institution, and therefore, not a public authority, within the meaning of the expression under the Act. The information applicant wrote to the CIC on 2-8-2006, stating that the school was unjustifiably denying applicability of the Act to it, and that it was a public authority, and therefore, bound to disclose the information sought. The CIC issued notice to the school, on 12-9-2006, under Section 18 of the Act. The school's response, in its reply was that it was not covered by provisions of the Act, as it was an unaided institution. It also urged that it was not a body constituted by or under any enactment, and that its members and governing body were drawn from amongst wives of serving officers of the Central Civil Services. It pleaded that the legislative intent of ensuring coverage of provisions of the Act to public authorities, was that such bodies were to be set up by or under a notification, if they were not government or statutory bodies, and also had to be substantially financed by the appropriate government. It was contended that none of such pre-requisites were fulfilled.

21. The CIC by its impugned order, held as follows:

> *"9. The Commission recalled its earlier order of 6th January 2007 wherein the respondents were represented by their Advocate, Shri Chitale. However, the Commission directed him to send the Principal of the School to the Commission as it was not prepared to hear the Advocate as per Section 5 (4) of the Central Information Commission (Appeal Procedure Rules 2005). Accordingly, in the hearing today, the Principal appeared on behalf of the Sanskriti School. The main issue in the case seemed to be whether Sanskriti School was a "Public Authority"*

or not ? At the hearing, it was stated by the Principal that although the Government did not give any grant for the day to day running of the School or for any other activity, it has given a substantial grant for setting up the infrastructure of the school in its initial phase. Secondly, as stated by the Respondent, the wife of the Cabinet Secretary is the Ex- Officio Chairperson of the Board of Management of the School and also that wives of other Civil Service Officers are on the Board of Management. On the basis of these two submission, the Commission decided that the Sanskriti School did come under the purview of the RTI Act, 5 as a "Public Authority". Hence, it was incumbent on them to set up the infrastructure for supply of information as required under the RTI Act and also to respond to the RTI applications.

10. The Commission, therefore, directed the Principal to reply to the application filed by Smt. Manju S. Kumar by 5th February.

11. The Commission ordered accordingly."

22. The School faults the CIC for not giving it appropriate hearing, or opportunity to present its case. It submits to being controlled by the Civil services Society, which is a private, non-profit making, voluntary organization, registered under the Societies Registration Act. The school has its Executive Committee comprising the wives of the serving Civil Services Officers and subsists fully on the fees received from the students. The day today expenses, salary of the teachers, and all recurring expenditure of the School is met from the tuition fee collected, which is the only income for the School and are not subject to any grants, funds or aid from the State. The School is a private non-profit institution which manages its day to day expenditure by itself without any aid, finance or grant from the Government or any other organization; it is not an aided school.

23. The school says that to fall within the parameters prescribed by Section2 (h) the authority, body or institution must be one of self government established by or under the Constitution, or by any law made by Parliament or the State Legislature or by a notification issued by the appropriate Government and in the event an authority, body or institution is established or constituted by a notification issued by the Appropriate Government, then it must be a body owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate government. The provisions of Section 2 (h) (d) (i) & (ii), argues the school, cannot be read in isolation and must be read as

necessary part of Section 2 (h) (d). The Legislature while drafting the provisions of Section 2(h) was cautious in inserting the words *"body owned, controlled or substantially financed,"* as a part of sub section (d) of Section 2 (h). Had the legislature intended otherwise, the words "body owned, controlled or substantially financed" would have been inserted with the opening words of Section 2 (h) to read as a "Public Authority means a body owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate government or any authority, institution or body of self government established or constituted under the provisions of sub clause (a) to (d)". It is submitted that none of the ingredients mentioned in Section 2 (h) of the Act stand satisfied in the present case there is no material on record to suggest the same. The CIC's order is therefore, attacked as untenable.

Common contentions of all petitioners

24. It is agued by all the petitioners that under Section 2 (h), a body institution or authority must possess the following essential ingredients to be a "public authority":

I) The authority, body or institution must be one of self government. In the present case, the petitioners are not an authority, body or institution of self government and hence not a public authority. There is no material on record to establish that the petitioner school is an authority or body or Institution of self government.

II) The Authority, body or institution under clause (a) may be established or constituted:

(i) by or under the Constitution
(ii) by a law made by Parliament or State Legislature
(iii) by a notification issued or made by the Appropriate Government and if so then it can be a NGO or a body owned controlled or substantially financed by the appropriate government.

All writ petitioners submit they are not "an authority, body or institution" constituted by or under the Constitution, or by a law made by Parliament or the State Legislature or by a

notification issued or made by any Government, and in any event, do not fall within the definition.

25. Besides the contentions mentioned above, all petitioners urge that facially, none of them fall within the description of "public authority". Considerable emphasis is placed upon the structure of the definition (of that term), for this purpose. Learned senior counsel for the Games Committee and the School point out that generically, the description of the bodies set out in the definition, are governmental or state bodies, constituted by or under a statute, or the Constitution. It is argued that in order that a body or institution to qualify as a public authority, it must be notified as such, by the appropriate government; the contention here is that absent a notification, no one can claim that it is a public authority. It is argued, concurrently, that the body or institution should also be set up or constituted by a notification. The petitioners therefore, submit that as none of them are set up by a notification, or are notified as public authorities, they do not fall within the description.

26. Learned counsel submit that the intention of Parliament was that institutions performing some public function, or affecting lives of the general public, for which they are substantially financed by the government, can alone be characterized as public authorities. Absent such characteristics, even if some assistance is given by the government, in a sporadic, or irregular manner, as a general policy measure, or to promote certain activities, (which otherwise do not partake any public law element) they are not public authorities. The Games Committee therefore, says that loans secured on commercial basis, irrespective of the amount, do not fall within the term "substantially financed". It is argued that the Committee itself is not a permanent body, but set up for the purpose of the Commonwealth Games; no sooner is that event concluded, the Committee will cease to function. Such a temporary body with short term objectives cannot be called a public authority.

27. The school submits that assistance given as a matter of policy by the Land and Development Office, to allot land (as a one-time measure) on concessional rates, or that one time grant was given by certain government departments or agencies, does not mean by any stretch of the imagination that it is a public authority. The school's management, its functioning and activities, and composition of the governing body, all point to such activities being purely private, and the school, being unaided. It is emphasized that even the funds received were for one time capital expenditure, and not recurring grants (by the school), which cannot negate its essential nature as a private organization, managing its affairs. Unless there is a public element with dominant control in its affairs or management by the Government, or government agencies, the school cannot be termed a public authority, for purposes of the Act. The IOA reiterates the same arguments, as in the case of the Games Committee and says that India is pledged to ensure that its functioning is completely autonomous, and that requiring it to comply with provisions of the Act on an assumption that it is a public authority would result in complete erosion of such autonomy and independence, which would be a blow to the Olympic movement as well as a setback to sports generally, so far as India is concerned. It is emphasized that IOA does not ever depend on government or state funding, as it has independent sources of income, through sponsorships, donations, event fees, etc. That the Central Government assists sports persons selected or endorsed pursuant to the IOA's affiliate bodies' processes, for which purpose, the amounts are routed through its accounts, does not make its (IOA's) functioning dependant on any substantial financing by the Central Government, or public funds. It is also submitted that the concept of "substantial financing" implies that government or public financing or funding should be dominant, or more than 50%, and also be on a recurring basis. Learned Counsel argue that mere allocation of funds for specific purposes would not make the recipient or donee organization or institution a public authority.

28. The respondents general common contentions are that the structure of Section 2(h), if left without the extension *"..and includes"* leaves no manner of doubt that in the

case of bodies or institutions that are neither created by or under the Constitution, or by a law made by Parliament, or by a law of the State Legislature, nor created under any notification, issued for the purpose, what is necessary – in the case of non-governmental bodies, is whether they are a *"Body owned, controlled or substantially financed"* by the appropriate government, or are a "*Non- Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government."* In either instance, there is no requirement that such bodies should perform public or governmental functions; the controlling intention is the element of "substantial financing" by the appropriate government, in both cases, and, in the case of non-governmental organizations, the funding should be by "substantial" by the appropriate government, whether it is "direct" or "indirect". Thus, argue the respondents, there is no requirement that the institution should be set up or created by a notification, or by an enactment. The emphasis is on funding, irrespective of whether it is direct or indirect.

29. It is argued that a look at the Annual Reports furnished by the IOA show that its activities are dependant to a large extent, on Central Government funding. Learned counsel argues that IOA has been seeking financial assistance from the Central Government and relies on a copy of the letter dated 16.10.2007 sanctioning Grant-in-aid of Rs.47,92,500 for participation of the Indian Contingent in the 2nd Asian Indoor Games 2007 at Macau and releasing an amount of Rs.35,94,375 as 75% advance. The Central Government relies on the following chart, which, it says, is only illustrative of the kind of financial assistance given to IOA:

S.No.	*Item/Event*	*Amount of assistance sought by the Petitioner*	*Amount of assistance approved/released by the Central Government*
1.	*Bid for Asian Games, 2014*	*Rs.5,00,00,000/- (Rupees five crore)*	*Rs.2,00,00,000/- (Rupees two crore)*
2.	*Participation of Indian Contingent in 2nd Asian Indoor*	*Rs.1,18,79,000/- (Rupees one crore eighteen lakh seventy*	*Rs.92,38,303/- (Rupees ninety two lakh thirty eight thousand and*

	Games, 2007 at Macau (China)	*thousand)*	*three hundred three)* *[Rs.35,94,375/- paid directly to the IOA and Rs.56,43,928/- to Ms. Balmer Lawrie & Co. towards airfare]*
3.	*Participation of Indian Contingent in Commonwealth Games, 2006 at Melbourne*	*Rs.1,69,00,800/- + Airfare (Rupees one crore sixty nine lakh and eight hundred)*	*Rs.1,10,65,410/-* *(Rupees one crore ten lakh sixty five thousand four hundred ten only)* *[Rs. 41,17,629/- released directly to the pensioner and Rs.69,47,781/- released to M/s. Balmer Lawrie & Co. towards air fare]*
4.	*Participation of Indian Contingent in Asian Games, 2006*	*Rs.3,23,44,768/- + Airfare (Rupees three crore twenty three lakh forty four thousand seven hundred sixty eight)*	*Rs.2,50,83,476/-* *(Rupees two crore fifty lakh eighty three thousand four hundred and seventy six only)* *[Rs.1,12,64,839/- paid to the petitioner directly and Rs.1,38,18,637 paid to M/s. Balmer Lawrie and Air India towards airfare].*
5.	*Participation of Indian Contingent in 4th children Asian Games 2008 at Yakutia (Russia)*	*Rs.53,62,900/- + Air fare as per actual* *(Rupees fifty three lakh sixty two thousand and nine hundred only)*	*Rs.1,50,77,856/-* *(Rupees one crore fifty lakh seventy seven thousand eight hundred fifty six)* *[Rs.11,74,320/- paid directly to the petitioner and Rs.1,39,03,536/- paid to M/s. Balmer Lawrie & Co. towards airfare]*
6.	*Participation of Indian Contingent in Olympic Games, 2008 at Beijing*	*Rs.88,86,062/-* *(Rupees eighty eight lakh eighty six thousand and sixty two only)*	*Approved amount– Rs.64,30,712/-* *(Rupees sixty four lakh thirty thousand seven hundred and twelve).* *Amount released: Rs.42,64,854/-* *(Rupees forty two lakh sixty four thousand eight hundred*

			fifty four)
7.	*Participation of Indian Contingent in 1st Asian Beach Games.*	*Rs.1,06,04,200/- + Air fare as per actuals.*	*Assistance approved:* *Air fare as per actual; accommodation and boarding @ US $ 50 per person per day; ceremonial dress @ Rs.9000/- per day for 73 contingent members cleared at Government cost; competition kit @ Rs.3500/- per person in respect of 52 sportspersons only and out of pocket allowance @ US $ 20 per day person for sportspersons and coaches only.* *Amount released: Rs.37,79,782/- to M/s. Ashol Travels & Tours Limited towards air fare.* *Amount to the petitioner to be released on receipt of the audited statement of accounts.*
8.	*Participation of Indian Contingent in 3rd Commonwealth Youth Games 2008 at Pune.*	*Rs.1,02,36,950/-* *(Rs. One crore two lakh thirty six thousand nine hundred fifty only).*	*Assistance approved:* *Air fare as per actual in respect of the team officials and extra team officials; accommodation & boarding for 21 extra officials @ US 75 per day per person; ceremonial dress @ Rs.12,000/- per person for 196 contingent officials; competition kit @ Rs.3,500/- per person in respect of 135 sportspersons only and out of pocket allowance @ Rs.500/- per person per day in respect of sportspersons and coaches only.*

			Amount to the petitioner to be released on receipt of the audited statement of accounts.

30. The Central Government also submits, in relation to the IOA, that it has been receiving different forms of grant-in-aid, which clearly demonstrates that it is substantially financed by the Government. The IOA also claims to be the apex of all National level sports federations; it represents the national face of the IOC. It has the power to affiliate or recognize other domestic sports federations, which in turn can select and sponsor sportsmen to represent the country in games and events. In these circumstances, the IOA's funding by other sources, does not deflect from the fact that the Government treats it as the sole representative body, for all manner of sports. Therefore, it is a public authority.

31. The Central Government states that it released following grant-in-aid to the petitioner during the last three years 2006-07 to 2008-09 towards participation of Indian contingents in multi-disciplinary international sports events and hosting of the multi-disciplinary international sports events in India. The details are as follows:

S.No.	Year	Amount
1.	2006-07	Rs.5.38 crore.
2.	2007-08	Rs.2.44 crore.
3.	2008-09	Rs.2.38 crore.

It is submitted that in view of the above details of amounts approved and sanctioned, IOA is receiving substantial Central Government financial assistance and thus falls within the definition of Public Authority under Section 2(h) of the Act.

32. The Central Government denies the IOA's contention that it provides financial assistance only for limited activities of players for their participation in the international events. It submits that the Ministry of Youth Affairs and Sports pays for the entire

expenditure of travel, boarding and lodging, ceremonial dress and out of pocket allowance etc. of the teams cleared on cost to the Government. The participation of the national teams in major multi-disciplinary sports events such as Olympic Games, Commonwealth Games, Asian Games etc. is one of the main activities of IOA, entirely funded by the Ministry. It is argued that whenever IOA bids for hosting a major sporting event, it seeks and receives government support. For the bidding of Commonwealth Games, 2010, the Central Government committed huge financial resources for the successful holding of the games. It is submitted that IOA also receives financial assistance from State Governments. For the construction of Olympic Bhawan, State Governments contributed over Rs.2.5 crore out of Rs.3.8 crore spent of the building. It is stated that the Government directly pays to the travel agents for the tickets issued in the names of players. However, the expenditure on boarding and lodging, Ceremonial dress, out of pocket allowance etc. are paid to the petitioner. The Central Government further says that under the order of the Government of India (Allocation of Business) Rules, 1961 the Indian Olympic Association and National Sports Federations have been specifically listed as an item of Business allocated to Ministry of Youth Affairs & Sports. For these reasons, it is contended that the IOA is a public authority.

33. As far as the contentions relating to the Commonwealth Games are concerned, the Central Government submits, that the committee is not a grantee institution, but keeping in view that it (the Government) is providing unsecured loan of Rs.767.00 crore and the committee, by its letter dated 9.7.2008 has further asked for a further substantial fund, the transparency in its functional system in every manner is expected, to reply to the valid queries under the Act. The Central Government has also undertaken to meet the shortfall between revenue and expenditure of Games Committee. The Central Government submits that sports infrastructure being developed by the Govt. of NCT of Delhi, Sports Authority of India, DDA etc, which will be used by the Committee and would generate revenue. Any shortfall in the expenditure and revenue of the Games Committee is to be met by the Government. However any surplus generated, will not be returned to the

Government, but will be shared between the IOA and the Commonwealth Games Federation. In this background, it is the statutory duty of the Committee, to use public funds judiciously and be open for scrutiny at all times. The Central Government states that the Games Committee is an asset-less organization, and the loan which sanctioned by it (the Central Government) is unsecured. It is stated that the Central Government has agreed to provide such a huge loan without any security, and has full right to put forth required conditions to ensure, that these funds are used judiciously and reasonably in accordance with norms of transparency and accountability. This cannot be equated with the functioning of Banks/Statutory Financial entities, which would not agree to provide funds without proper safeguards including guarantors.

34. The Central Government submits that it has further undertaken to bear any shortfall in expenditure and revenue of the Games Committee; it also submits that its role is also to committing for the required institutional arrangements to ensure the success of the Commonwealth Games, and, also planning for and incurring, of enormous expenditure, amounting to thousands of crores of Rupees, on the construction/renovation/up-gradation of sports stadia; up-gradation of civic infrastructure; construction of hotels; operationalization of metro lines, etc. The revenues that will emanate from the 'Conduct of the Games' to the Committee, will be as a result of use of these stadia etc. by the petitioner for the Games, for which the Central Government has not insisted on any user charges or investment cost, from the Games Committee. The committee therefore has to use the public funds judiciously, and act transparency in its operations in expending the substantial funds provided to it. It is contended, importantly, that a sum of Rs.767.00 crores has already been sanctioned and out of which, a sum of Rs.272.72 crore has been given to the Games Committee; it is further submitted that a revised estimate of Rs.1780/- crore as sought by the Games Committee is under consideration. The Central Government emphasizes that even the interest on the loans advanced to the Games Committee had, at its request been waived off and it was been decided that the interest would be payable only from the surplus

generated by the Organizing Committee after meeting its expenditure. The letter of the Union Finance Minister, dated 11.10.2007, to that effect, to the Committee has been relied upon, for this purpose.

35. It is contended that the fact that the Games Committee is not a permanent body would not detract from the fact that it is a public authority under the Act. The nature of commitments made by the Central Government establish that there is not only substantiality about the financing of the Committee's activities, and also that it owns only the games, but is entirely dependent on physical infrastructure which admittedly belongs to the Government and public bodies.

36. The information applicant submits, in relation to the School's writ petition (WP 1161/2008) that the court cannot be limited by the circumstance- while considering whether it (the school) is covered by provisions of the Act, that it is an unaided school. It is submitted that being conceived and promoted by the most senior officials in the Central Government, drawn from among elite services such as the IAS, IFS, IPS, IRTS, etc, the school has been recipient of considerable public funds, which fits the definition of a public authority, under the Act. Reliance is placed on the response of the Union Ministry of Personal, Public Grievances & Pensions, Department of Personal & Training letter dated 27th August, 2008, to the queries sought, for the submission that the total grant-in-aid of Rs.15.94 crores and donations of Rs.22.50 lakh were received by the School between the years 1994-95 to 2001-2002. The land, says the applicant, for the School was allotted by the Ministry of Urban Development, at extremely nominal rates. The said letter also says that:

> *"Unable to meet its capital investment requirements etc the Civil Services Society/ Sanskriti School approached the Department of Personnel and Training for financial assistance. The Department of Personnel and Training released further grants-in-aid to the Sanskriti School with the approval for the Committee of Secretaries/ Cabinet. An amount of Rs.5.50 crore was released to the School by this Department during 2004-05 in installments. In the subsequent years 2006-07 and 2007 -08, an amount of Rs.2.37 crores was released in installments by the Department."*

37. The information applicant also relies on the sanction letter of the Central Board of Excise and Customs, dated 26th April, 1996, where the sum of Rs. 3 crores was sanctioned for the school. The letter also stipulated that:

> *"Seven (7) seats shall be reserved in the School for the nominees of the Chairman, CBEC, who could be children of any of the employees of the customs and Central Excise Department.*
>
> *(iii) A formal resolution of the Civil Services Society, conveying the acceptance of above conditions shall also be forwarded to the Chairman, Central Board of Excise and customs.*
>
> *(iv) The Society should abide by Rules 150 & 151 of the Grants-in-aid etc. and loans Rules. These rules require (a) the Accounts of the Institution/ Society to be audited by the C & AG, (b), submission of the certificate of actual utilization of the grants received, by a specific date and (c) laying on the Table of the House, the Annual Reports & Accounts of the Society."*

So far as the land allotted to the Civil Services Society for purposes of the school is concerned, it is argued that the letter of the Ministry of Urban Development, dated 16.09.2008 clarified that land area measuring to 7.797 acre was been allotted to the said Civil Service Society (for Sanskriti School) on lease hold basis @ Rs.1/- per acre, as ground rent per annum.

38. It is submitted that the court cannot be constrained in its interpretation of the term "public authority" by references to "State" under Article 12 of the Constitution of India, or "other authority or person" under Article 226 of the Constitution, since they are meant to further other objectives. It is contended that the purposes of the Act are wider, and meant to ensure transparent functioning of government and public bodies; in the scheme of things, if a non-governmental organization – regardless of its nomenclature, receives substantial finance for any of its activities, it is deemed to be a public authority, and obliged to follow the provisions of the Act.

Analysis and Conclusions

39. Before proceeding to discuss the rival contentions, it would be useful to recollect and analyze provisions of the Act. Under the scheme of the Act, "record", and "information", are held by defined "public authorities". By virtue of Sections 3, 5, 6 and 7, every public authority requested to provide information is under a positive obligation to do so; the information seeker is under no obligation to disclose why he requests it. Public authorities, are defined by Section 2(h) as-

> "*Section 2 (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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government."*

40. Section 4 obliges public authorities to publish various specified classes of information. The information provider or the concerned agency is, under the Act, obliged to decide the applications, of information seekers, within prescribed time limits. A hierarchy of authorities is created with the CIC, at the apex to decide disputes pertaining to information disclosure. In this Scheme, the Parliament has in its wisdom, visualized certain exemptions. Section 6 enjoins that information disclosure is the norm; in case the public authority on being approached (for information), does not possess the information sought, the Public Information Officer (PIO) has to forward the application, under Section 6(3) to the authority which actually holds the information; in that situation, the latter authority is accountable for disclosure of the information. Section 8 lists exemptions; it opens with a *non-obstante* clause, signifying the intention that irrespective of the rights of the information seeker, in regard to matters listed under that provision, the information providers can justifiably withhold access to the information seeker the

record, information or queries sought for by him (i.e. the information seeker or applicant).

41. The Act marks a legislative milestone, in the post independence era, to further democracy. It empowers citizens and information applicants, to demand and be supplied with information about public records; Parliamentary endeavor is to extend it also to public authorities which impact citizens' daily lives. These documents and processes are such as to which the people previously had no access. The Act mandates disclosure of all manner of information, and abolishes the concept of *locus standi*, of the information applicant; no justification for applying (for information) is necessary; indeed, Section 6(2) enjoins that reasons for seeking such information cannot be sought- (to a certain extent, this bar is relieved, in Section 8). Decisions and decision making processes, which affect lives of individuals and groups of citizens are now open to examination. Parliamentary intention apparently was to empower people with the means to scrutinize government and public processes, and ensure transparency. At the same time, however, the needs of society at large, and governments as well as individuals in particular, to ensure that sensitive information is kept out of bounds, have also been accommodated, under the Act.

42. The central issue which the court has to consider and decide is if the three organizations which have approached this court, are "public authorities" under the Act.

43. The structure of Section 2(h) makes it obvious that it is in two parts. The first part refers to an "authority" "body" or "institution" of "self government". These bodies of "self government" are "established", or "constituted" by or under the Constitution, any central enactment, or any state enactment, or "by or under a notification issued by the appropriate government". (The expression "appropriate government" is defined by Section 2 (a) as, "*in relation to a public authority which is established, constituted owned, controlled or substantially financed by funds provided directly or indirectly" by (i) the Central Government or the Union Territory administration, the Central*

Government" likewise, if the funding-substantially, whether directly or indirectly is by the State Government, then the appropriate government is the state government.) The first three categories of this part are fairly clear; those established under the Constitution or any enactment, Parliamentary, or state, are public authorities. The fourth category of institution or body is that set up under notification issued by "the appropriate government". This is if the body, apart from being established by the notification is substantially financed, *directly or indirectly* by the appropriate government. The fourth category, therefore, presupposes the following:

(1) The body or institution to be one of self government;

(2) Established by or constituted under a notification, issued by the appropriate government.

Facially, the controlling expression here is "self-government" which the petitioners, perhaps correctly interpret, as limiting the reach of the definition. The reference to "appropriate government" and substantial financing, either directly or indirectly, to a certain extent, widens the scope of the definition. Yet, the direct allusion to "self-government" no doubt acts as a limitation to its amplitude. The requirement of the institution being constituted, or established by or under a notification, narrows its reach. It can arguably be said, that the allusion to such bodies or institutions, and placement along with statutory bodies, constituted by or under Parliamentary or State enactments, or under the Constitution, naturally means that such institutions (set up under notifications) should possess the same characteristics of those referred to in the first three categories. So far, the writ petitioners' construction appears not only to be feasible, but the correct one; it could even be said that but for the extended definition- (the extension being the term *"and includes"* after which the express reference to non-governmental organizations is made), the petitioners' interpretation is the reasonable and correct one. However, the entire definition has to be considered; the extension by use of the term "and includes" acquires significance, in this context.

44. As to the legislative intent in using the expression "includes", in *Associated Indem Mechanical (P) Ltd. v. W.B. Small Industries Development Corpn. Ltd.,(2007) 3 SCC 607,* the Supreme Court held that:

> *"The definition of premises in Section 2(c) uses the word "includes" at two places. It is well settled that the word "include" is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute; and when it is so used those words or phrases must be construed as comprehending, not only such things, as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. (See Dadaji v. Sukhdeobabu 1980 (1) SCC 621; Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. 1987 (1) SCC 424 and Mahalakshmi Oil Mills v. State of A.P. 1989 (1) SCC 164) The inclusive definition of "District Judge" in Article 236(a) of the Constitution has been very widely construed to include hierarchy of specialised civil courts viz. Labour Courts and Industrial Courts which are not expressly included in the definition. (See State of Maharashtra v. Labour Law Practitioners' Assn. 1998 (2) SCC 628) Therefore, there is no warrant or justification for restricting the applicability of the Act to residential buildings alone merely on the ground that in the opening part of the definition of the word "premises", the words "building or hut" have been used."*

The principle was endorsed, more recently, in *Karnataka Power Transmission Corpn. v. Ashok Iron Works (P) Ltd.* (2009) 3 SCC 240:

> ***"15.*** *Lord Watson in Dilworth v. Stamps Commr.*[3] *made the following classic statement: (AC pp. 105-06)*
>
> *"... The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to shew that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."*
>
> ***16.*** *Dilworth*[3] *and few other decisions came up for consideration in Peerless General Finance and Investment Co. Ltd.*[2] *and this Court summarised the legal position that (Peerless case*[2]*, SCC pp.449-50, para 32) inclusive definition by the legislature is used:*
>
> > *"32. ... (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (2) to include meanings about which there might be some dispute; or (3) to bring under one nomenclature*

all transactions possessing certain similar features but going under different names."

17. *It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort to the word "includes" by the legislature often shows the intention of the legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes, however, the context may suggest that word "includes" may have been designed to mean "means". The setting, context and object of an enactment may provide sufficient guidance for interpretation of the word "includes" for the purposes of such enactment."*

Earlier, in *State of Bombay –vs- Hospital Mazdoor Sabha* AIR 1960 SC 610, the Supreme Court emphasized that the term "includes" denotes legislative intent to widen the ambit and scope of the thing defined, to include other objects or things which do not fall within the ordinary scope of the expression:

"…It is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. Where we are dealing with an inclusive definition, it would be inappropriate to put a restrictive interpretation upon terms of wider denotation…"

Similar instances of the term "include" being held to widen the scope of a definition can be found in decisions reported as *Commissioner Income Tax –vs- Taj Mahal Hotel, Secunderabad* AIR 1972 SC 168; *Scientific Engineering House Pvt. Ltd. –vs- Commissioner of Income Tax* AIR 1986 SC 338 and *Lucknow Development Authority –vs- M.K.Gupta* 1994 (1) SCC 243.

45. Now, if the Parliamentary intention was to expand the scope of the definition "public authority" and not restrict it to the four categories mentioned in the first part, but to comprehend other bodies or institutions, the next question is whether that intention is coloured by the use of the specific terms, to be read along with the controlling clause "authority…of self government" and "established or constituted by or under" a notification. A facial interpretation would indicate that even the bodies brought in by the extended definition:

(i) "….Body owned, controlled or substantially financed;

(ii) Non- Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government."

are to be constituted under, or established by a notification, issued by the appropriate government. If indeed such were the intention, sub-clause (i) is a surplusage, since the body would have to be one of self government, substantially financed, and constituted by a notification, issued by the appropriate government. Secondly – perhaps more importantly, it would be highly anomalous to expect a "non-government organization" to be constituted or established by or under a notification issued by the government. These two internal indications actually have the effect of extending the scope of the definition "public authority"; it is thus not necessary that the institutions falling under the inclusive part have to be constituted, or established under a notification issued in that regard. Another significant aspect here is that even in the inclusive part, Parliament has nuanced the term; sub-clause (i) talks of a "body, owned, controlled or substantially financed" by the appropriate government (the subject object relationship ending with sub-clause (ii)). In the case of control, or ownership, the intention here was that the irrespective of the constitution (i.e it might not be under or by a notification), if there was substantial financing, by the appropriate government, and ownership or control, the body is deemed to be a public authority. This definition would comprehend societies, co-operative societies, trusts, and other institutions where there is control, ownership, (of the appropriate government) or substantial financing. The second class, i.e non-government organization, by its description, is such as cannot be "constituted" or "established" by or under a statute, or notification.

46. The term "non-government organization" has not been used in the Act. It is a commonly accepted expression. Apparently, the expression was used the first time, in the definition of "international NGO" (INGO) in Resolution 288 (X) of ECOSOC on February 27, 1950 as *"any international organization that is not founded by an international treaty"*. According to Wikipedia http://en.wikipedia.org/wiki/Non-governmental_organization..accessed on 28-12-2009 @19:52 hrs)

> *"…Non-governmental organization (NGO) is a term that has become widely accepted as referring to a legally constituted, non-governmental organization created by natural or legal persons with no participation or representation of any*

government. In the cases in which NGOs are funded totally or partially by governments, the NGO maintains its non-governmental status and excludes government representatives from membership in the organization. Unlike the term intergovernmental organization, "non-governmental organization" is a term in general use but is not a legal definition. In many jurisdictions these types of organization are defined as "civil society organizations" or referred to by other names…"

Therefore, inherent in the context of a "non-government" organization is that it is independent of government control in its affairs, and is not connected with it. Naturally, its existence being as a non-state actor, the question of its establishment or constitution through a government or official notification would not arise. The only issue in its case would be whether it fulfills the "substantial financing" criteria, spelt out in Section 2(h). Non-government organizations could be of any kind; registered societies, co-operative societies, trusts, companies limited by guarantee or other juristic or legal entities, but not established or controlled in their management, or administration by state or public agencies.

47. In view of the above discussion, it has to be concluded that the requirement for an organization, which is not established by statute, or under the Constitution, but is a non-government organization, need not be constituted by or under a notification, due to the extended meaning of the expression "public authority" in terms of Section 2 (h) of the Act.

48. The next issue is the meaning of the expression "substantially financed". This is, in the opinion of this court, crucial for a determination as to whether the body or institution is a public authority. The petitioners' arguments on this point have been that for a body to be "substantially financed" state finance or funding has to be more than 50%; there should be an element of permanent dependence about such financing, that such financing should not be only in respect of capital expenditure, and that the body receiving the funds or finances should not be a venture or ad-hoc body, but a continuous one. It is also argued that loans advanced, as in the case of commercial transactions, do not amount to "substantial financing" of the institution.

49. The term "substantially financed" has not been defined. The Lexicon Webster Dictionary – Vol. I at page 365 defines "financing" as follows:

> *"financial, a money payment, < finare, to pay a fine, < L. finis.] The management of pecuniary affairs, esp. in the fields of government, corporations, banking, and investment; the system of public revenue and expenditure; pl. income or resources of corporations, governments, or individuals.-v.t.-financed, financing. To supply with finances or money; provide capital for.-v.i."*

According to *Black's Law Dictionary*, – Page 630

> ***"Finance.*** *As a verb, to supply with funds, through the payment of cash or issuance of stocks, bonds, notes, or mortgages, to provide with capital or loan money as needed to carry on business.*
>
> *Finance is concerned with the value of the assets of the business system and the acquisition and allocation of the financial resources of the system."*

Chamber Law Dictionary – (at page 627) says that "finance" is:

> *"finance fi, fi-nans' or fi, n money affairs or revenue, esp. of a ruler or state; money, esp. public money; the art of managing or administering public money; (in pl) money resources – v to manage financially; to provide or support with money – vi to engage in money business. – adj. finan'cial (-shal) pertaining to finance. – n finan'cier (-si-ar; US fin-an-ser') – adv finan'cially."*

According to the *Legal Glossary – 1992* (published by the Govt. of India) the term means:

> *"finance: 1. the pecuniary resources of a government or a company.*
>
> *2. to provide with necessary funds."*

Oxford's Shorter English Dictionary defines the term "substantial" as follows:

> *"substantial….A adjective..*
>
> *3. Of ample or considerable amount or size; sizeable, fairly large.*
>
> *4. Having solid worth or value, of real significance; solid, weighty; important, worthwhile.."*

The term "substantial" denotes something of consequence, and contrary to something that is insignificant or trivial. It implies a matter of some degree of seriousness. The question is whether the term itself suggests, in the context of "substantial financing" a predominant or overwhelming financing. In other words, does "substantial" read with "financing" mean that the major funding should from the relevant source, i.e state or governmental source.

50. It would undoubtedly be tempting to look at previous decisions on what constitutes "public authority" rendered in the context of whether a body is "State" as defined by Article 12 of the Constitution of India, or for its being subject to jurisdiction of the Courts, for judicial review purposes, under Article 226 of the Constitution of India. The Petitioners also rely on a few decisions, such as *Pradeep Biswas –vs- Institute of Chemical Biology* 2002 (5) SCC 111 and *Zee Telefilms –vs-Union of India* 2005 (4) SCC 649.

51. Article 226 confers wide powers on the High Courts to issue writs to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose". The term "authority" used in Article 226, it has been held, should be widely construed, unlike the term "authority" occurring in Article 12, which is relevant in the context of enforcement of fundamental rights under Art.32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as other rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or bodies performing public. The form of the body or institution is irrelevant; what is of relevance is the nature of the obligation imposed, the breach of which is complained against, or the enforcement of which is sought. It has thus been ruled that judicial control over ever changing nature of bodies affecting the rights of people cannot be stereotyped or straight-jacketed. This was emphasized in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors,-vs- V. R. Rudani* 1989 (2) SCC 691, as follows:

"20. In Praga Tools Corporation v. Shri C.A Imanual and Ors., (1969) 3 SCR 773 : (AIR 1969 Supreme Court 1306) , this Court said that a mandamus can issue against a person or body to carry out the duties placed on them by the Statutes even though they are not (WP(C) 5410-1997) Page 51 of 70

public officials or statutory body. It was observed (at 778) ; "It is however not necessary that the person or the authority on whom the statutory duty is imposed need be a public official or an official body, A mandamus can issue, for instance, to an official or a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorising their undertakings. A mandamus would also lie against a company constituted by a statute for the purpose of fulfilling public responsibilities. (See Halsbury's Laws of England (3rd Ed. Vol. II p. 52 and onwards)."

21. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute Commenting on the development of this law, Professor De Smith states : "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of administrative Act 4th Ed. p.540). We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice whenever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition."

52. More recently, in ***Binny Ltd. & Anr. v. V.V. Sadasivan,*** 2005 (6) SCC 657, while deciding when a private body can be said to be performing public function, the Supreme Court observed:

"Judicial review is designed to prevent the cases of abuse of power and neglect of duty by public authorities. However, under our Constitution, Article 226 is couched in such a way that a writ of mandamus could be issued even against a private authority. However, such private authority must be discharging a public function and that the decision sought to be corrected or enforced must be in discharge of a public function. The role of the State expanded enormously and attempts have been made to create various agencies to perform the governmental functions. Several corporations and companies have also been formed by the government to run industries and to carry on trading activities. These have come to be known as Public Sector Undertakings. However, in the interpretation given to Article 12 of the Constitution, this Court took the view that many of these companies and corporations could come within the sweep of Article 12 of the Constitution. At the same time, there are private bodies also which may be discharging public functions. It is difficult to draw a line between the public

functions and private functions when it is being discharged by a purely private authority. A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. In a book on Judicial Review of Administrative Action (Fifth Edn.) by de Smith, Woolf & Jowell in Chapter 3 para 0.24, it is stated thus:

> *"A body is performing a "public function" when it seeks to achieve some collective benefit for the public or a section of the public and is accepted by the public or that section of the public as having authority to do so. Bodies therefore exercise public functions when they intervene or participate in social or economic affairs in the public interest. This may happen in a wide variety of ways. For instance, a body is performing a public function when it provides "public goods" or other collective services, such as health care, education and personal social services, from funds raised by taxation. A body may perform public functions in the form of adjudicatory services (such as those of the criminal and civil courts and tribunal system). They also do so if they regulate commercial and professional activities to ensure compliance with proper standards. For all these purposes, a range of legal and administrative techniques may be deployed, including: rule-making, adjudication (and other forms of dispute resolution); inspection; and licensing. Public functions need not be the exclusive domain of the state. Charities, self-regulatory organizations and other nominally private institutions (such as universities, the Stock Exchange, Lloyd's of London, churches) may in reality also perform some types of public function. As Sir John Donaldson M.R. urged, it is important for the courts to "recognize the realities of executive power" and not allow "their vision to be clouded by the subtlety and sometimes complexity of the way in which it can be exerted". Non-governmental bodies such as these are just as capable of abusing their powers as is government."*

53. In ***G.Bassi Reddy*** v. ***International Crops Research Institute and Another,*** (2003) 4 SCC 225 it was observed that:

> *"It is true that a writ under Article 226 also lies against a person' for "any other purpose". The power of the High Court to issue such a writ to "any person" can only mean the power to issue such a writ to any person to whom, according to well-established principles, a writ lay. That a writ may issue to an appropriate person for the enforcement of any of the rights conferred by Part III is clear enough from the language used. But the words "and for any other purpose" must mean "for any other purpose for which any of the writs mentioned would,*

according to well established principles issued. A writ under Article 226 can lie against a "person" if it is a statutory body or performs a public function or discharges a public or statutory duty."

53. There are decisions which have ruled that even in the contractual sphere, there is no bar to entertaining a writ petition or if it involves some disputed question of facts. The Supreme Court observed in *LIC of India v. Consumer Education & Research Centre,* (1995) 5 SCC 482, that:

> *"Every action of the public authority or the person acting in public interest or its acts give rise to public element, should be guided by public interest. It is the exercise of the public power or action ' hedged with public element becomes open to challenge. If it is shown that the exercise of the power is arbitrary unjust and unfair, it should be no answer for the State its instrumentality, public authority or person whose acts have the insignia of public element to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions as private citizens, simplicitor, do in the field of private law. Its actions must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons....The actions of the State, its instrumentality, any public authority or person whose actions bear insignia of public law element or public character are amenable to judicial review and the validity of such an action would be tested on the anvil of Article 14. While exercising the power under Article 226 the Court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field cannot be demarcated with precision. Each case has to be examined on its own facts and circumstances to find out the nature of the activity or scope and nature of the controversy. The distinction between public law and private law remedy is now narrowed down. The actions of the appellants bear public character with an imprint of public interest element in their offers regarding terms and conditions mentioned in the appropriate table inviting the public to enter into contract of life insurance. It is not a pure and simple private law dispute without any insignia of public element. Therefore, we have no hesitation to hold that the writ petition is maintainable to test the validity of the conditions laid in Table 58 terms policy and the party need not be relegated to a civil action….."*

The decision relied upon by some of the petitioners, i.e *Pradeep Biswas* was for interpreting if a body or institution is "State" to be bound to by provisions of Part III of the Constitution of India. After reviewing the previous decisions, the seven member bench of the Supreme Court, in that ruling approved the previously established tests to decide if the body or institution was "state" was as follows:

(1) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.

(2) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.

(3) It may also be a relevant factor whether the corporation enjoys monopoly status which is State-conferred or State-protected.

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality.

(5) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government.

(6) Specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government.

The court went on to hold that:

> *"The picture that ultimately emerges is that the tests formulated in Ajay Hasia are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."*

54. The decisions of the Supreme Court, cited in this case, and discussed previously, all concerned themselves with the issue of reviewability of actions, policies, or decisions taken by specific bodies – in most instances sponsored by the government or public agencies, where the state or such sponsoring body exercised pervasive control, either financially, or in the management of affairs of the subject body. Here, however, the issue is a wider one. Parliament had the benefit of the debate on the interpretation of the expression "authority" and the rulings of the Supreme Court, which became law under Article 141 of the Constitution. Those decisions were rendered in the context of the court's power to enforce fundamental rights, and the jurisdiction to supervise policies and actions of the bodies. In other words the highlight of the judgments was whether the courts could rule on such actions and policies. The object of the Act, here, is entirely different. It is not about the scope of judicial review, and any relief that courts may be capable of granting. The object of the Act is to ensure that information with bodies which are "public authorities" are open to scrutiny to those seeking such information. One may well ask why this is necessary, when courts exist to guarantee enforcement of fundamental and other rights. The answer to this is not in the remedy available to a citizen against wrong- suffered or perceived- but in the value of transparency in decision making and general information dissemination to the people at large, in our knowledge based, and information driven millennium. As our society progresses, its goals of achieving equality, social justice and furthering democratic principles remain constant – indeed current levels of wealth disparities underline the criticality of achieving those goals for all citizens as an urgent objective.

55. In *Ramana Dayaram Shetty v. The International Airport Authority of India & Ors.* (1979) 3 SCR 1014, the Supreme Court noticed state pervasiveness and ubiquity in the economy as follows:

> *"To-day the Government, in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits. The valuables dispensed by Government take many forms, but they all share one characteristic.*

They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kind leases, licenses, contracts and so forth. With the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, it cannot be said that they do not enjoy any legal protection nor can they be regarded as that they do not enjoy any legal protection nor can they be regard as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure..."

The decade of the nineteen nineties has witnessed a shift; the state has now retreated from major areas of the economy, like finance, insurance, power, communications, energy resources and infrastructure. Its current role is to ensure effective regulation, and put in place strong rules that protect the participants in the market place, as well as the consumers, or users, of the goods and services, even while assuring growth and distribution of wealth. As a result of these policies, companies, and non-state actors have assumed considerable economic power. Concurrently, the state's obligation to promote development and ensure that the effects of growth are available to all sections of the society, has resulted in new methods of channelizing development. Thus, the state, if not as an interventionist "actor" (participant- as it hitherto was) now frames policies, which promote this obligation. Key growth areas, and general welfare measures which may otherwise not interest business "players" for various reasons such as commercial un-viability and so on, are nevertheless pursued by funding non-government and voluntary agencies, which are not under state control, but perform specific welfare, social and commercial tasks are recipients of funding, assistance and state promotion. Their existence and functions are considered crucial for the growth and development of areas like health care, women and child development, viable and sustainable livelihoods for marginalized sections of the society, education, gender justice, tribal welfare, environment preservation, poverty eradication, and so on. The states' policies are aimed at realization of social welfare and social justice objectives through a combination of measures, where these bodies and institutions play a vital role.

56. An interesting aside. Even on the issue of judicial control of non-state bodies, the growth of law in India and other parts of the world have been parallel. In *Nagle v. Feilden and Others* [1966 (2) QB 633], a Jockey Club was entitled to issue licences training horses meant for races. An application for grant of licence was refused, on the ground that the request was by a woman. The action of the Club (a private body) was set aside by the court, which held that it exercised licensing functions, and controlled the profession and, thus, had to be judged and viewed by higher standards. It was held that it could not act arbitrarily. In *Greig & Others v. Insole & Others* [1978 (3) All ER 449], a Chancery Division considered in great details the rules framed by the International Cricket Council as also the Test and County **Cricket Board of** United Kingdom. The question which arose there was whether the ICC and consequently the TCCB could debar a cricketer from playing official cricket as well as county cricket as the plaintiffs, well-known and talented professional cricketers (who had played for English County Club and test matches for some years) participated in the World Series Cricket which promoted sporting events of various kinds. In *R. v. Panel on Take-overs and Mergers, ex parte Datafin plc & Anr* [1987 (1) All ER 564] the Court exercised the power of the judicial review over a private body. The grounds of judicial review, which was granted, are:

(a) The Panel, although self-regulating, do not operate consensually or voluntary but had imposed a collective code on those within its ambit;

(b) The Panel had been performing a public duty as manifested by the government's willingness to limit legislation in the area and to use the Panel as a part of its regulatory machinery. There had been an "implied devolution of power" by the Government to the Panel in view of the fact that certain legislation presupposed its existence.

(c) Its source of power was partly moral persuasive. Such a power would be exercised under a statute by the Government and the Bank of England.

Lloyd LJ in his separate speech said that:

> *"On the policy level, I find myself unpersuaded. Counsel for the panel made much of the word 'self-regulating'. No doubt self-regulation has many advantages. But I was unable to see why the mere fact that a body is self-regulating makes it less appropriate for judicial review. Of course there will be many self-regulating*

> *bodies which are wholly inappropriate for judicial review. The committee of an ordinary club affords an obvious example. But the reason why a club is not subject to judicial review is not just because it is self-regulating. The panel wields enormous power. It has a giant's strength. The fact that it is self regulation, which means, presumably, that it is not subject to regulation by others, and in particular the Department of Trade and Industry, makes it not less but more appropriate that it should be subject to judicial review by the courts." [Aston Cantlow, Wilmcote and Billesley Parochial Church Council v. Wallbank [2001] 3 W.L.R. 1323].*

In *Poplar Housing and Regeneration Community Association Ltd. v. Donoghue* [2001] 4 All ER 604, the issue was whether eviction of the defendant by a housing association from one of the premises violated provisions of the Human Rights Act. Lord Woolf CJ upon considering the provisions as well as several previous decisions held that the Association discharged public functions:

> *"The emphasis on public functions reflects the approach adopted in judicial review by the courts and text books since the decision of the Court of Appeal (the judgment of Lloyd LJ) in R v. Panel on Take-overs and Mergers, ex p Datafin plc (Norton Opax plc intervening) [1987] 1 All ER 564, [1987] QB 815. (ii) Tower Hamlets, in transferring its housing stock to Poplar, does not transfer its primary public duties to Poplar. Poplar is no more than the means by which it seeks to perform those duties"*

These decisions, as well as previous judgments in India, have demonstrated that attempts have been made to account for actions of bodies that broadly perform "public" functions, through judicial review. The court is mindful that such attempts are part of the larger move to make such bodies accountable. In the case of coverage of the Act, however, the only value is transparency. It is not as if the actions of bodies which fall within its provisions, are otherwise judicially reviewable, if they are not "state" under Article 12, or not "authorities" under Article 226. The objective is to ensure information dissemination, so that members of the public are empowered in the decisions that they take, and the manner in which they wish to decide how policies should be made by the state, in granting largesse, aid, or finance to such bodies.

57. That brings the court to the question as to what is "substantial financing". It is apparent that Parliament was aware of previous enactments and laws (obvious because of reference to other Acts, such as Official Secrets Act, and rights under other laws such as intellectual property laws, etc). Yet, there was no deliberate attempt to define "substantial" financing for the purpose of discerning whether any institution or body was a public authority. Had it been so intended, Parliament could have clarified that "substantial financing" had the same meaning as in Explanation to Section 14 (1) of the CAG Act. Here, one may recollect that in the absence of a clearly manifested legislative intent, the meaning of a term, not defined in one enactment, should not be deduced or borrowed, with reference to another enactment. Thus, the Supreme Court quoting the following passage from *Craies* on Statutes (Sixth Edition, p. 164):

> *"In construing a word in an Act caution is necessary in adopting the meaning ascribed to the word in other Acts. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone." (Macbeth & Co. v. Chislett (1910 AC 220, 223 : 79 LJKB 376 : 102 LT 82 (HL)).*"

held, in *M/s MSCO Ltd. –vs- Union of India* 1985 (1) SCC 551, that:

> *"But while construing a word which occurs in a statute or a statutory instrument in the absence of any definition in that very document it must be given the same meaning which it receives in ordinary parlance or understood in the sense in which people conversant with the subject matter of the statute or statutory instrument understand it. It is hazardous to interpret a word in accordance with its definition in another statute or statutory instrument and more so when such statute or statutory instrument is not dealing with any cognate subject."*

This construction was followed in *State of Kerala –vs- Mathai Verghese* 1986 (4) SCC 746. It is therefore, held that this court cannot accept the petitioner's contention that the meaning of the term "substantial financing" has to be gathered from the provisions of the CAG Act.

58. In a previous section of this judgment, this court noted the meanings of "substantial" and "financing". To discover the meaning of the expression, since it is undefined, the common parlance test, as well as the contextual setting (of the term), having regard to objects of the Act, are to be examined. There is no yardstick, in this context to determine what is meant by "financing". As discussed earlier, the expression has wide import. It is not inhibited by considerations such as "revenue" or "capital" funding. An organization may be infused with public funds, the character of which is such that the vital functioning of the institution depends on it. It may be also the recipient of special attention, together with funds, which is otherwise unavailable to organizations or institutions of a similar class. Likewise, the fact that financing is by way of a loan, is immaterial, if the conditions for such advance are not available to others or organizations involved in the same activity. The quantitative test may not be appropriate. For instance, in a project for Rs. 10,000 crore, if the Central Government commits, and infuses Rs. 1000 crore, such amount cannot be termed insubstantial, because it is a small percentage of the overall value of the project. In the ultimate analysis, the funding or financing, (if not a part of uniform policy measures, such as price support to agriculturists, farm subsidies, etc) by the Government would be a significant factor in determining whether the recipient is a public authority. Public funds, for whatever reasons, retain their imprint or character as an obligation of fruition of the purposes for which the amounts are given. There is therefore, the imperative in the value of ensuring transparency, to secure such ends.

59. This idea was explained in *Electronics and Computer Software Export Promotion Council Vs. Central Information Commission and Ors.* (WP. 11434/2006, decided on 19-7-2006) by this court:

> *"4. The petitioner has impugned the orders holding him to be a public authority contending that the Grants-in-Aid are released by the Department of Commerce, Department of Information Technology for specific programs/projects and the grants are also received from international agencies like the United Nations Industrial Development Organization (UNIDO). The learned Counsel for the*

petitioner contended that since there is a distinction between funding of an organization and funding of promotional programs/projects, therefore, it cannot be inferred that the petitioner is substantially financed by the Government as contemplated under the Right to Information Act, 2005. The petitioner also relied on a letter dated 15th February, 2006 by the Ministry of Commerce and Industry stipulating that petitioner is treated as an autonomous non- Governmental organization and the employees of petitioner are not government servants nor petitioner is required to seek clearance from the Government for the appointment of officers. Post are created and so do the rules are framed by the petitioner governing the service conditions of its employees and therefore it is not under the Administrative Control of Department of Information Technology.

5. The learned Counsel for the petitioner has also contended that the Working Committee members of petitioner are the persons from private industries and has relied on list of Working Committee members of the petitioner for 2004-2006 to contend that it is not a public authority.

6. For the purpose of Section 2(h) of Right to Information Act, 2005, what is to be seen is whether the body is owned and controlled or substantially financed by the Government. Whether the funding is for specific programs/projects carried on by the petitioner or funds are given not for any specific program to the petitioner, will not make the petitioner not financed by the Government. The Government can give the funds without specifying as to how the funds are to be utilized and can also specify the manner and the programs on which the funds are to be utilized. Specifying the manner in which the funds are to be utilized rather will show more control of the Government on the petitioner. Specifying the programs on which the funds are to utilized does not negate the substantial funding of the petitioner as is sought to be canvassed by the learned Counsel for the petitioner. I have no hesitation in holding that in the circumstances, as has been done in the orders impugned by the petitioner, that the petitioner is substantially funded by the Government in the facts and circumstances.

7. The Central Information Commission has held that petitioner is a public authority on account of administrative control of Department of Information Technology on the petitioner on the basis of various factors stipulated in its order which are not negated on account of autonomous character of the petitioner in framing its rules governing the service conditions of its employees and the employees of the petitioner being not the Government servants. On the plea that its employees are not government servants, the control of Department of Information Technology cannot be negated. Therefore the probable inference is that the petitioner is under the administrative control of Department of Information Technology.

8. The Working Committee Members of the petitioner from different industries will also not negate the control of Department of Information Technology on the petitioner and Petitioner's substantial funding by the Government as contemplated under Right to Information Act, 2005. Perusal of list of Working Committee Members of petitioner for 2004-2006 rather reflects that it also has the Government nominees and, consequently, it cannot be inferred that petitioner will not be a public authority under the definition of the Right to Information Act, 2005. From the objects of the petitioner also, the character of the petitioner discharging public functions and being a public authority cannot be negated."

(emphasis supplied)

The above decision was approved by a Division Bench of this court, in LPA 1802/2006 (decided on 1-9-2008), where it was clarified that:

"10. The 'public authority' is amenable to the jurisdiction of the respondent No. 1 on the basis of it being a non-governmental organization which is substantially financed by the Union of India. The respondent No. 1 has recorded and the learned Single Judge has affirmed that out of funds of the sum of Rs. 11.8 crore income for the year 2004-05, the Grant-in-aid to the appellant from the Department of Commerce and Information Technology was about Rs. 6.8 crore and consequently, it was held by the respondent No. 1 and affirmed by the learned Single Judge that the appellant was substantially financed by the Government. The appellant has challenged the above finding not on the quantum of the aid given but on the ground that the grant-in-aid is provided by the Government for specific promotional programmes and projects and not for administrative expenses.

11. In our view, all that the Act requires is that the non-governmental organization ought to be substantially financed by the Government. The dictionary meaning of ' substantial' is instructive and reads as follows:

Oxford English Dictionary

Constituting or involving an essential point or feature; essential, material…"

60. This court therefore, concludes that what amounts to "substantial" financing cannot be straight-jacketed into rigid formulae, of universal application. Of necessity, each case would have to be examined on its own facts. That the percentage of funding is not "majority" financing, or that the body is an impermanent one, are not material. Equally, that the institution or organization is not controlled, and is autonomous is

irrelevant; indeed, the concept of non-government organization means that it is independent of any manner of government control in its establishment, or management. That the organization does not perform – or pre-dominantly perform – "public" duties too, may not be material, as long as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. To the extent of such funding, indeed, the organization may be a tool, or vehicle for the executive government's policy fulfillment plan. This view, about coverage of the enactment, without any limitation, so long as there is public financing, is supported by a recent decision of the Chancery Division in *Sugar -vs- British Broadcasting Corporation & Anr* [2009] UKHL 9 (where the court considered the coverage of the UK Information Act, in respect of the British Broadcasting Corporation, which was notified as a "public authority" in regard to a certain class of information). It was held that:

> *"49. The contrary argument appears to assume that a body must be one and indivisible, either a public authority or not. This argument is supported by the invention of another new term, a "hybrid authority", which is intended to suggest that there is a single authority which can be characterized as a public authority. But this construction is contrary to the plain statutory intention to treat the body in question as if it were two bodies, one of which is a public authority and the other not. But once one accepts that this was the effect of the Act, there can be no distinction between a decision as to whether a body (such as an institution "in the nature of a college") is for all purposes a public authority, and a decision as to whether a body's relevant persona is a public authority. In both cases the question is anterior to the jurisdiction of the Commissioner and in neither case does the Act confer upon him jurisdiction to decide it."*

61. It would now be necessary to decide whether each petitioner is a "public authority" under the Act, and therefore, bound to set up mechanisms for information dissemination, as mandated by its provisions.

The Indian Olympic Association

62. The facts of the IOA's petition have been discussed elaborately earlier. Its assertion that it is not covered by the Act stems from the Olympic Charter, the Aomori

resolution, by the International Olympic Committee, both of which require autonomy of the national association (such as IOA). It also contends that there is no state or public involvement in its functioning, constitution or management, and that state financing or funding is directly to the sportspersons who are selected by its affiliate associations.

63. The IOA is a registered society. No doubt, there is no state or public involvement in its establishment, or administration. It does not receive grants as is traditionally understood. It is the national face of the Olympic movement in India. Its word determinates the fate of the sport, and sportspersons, who are to attend and participate in Olympic events (not confined to the Olympics, but also embracing other, sport specific international events, and regional meets, etc). It affiliates or recognizes bodies which regulate sports that aspire to participate in Olympic and international events. Its approval is essential for any sport – in India- continuing to be part of the Olympic and international movement.

64. The factual position emerging from the Auditors' Reports, which are part of the record, is discussed now. The Report for the year 1995-95 discloses that the grants received/ receivable from the Central Government for that year was Rs. 35,05527/- (out of a total expenditure of Rs. 11,227,034/-) for the previous year it was Rs. 55,10,339 (out of a total expenditure of Rs. 92,16,534). For the year 1996-97 it was Rs. 18,69,264/- (out of a total expenditure of Rs. 76,50,817/20); for 1998-99, the report showed that of an amount of Rs. 46,16,919/- shown as recoverable, the amount of Rs. 46,09,046/- was to be recovered from the Central Government. The same report also reflects that an amount of Rs. 5,09,040/- had to be recovered from the Central Government for that year, as well as previous years towards "Salary grant". The report for the period 2000-2001 shows that Rs. 1,43,45,523/- out of the total receipt (income, of Rs. 2,84,08,729) received by IOA as grants from the Central Government. Rs.14,93,750/- was shown as recoverable from the Central Government, in the Report for 2001-2002. The figures for the later years, have been shown in Paras 29-30 of this judgment.

65. It would be useful to recollect the majority judgment of the five judge Bench of Supreme Court, in *Zee Telefilms Ltd. v. Union of India*,(2005) 4 SCC 649, where the issue was if the Board of Control for Cricket (BCCI) was "State" under Article 12 of the Constitution, and bound by Article 14. The court had observed in the said ruling that:

> *"...It cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32."*

Having regard to the pre-eminent position enjoyed by the IOA, as the sole representative of the IOC, as the regulator for affiliating national bodies in respect of all Olympic sports, armed with the power to impose sanctions against institutions –even individuals, the circumstance that it is funded for the limited purpose of air fare, and other such activities of sports persons, who travel for events, is not a material factor. The IOA is the national representative of the country in the IOC; it has the right to give its nod for inclusion of an affiliating body, who, in turn, select and coach sportsmen, emphasizes that it is an Olympic sports regulator in this country, in respect of all international and national level sports. The annual reports placed by it on the record also reveal that though the IOA is autonomous from the Central Government, in its affairs and management, it is not discharging any public functions. On the contrary, the funding by the government consistently is part of its balance sheet, and IOA depends on such amounts to aid and assist travel, transportation of sportsmen and sports managers alike, serves to underline its public, or predominant position. Without such funding, the IOA would perhaps not be able to work effectively. Taking into consideration all these factors, it is held that the IOA is "public authority" under the meaning of that expression under the Act.

The Organizing Committee of the Commonwealth Games 2010

66. The Games Committee, as discussed earlier, contests the application of the Act, stating that it is not a permanent body, that the amounts received from the Central Government, towards financing its activities, are in the form of advances or loans, on commercial terms, that it is autonomous from the Central Government, and the Government of NCT, and that the latter do not exercise any element of control over it. It further contends to not owning any physical assets, and that surpluses generated from the Games are to be given to the IOC.

67. The materials on the record disclose that the Games Committee is a society, set up as part of the commitment given to the Commonwealth Games and the International Olympic Committee. It has an autonomous management structure, and is not dependant on the Central or NCT Government for any its decision making processes. It owns the games, which means its conduct, and all the rights associated with it. As far as Central and NCT Government involvement is concerned, they are committed to investing and improving physical infrastructure. The Central Government has also committed to pay Rs. 767 crores as advance. The Central Government has placed on the record its letter dated 16-12-2008, which indicates that Rs. 349,72,16,350/- out of the amount committed (Rs. 767 crores) has been released. The Central Government has stated that the Games Committee wants the allocation (advance) to be increased to Rs. 1780 crores – which has not been denied. Equally, the uncontroverted position regarding repayment of interest is that the Central Government has agreed that such repayment can be from the surplus generated due to receipts during the games. In other words, if there is no surplus, interest on the loan stands waived. Also, the Central Government is committed to meet any shortfall in financing arrangements.

68. Now, the disbursement of a substantial amount of loan –as assistance by itself, cannot be considered as "substantial financing". There has to be something more to the transaction. In this case, the Games Committee owns the conduct of the games; it is

responsible, and reaps the benefit of the substantial amounts received, by way of licensing fee, sponsorship fee collected, etc. The Central Government does not share these revenues; rather they flow back to the Commonwealth Games and the International Olympic Committee. The Central Government has also agreed to allow the use of the stadia, and other infrastructure, without any user charges. Doubtless, the Central Government has its reasons to extend these benefits to a body which is otherwise private. They may include economic "spin off" that indirectly accrue to the people, as a result of the construction and up-grading of infrastructure, as well as anticipated benefits from tourists who are expected to visit the country before and during the event. Yet, the fact remains that writing off – even on contingent basis- interest on loans, of such scale, and agreeing not to demand any use charges or license fee for infrastructure, as well as agreeing not to take any part of the surplus generated, is not an ordinary loan transaction. Undeniably, the "investment" if one may term that to be so, is not a priority one. In these circumstances, the court concludes that the financing or funding of the Games Committee, concededly a non-governmental organization, is substantial; it is therefore, a public authority, within the meaning of Section 2(h) of the Act.

Sanskriti School

69. The school had argued that to being a private institution, in whose governance the Central Government, nor any public agency has any say; its membership is from amongst Central Civil Services officers. It submits that though the Ministry of Urban Development allotted land for establishment of the school, which was part of a larger policy, to allot institutional land for educational purposes. It also mentioned that the initial amounts received by various Central Government departments and the Reserve Bank of India, were for the purpose of school construction, and that they were one time capital receipts. The school states that it is self financed, and is not dependant on any grants by the Central or State Government; nor does it discharge any public law functions, to be called a "public authority" under the Act.

70. The materials on record show that the Sanskriti School was promoted undoubtedly by private individuals (serving, retired members of central civil services and their wives). Its management structure appears to be drawn predominantly from wives of senior civil servants. Therefore, that part of the reasoning by the CIC, holding it to be a public authority (as wives of civil servants are part of the managing structure, or governing council) cannot be upheld. In the absence of any thing further, the involvement of wives of senior bureaucrats *ipso facto* would not establish any degree of control by the Central Government. Such a conclusion is premised on untenable grounds. However, there can be no doubt that the society is a non-government organization.

71. As far as the question of financing is concerned, the allotment letter issued by the Union Urban Development Ministry is part of the record. It states that the 7.67 acre plot, located in a prime New Delhi colony (Chanakya Puri) is leased on a token annual rent and premium of Rs. 2/- . Neither the school, nor the allotment letter alludes to any general policy or programme, whereby such valuable land is made available as a matter of right to educational institutions, let alone at rates as not to be called any rate at all. The school asserts that it is run independently, on self-financing basis, which naturally implies that subject to other limitations, there is freedom to charge fees from pupils. This concession – though one time, has placed the school at a great advantage over others run on "commercial" but "self finance" lines.

72. The materials on record, in the form of letters of Directorate of Logistics, Customs and Central Excise, (date 15-7-2008); Department of Personnel and Training (dated 28-8-2008) and Department of School Education and Literacy, Union Ministry of Human Resource Development show that a total amount of Rs. 23.81 crores was given to the school for cost of construction; the amount included grants for later years, to meet the shortfall in capital expenditure. The letter of the Customs Department, dated 26th April, 1996 whereby the sum of Rs. 3 crores was sanctioned to the school, states that:

> *"(iv) The Society should abide by Rules 150 & 151 of the Grants-in-aid etc. and loans Rules. These rules require (a) the Accounts of the Institution/ Society to be*

audited by the C & AG, (b), submission of the certificate of actual utilization of the grants received, by a specific date and (c) laying on the Table of the House, the Annual Reports & Accounts of the Society."

The allotment letter issued by the Union Urban Development Ministry, dated 1-5-1995, stipulates, *inter alia*, as a condition of allotment that:

"xviii) There shall be three nominees of the Govt. (not below the rank of Joint Secy. to the Govt. of India) from Ministry of Human Resources Development (Dept. of Education) Ministry of Personnel & Training) & Ministry of Urban Affairs and Employment on the Management Committee of the School."

The letter of the Reserve Bank of India, dated 23-10-2008, disclosing that Rs. 1 crore was given to the school, in 1999, to facilitate admission of wards and children of its officers who face frequent transfers, is also on the record. The letter of the Customs Department, dated 26th April, 1996 whereby the sum of Rs. 3 crores was sanctioned to the school, also imposed a condition that preference had to be given to wards of children of officers from Customs and Central Excise Department, in admissions to the school, and that seven seats were to be reserved in the school for nominees of the Chairman, Central Board of Customs and Excise, who could be children of employees of that department. These conditions were accepted by the school, as evident from the Society's letter dated 25-4-1996.

73. The factual picture which emerges from the above discussion, in relation to the school's petition, is that it received amounts in excess of Rs. 24 crores by way of grants. There is opaqueness about these grants; interestingly, the Ministry of Human Development did not sanction the grant; individual ministries and agencies (such as the Customs Department, Reserve Bank of India) etc sanctioned monies apparently from their budgets. Whether this kind of grant or donation to private schools could be budgeted for, is not in issue. Yet, the fact established from the record is that the school could access, and muster these funds, which undeniably cannot be done by other private schools. There is no policy suggestive of the Central Government agreeing to donate such

large amounts to private schools, even if a larger public objective of education is furthered. Moreover, all indications are that the school operates as an unaided institution, and does not charge subsidized fees. Therefore, only children of those wards *who can afford such fees*, can access its services. Another interesting aspect is that the departments or agencies (or at least some of them) imposed a condition that the wards of their *officers* would be given admissions. There is nothing on record to suggest any Central Government policy to prioritize education of wards of children of its employees, through donations to private schools – even on one time basis. The school agreed to maintain its accounts in terms of the rules of the Government applicable to Grants in Aid institutions (insisted upon by the Customs Department); its accounts are to be subject to scrutiny and audit by the CAG. Further, nominees of the Central Government are required to be part of its Managing Committee – mandated by the allotment letter, issued by the Union Urban Affairs Ministry.

74. As discussed earlier, grants by the Government retain their character as public funds, even if given to private organizations, unless it is proven to be part of general public policy of some sort. Here, by all accounts, the grants – to the tune of Rs. 24 crores were given to the school, without any obligation to return it. A truly private school would have been under an obligation to return the amount, with some interest. The conditionality of having to admit children of employees of the Central Government can hardly be characterized as a legitimate public end; it certainly would not muster any permissible classification test under Article 14 of the Constitution. The benefit to the school is recurring; even if a return of 10% (which is far less than a commercial bank's lending rate) is assumed for 6 years, the benefit to the school is to the tune of Rs. 14.88 crores. This is apart from the aggregate grant of Rs. 24.8 crores, and the nominal concessional rate at which the school was allotted land for construction.

75. On a consideration of all the above factors, this court holds that the school fulfils the essential elements of being a non-government organization, under Section 2(h) of the

Act, which is substantially financed by the Central Government, through various departments, and agencies. It is therefore, covered by the *regime* of the Act.

76. India is in the midst of challenges. On the one hand is a continuing task to ensure social justice and equity to all the people, and on the other, the imperative of economic growth and development, as well as the spread of its benefits to all. Educating, clothing and providing shelter, employment and basic health care to all the people are non-derogable priorities. The model chosen by the government of ensuring spread of welfare and its benefits, include functioning through non-government agencies, who are tasked and assisted for this purpose. The crucial role of access to information here cannot be understated. It is in this context that Section 2 (h) recognizes that non-state actors may have responsibilities of disclosing information which would be useful, and necessary for the people they serve, as it furthers the process of empowerment, assures transparency, and makes democracy responsive and meaningful.

77. In view of the above conclusions, in relation to each petition, the court holds that the reliefs sought cannot be granted; each of the petitioners is a public authority, and therefore bound to give effect to provisions of the Act. They are granted 30 days time to set up appropriate mechanisms to enable access to information held and required to be held by them. For these reasons, W.P (C) Nos.876/2007, 1212/2007, and 1161/2008 are dismissed, without any order on costs.

JANUARY 07, 2010 (S.RAVINDRA BHAT)

JUDGE

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 5636/2016 and CM No. 23383/2016**

UNION OF INDIA AND ANR ..... Petitioners

Through: Mr Jasmeet Singh, CSGC with Mr Srivats Kaushal and Mrs Astha Sharma, Advocates for UOI.

versus

CENTRAL INFORMATION COMMISSION AND ANR ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 23.11.2017

1. The petitioner (Union of India) has filed the present petition, *inter alia*, impugning an order dated 12.03.2016 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC'). By the impugned order, the CIC has declared "*the Ministers in the Union Government and all State Governments as 'public authorities' under Section 2(h) of Right to Information Act, 2005*".

2. The CIC has further issued directions to Central and State Governments to provide the necessary support to each Minister including designating some officers or appointing the said officers as Public Information Officers and First Appellate Authorities. The CIC has also directed that Ministers be given an official website for *suo moto* disclosure of information with periodical updating as prescribed under Section 4 of the Right to Information Act, 2005 (hereafter 'the Act'). The CIC has also

recommended that the oath of secrecy which is required to be taken by the Ministers be replaced with the oath of transparency.

3. Briefly stated, the relevant facts are that respondent no.2 filed an application dated 20.11.2014 before the Additional Private Secretary, Minister of Law and Justice, Government of India seeking the following information:-

> "Time period of Hon'ble Minister or Minister of State's meeting the General Public has not been issued by the Ministry. If issued, its details and time to provide in Hindi and English language."

4. Since the information as sought was not received, respondent no.2 filed an appeal dated 02.01.2015 under Section 19(1) of the Act. Thereafter, the Central Public Information Officer (hereafter 'CPIO') sent a response dated 16.01.2015 informing respondent no.2 that "*No specific time has been given for the meeting of General Public with the Hon'ble Minister. However, as and when requests are received appointments are given subject to the convenience of the Hon'ble Minister*".

5. Respondent no.2 filed a second appeal under Section 19(3) of the Act on 14.04.2015. The principal grievance of respondent no.2 was that he had not received the information sought for within the specified time and, therefore, prayed that certain action be taken against the concerned CPIO under Section 20(1) of the Act.

6. The CIC listed the aforesaid appeal for hearing on 29.02.2016. However, none appeared for either of the parties. Notwithstanding the

same, the CIC framed the following questions for his consideration:

> "a) Is Minister or his office a 'public authority' under the RTI Act?
>
> b) Whether a citizen has right to information sought, and does the minister has corresponding obligation to give?"

7. After framing the aforesaid questions, the CIC deliberated upon the same at length and held that the Ministers in the Union Government and/or State Governments are 'public authorities' within the meaning of section 2(h) of the Act. The CIC also issued several directions to the Central or State Governments to provide necessary support to each Minister including designating officers as Public Information Officers and First Appellate Authorities, by providing official website for *suo moto* disclosure of information; and, for periodical updating of such information.

8. This Court finds it difficult to understand as to how the questions as framed by the CIC arise in the appeal preferred by respondent no.2. The information as sought for by respondent no.2 was provided to him and there was no dispute that he was entitled to such information. The only grievance voiced by respondent no.2 was regarding the delay in providing him with the information as sought by him. Thus, the only prayer made by respondent no.2 before the CIC was that action be taken against CPIO and the First Appellate Authority under the provisions of the Act.

9. In these circumstances, there was no occasion for the CIC to enter upon the question as to whether a Minister is a 'public authority' under Section 2(h) of the Act. Further, directions issued by the CIC are also wholly outside the scope of the matter before CIC.

10. In view of the above, the impugned order dated 12.03.2016 cannot be sustained and is, accordingly, set aside.

11. The petition and the application are disposed of.

VIBHU BAKHRU, J

NOVEMBER 23, 2017
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7878/2015 & CM 15758/2015

INDIAN POTASH LIMITED & ORS. ..... Petitioners

Through: Mr Manish Kaushik, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr Vikas Mahajan, Mr Shyam Sundar Rai, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 28.11.2017

VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia*, impugning the order dated 09.07.2015 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC'), whereby the CIC has held the petitioner no.1 (hereafter 'the petitioner') to be a public authority within the meaning of Section 2(h) of the Right to Information Act, 2005 (hereafter 'the RTI Act').

2. Respondent nos.2 & 3 had filed applications dated 23.12.2010 and 28.05.2013 under the RTI Act seeking certain information from the petitioner. Respondent no. 2 had sought the landed cost of Muriate of Potash (MoP) imported by the petitioner during the period 01.03.2009 to 31.10.2010 and respondent no. 3 had sought information as to the quantity

of MoP purchased by two specified concerns from the petitioner during the period December 2006 to March 2009. The petitioner declined to give the information as sought for by the said respondents on the ground that the petitioner was not a 'public authority' under Section 2(h) of the RTI Act.

3. The only question to be addressed in the present petition is whether the petitioner is a 'public authority' as defined under Section 2(h) of the RTI Act?

4. Briefly stated, the relevant facts - which remain uncontroverted - necessary to address the controversy involved in the present petition are as under:-

5. In 1955 three private companies jointly formed a consortium, for import of potash salts in the interest of agriculture on the advice of the Government of India, under the name and style of Indian Potash Supply Agency Limited (IPSA), which was incorporated on 17.06.1955 under the Companies Act, 1913. After the enactment of the Companies Act, 1956, the petitioner company was incorporated under the said Act as Indian Potash Limited.

6. At the material time, the shareholding of the petitioner was held by three shareholders namely; M/s Shaw Wallace & Co Ltd., Parry & Co. Ltd. and Mysore Fertilizer Co.

7. The learned counsel appearing for the petitioner states that the petitioner company is a company in the private sector and is run in accordance with its Articles of Association (AOA). The petitioners claim that there is no direct or indirect funding of the petitioner by either the Central or any State Government. Although, some of the petitioner's shares

are held by Public Sector entities, majority of the shares - about 70% - are held by entities, which are not public authorities within the meaning of section 2(h) of the RTI Act. Only about 12.67% equity is held by Public Sector Enterprises. Thus, out of the total share capital of ₹14,29,86,000/- about ₹1,81,16,327/- equity capital is held by the Public Sector entities.

8. The CIC analysed the shareholding pattern of the petitioner and observed that 70.22% of the entire shareholding was held by the cooperative sector which included certain cooperatives, namely; IFFCO, Gujarat State Co-Op. Marketing Federation Ltd. and Vidharbha Co-Op. Marketing Federation Ltd., which were not 'public authorities' within the meaning of Section 2(h) of the RTI Act. The CIC thus, excluded the shareholding of these entities and concluded that the balance 25.77% of the shareholding were with the Cooperatives, which were under the government control. The CIC assumed that such entities were 'public authorities' within the meaning of Section 2(h) of the RTI Act. In addition, the CIC noted that 20.54% of the issued as subscribed equity shares of the petitioner were held by five Public Sector enterprises, namely; Madras Fertilizers Ltd., Steel Authority of India Ltd., Rashtriya Chemicals and Fertilizers Ltd., Gujarat State Fertilizers and Chemicals Ltd. and Fertilizers and chemicals Travancore Ltd.

9. Taking the aforesaid analysis of shareholding pattern into account, the CIC held that 46.24% - 25.77% held by cooperative sector plus 20.54% held by Public Sector - were funds directly or indirectly from the government coffers or was public money. The CIC also referred to the decision of the Karnataka High Court in the case of ***Mangalore SEZ Ltd. v. Karnataka Information Commission & Ors: W.P.(C) 34095/2010, decided on***

14.08.2012, whereby the Court had held that Mangalore SEZ Ltd. was a public authority on the reasoning that 49.96% of its shares were held by government organizations.

10. The CIC concluded that the petitioner was a public authority since 46.24% of the petitioner's shareholding was indirectly held by Central and State Government and that would constitute substantial funding of the petitioner. The CIC also held that the petitioner was enjoying monopoly status and was, essentially, performing its functions for the benefit of the public and therefore they assumed the character of a government function. In view of the above, the CIC concluded the petitioner to be a 'public authority' within the meaning of Section 2(h) of the RTI Act.

11. Before proceeding further, it would be relevant to refer to Section 2(h) of the RTI Act, which defines the expression "public authority". Section 2(h) of the RTI Act is set out below:-

> "2. Definitions.- In this Act, unless the context otherwise requires,-
>
> xxxx xxxx xxxx 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. The aforesaid expression was considered by the Supreme Court in the case of ***Thalappalam Service Cooperative Bank Ltd. and Others v. State of Kerala and Others: (2013) 16 SCC 82***, whereby the Supreme Court explained as under:-

> "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."

13. In the present case, admittedly, the petitioner does not fall in the categories under clauses (a), (b) or (c) of Section 2(h) of the RTI Act. Thus, the only question that arises is whether the petitioner can be held to be public authority within the meaning of clause 2(h)(d)(i) or 2(h)(d)(ii) of the RTI Act. In other words, whether the petitioner is a *body owned controlled or substantially financed* directly or indirectly by funds provided by the appropriate government or is a Non-Government Organization (NGO)

substantially financed, directly or indirectly by funds provided by the appropriate government.

14. In ***Thalappalam Service Cooperative Bank Ltd.*** (*supra*), the Supreme Court had explained the meaning of the expression "a body owned" which reads as under:-

> "35. A body owned by the appropriate Government clearly falls under Section 2(h)(d)(i) of the RTI 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."

15. Insofar as the word "controlled" used in clause 2(h)(d)(i) is concerned, the Supreme Court had held as under:-

> "44. 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. The 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. The 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 Cooperative Societies Act.
>
> 45. 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."

16. The word "appropriate government" is defined under Section 2(a) of the RTI Act, which reads as under:

> "2. Definitions.- In this Act, unless the context otherwise requires,-
>
> (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."

17. From the facts as noticed above, it is clear that the petitioner is not owned by either the Central Government or by any State Government. The shareholding pattern of the petitioner as noticed by the CIC indicates that about 70.22% of the petitioner's share capital is held by seventeen entities from the co-operative sector. Further, five public sector companies own an aggregate of 20.54% of the issued and subscribed shares capital of the petitioner. In addition, there are several other entities, which are unconnected with the government, that hold the balance shares. Admittedly,

none of the issued and subscribed shares of the petitioner shares are held by either the Central or the State Government. The Articles of Association of the petitioner also does not provide any power to the Central Government or any State Government to exercise control over the affairs of the petitioner. There is, thus, no material to indicate that either Central Government or any State Government has good legal title to the petitioner or has ultimate control over the affairs of the petitioner. The petitioner being a company incorporated under the Companies Act, 1956 is a juristic entity and its affairs have to be conducted in the manner as provided in the Articles of Association. Thus, plainly, the petitioner cannot be termed as a body owned by any appropriate government.

18. Insofar as the expression "control" is concerned, the same has to be understood - as explained by the Supreme Court in ***Thalappalam Service Cooperative Bank Ltd.*** (*supra*) - as a body owned or substantially financed by the appropriate government.

19. Thus, the only question that remains to be addressed is whether the petitioner is substantially financed by the appropriate government so as to lead to the conclusion that it is a public authority under Section 2(h)(d)(i) of the RTI Act.

20. In ***Thalappalam Service Cooperative Bank Ltd.*** (*supra*), the Supreme Court had clarified that:

> "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."

21. In the facts of the present case, there is no material whatsoever to indicate that either the Central Government or any State Government has provided any finance to the petitioner. It may be true that 20.54% of the shares are held by Public Sector Enterprises; however, that does not mean that those shares have been subscribed by funds provided by the Central Government or any State Government. Some of the Public Sector Enterprises that hold shares in the petitioners are listed on stock exchanges and their shares are freely traded. A significant portion of the shares of these companies are also held by public at large and financial institutions. The source of funding of Public Sector Enterprises is not limited only to Central Government or State Governments. In addition, these Public Sector Enterprises also have large reserves, which are generated by accumulating undistributed profits. Thus, it would be incorrect to assume that the funds utilized by Public Sector Enterprises to purchase the shares of the petitioner owe their source to the funds provided by an appropriate government. It would be a different matter if it was established that the Central/State Government had provided the Public Sector Enterprises in question with funds earmarked to be utilized for subscribing to the shares of the petitioner. However, concededly, that is not the case here. There is also no material to even indicate whether the shares of the petitioner were subscribed by the Public Sector Entities directly or were purchased from other entites that had subscribed to the shares intially.

22. This Court is unable to accept the view that merely because a minority shareholding of the petitioner is subscribed by Public Sector Enterprises and entities in the Co-operative sector, the same must be construed as

subscription funded by Central/State Government. And, as there is no other material to indicate that the petitioner was funded by Central Government or any State Government, the CIC's conclusion that the petitioner has been substantially funded by an appropriate government and is thus a public authority cannot be sustained.

23. The decision of the Karnataka High Court in ***Mangalore SEZ Ltd.*** (*supra*) – which was relied upon by the CIC – was rendered prior to the decision of the Supreme Court in ***Thalappalam Service Cooperative Bank Ltd.*** (*supra*). In that case, the Karnataka High Court had held as under:

> "5. In the matter on hand, as is clear from Annexure-B, about 50% of holding of the petitioner is from the Government organisations viz., Oil and Natural Gas Corporation Limited, Karnataka Industrial Area Development Board, ONGC Mangalore Petro Chemicals Limited. The number of shares held by these three organisations comes to about 49.96%. Oil &Natural Gas Corporation Limited though is a company incorporated under the Companies Act, the same is owned by Government of India. Karnataka Industrial Area Development Board is also a State Government Organisation. Since 49.96% holding of the petitioner is by Governmental organisations, having regard to the object sought to be achieved by the RTI Act, in my considered opinion, the provision of Section 2(h) has to be read to take within its sweep all funds provided by the appropriate Government, either from its own bag or funds which reach the authority through the appropriate Government or with its concurrence or its clearance. Hence, in my view, the petitioner company Mangalore SEZ Limited, Mangalore can be classified as a 'public authority' and non-Government organisation which is substantially financed directly or indirectly by funds provided by the appropriate Government."

24. It is apparent from the above that Karnataka High Court has

interpreted the provisions of Section 2(h) of the RTI Act in an expansive manner. The said interpretation may no longer hold good in view of the decision of the Supreme Court in ***Thalappalam Service Cooperative Bank Ltd.*** (*supra*), which was rendered subsequently, wherein the Supreme Court had held that Section 2(h) of the RTI Act is exhaustive.

25. In view of the above, the petition is allowed and the impugned order is set aside.

VIBHU BAKHRU, J

NOVEMBER 28, 2017
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8993/2017

DOMINIC SIMON ..... Petitioner

Through: Mr Jose Abraham and Mr B. Mathews, Advocates.

versus

CENTRAL PUBLIC INFORMATION OFFICER AND ANR. ..... Respondents

Through: Mr Saqib, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 31.01.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 05.05.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC'), whereby the CIC has rejected the appeals preferred by the petitioner under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act').

2. The petitioner also prays for an order: (i) declaring that "*the International Indian Schools in Saudi Arabia come under the purview of the RTI Act, 2005*"; and (ii) directing the respondents to disclose the information sought by the petitioner.

3. The petitioner was the Chairman of the Managing Committee of

the International Indian Schools, Saudi Arabia, which, the petitioner claims is a network of ten schools affiliated with the Central Board of Secondary Education (hereafter 'the CBSE'). The petitioner alleges that the said schools were being run and managed by the Embassy of India in the Kingdom of Saudi Arabia. The learned counsel for the petitioner states that he was compelled to resign from his post on the basis of certain allegations made by the unknown persons.

4. In the aforesaid context, the petitioner sent an e-mail dated 01.11.2015 to the Indian Embassy at Saudi Arabia seeking certain information. The said e-mail reads as under:

> *"Sir,*
>
> *Kindly provide me copy of any complaints and it supporting documents received at the mission or any employees of the mission and any action taken report on such matters against the Chairman/managing Committee of International Indian Public School Riyadh from 01 - May-2015 Till Date.*
>
> *regards"*

5. The petitioner's request for information was declined by the Public Information Officer (PIO) of the Embassy of India on the ground that the International Indian Schools in the Kingdom of Saudi Arabia do not come under the purview of the Act and, therefore, cannot share the information as sought under the Act. The petitioner's appeal to the First Appellate Authority (hereafter 'the FAA') against denial of such information was also rejected by an order dated 04.01.2016.

6. Aggrieved by the order passed by the FAA, the petitioner preferred a second appeal under Section 19(3) of the Act, which was dismissed by the CIC vide the impugned order. The CIC held that the disclosure of official communications with the Saudi Government would impinge upon the friendly relations with the foreign country and, thus, the information sought by the petitioner was exempt under Section 8(1)(a) of the Act.

7. The respondent has filed a counter affidavit wherein it is affirmed that all the International Indian Schools in the Kingdom of Saudi Arabia are directly controlled by the Saudi Ministry of Education through a set of (i) Organizing Rules and (ii) the Charter of International Indian Schools in the Kingdom of Saudi Arabia. It is affirmed that since more than three million Indians are residing in the Kingdom of Saudi Arabia and education in Saudi Arabia is expensive, Saudi Arabian authorities have issued licences to run ten International Indian Schools, which are located in nine cities in the Kingdom of Saudi Arabia. These schools are affiliated to CBSE.

8. It is also affirmed that the Indian Embassy of the Indian Government does not shoulder any administrative or financial responsibility with regard to the said schools. It is stated that the said schools are run by financial contribution of the members of the Indian community. The schools are managed by a Higher Board (hereafter 'the HB') and the Managing Committee of the International Indian Schools in Saudi Arabia. It is stated that the Indian Ambassador to Saudi Arabia has been given the status of "Patron" as a special gesture

by the Saudi Authorities. It is stated that he has no effective role to play and his status as a patron is merely symbolic. Based on the aforesaid status, he is also a Member of the Managing Committee. It is stated that he can attend the meetings of the said Committee as an Observer but he has no voting right in the decisions of the said Committee. He also has a right to nominate a person to attend the meetings as an Observer in his place.

9. In view of the above, the Indian International Schools located in the Kingdom of Saudi Arabia cannot be considered as public authorities within the definition of Section 2(h) of the Act as they are neither controlled nor funded by an appropriate government.

10. The learned counsel for the petitioner has also referred to a circular issued by the Indian Embassy inviting applications for Members to be nominated to the Managing Committee, as well as certain press releases made by the Embassy of India. The said circular and the press releases do not advance the case of the petitioner as the Indian Ambassador's nominee also does not have any right to vote and merely acts as a nominee of the Indian Ambassador.

11. The learned counsel also referred to the Inspection Report by the CBSE, which states that the Managing Committee of the Schools is appointed by the Ambassador to oversee the functioning of the school. However, the said statement is clearly incorrect in view of the affidavit affirmed on behalf of the respondent.

12. The next question that falls for consideration is whether the

information sought for by the petitioner would be exempt from disclosure under Section 8(1)(a) of the Act as held by the CIC.

13. Section 8(1)(a) of the Act, reads as under:

> "(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."

14. The petitioner has restricted his prayer for information to only seek any complaint made against him.

15. It is once clear that if the information as sought for by the petitioner is available with the Indian Embassy, the same is not covered under any of the provisions of Section 8(1)(a) of the Act. Plainly, the disclosure of the complaint made against the petitioner would not in any manner affect the sovereignty and integrity of India. It is also difficult to accept that it would prejudicially affect the security, strategic, scientific or economic interests of the State in any manner. There is also no material to indicate that such information would lead to an offence.

16. The CIC had observed that "*the disclosure of the embassy files relating to the official communication with Saudi Govt. will impinge upon the friendly relations with a foreign country*". This observation is, plainly, unmerited. The question whether disclosure of any

communication with a Foreign State would adversely affect the relationship with that Foreign State would depend on the nature of the information and whether the same is expected to be treated as confidential.

17. This is a case where the petitioner claims that he had been compelled to resign on account of a complaint. Nothing has been brought on record which would indicate that this information, if available with the Indian Embassy at Saudi Arabia, is required to be kept confidential or would have a material bearing on the relationship of India with the Saudi Authorities. In view of the above, the impugned order to the extent that it rejects the petitioner's second appeal arising from his request for information made on 01.11.2015 (CIC/KY/A/2016/001204) is set aside.

18. The respondents are directed to disclose the complaints received against the petitioner provided that the same are available with the Indian Embassy at Saudi Arabia. It is clarified that the Indian Embassy is not required to take any steps to secure this information from other sources; in other words, the said complaint would be disclosed to the petitioner, only if the same is available with the Indian Embassy.

19. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

JANUARY 31, 2018/MK

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 658/2016 & CM No. 2743/2016, 848/2018, 849/2018 & 850/2018**

BATRA HOSPITAL & MEDICAL RESEARCH CENTRE ..... Petitioner

Through: Mr Ashok Chhabra and Mr Nikhil Karwal, Advocates.

versus

CENTRAL INFORMATION COMMISSION AND ANR ..... Respondents

Through: Respondent no.2 in person.

AND

\+ **W.P.(C) 707/2016 & CM No. 2985/2016**

BATRA HOSPITAL & MEDICAL RESEARCH CENTRE ..... Petitioner

Through: Mr Ashok Chhabra and Mr Nikhil Karwal, Advocates.

versus

CENTRAL INFORMATION COMMISSION AND ANR ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 06.02.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petitions, *inter alia*, impugning the common orders dated 01.07.2015 & 10.09.2015 (hereafter 'the impugned orders') passed by the Central Information

Commission (hereafter 'the CIC') holding the petitioner to be a public authority within the meaning of Section 2(h) of the Right to Information Act, 2005 (hereafter 'the RTI Act').

2. None appears for Shri Deepak Kumar, respondent no. 2 in WP(C) 707/2016 despite notice. It is seen that none has been appearing on behalf of respondent no. 2 in W.P.(C) 707/2016 at the previous hearings as well. In view of the above, this Court does not consider it apposite to defer the hearing of the petitions to await a representation on his behalf.

3. The information sought by the information seekers arrayed as respondent no.2 in both the petitions, under the RTI Act, was denied by the petitioner on the ground that the petitioner was not a 'public authority' as defined under Section 2(h) of the RTI Act. The controversy involved in both the matters is common and, therefore, both the petitions are taken up together.

4. The only question to be addressed in the present petitions is whether the petitioner is a 'public authority' as defined under Section 2(h) of the RTI Act.

5. The petitioner hospital is a unit of Ch. Aishi Ram Batra Public Charitable Trust registered under the Societies Registration Act, 1860 and was set up at Tughlakabad Institutional Area in the name and style of Batra Hospital and Medical Research Centre.

6. On 10.06.1949, Ministry of Finance and Ministry of

Rehabilitation decided to allot land on incentivized rates to institutions of secular and non-communal character with an intention to give incentive to all charitable trusts and institutions to open schools, hospitals etc. It was contended on behalf of the information seekers (arrayed as respondent no.2 in the respective petitions) that the land measuring about 11 acres, which is occupied by the petitioner society is being utilised for running a hospital and other ancillary purposes, was provided at concessional rates and, therefore, the petitioner society is controlled and substantially financed by the Government. This contention was accepted by the CIC.

7. The CIC also noted that the Delhi Development Authority (DDA) vide letter dated 03.12.2004 had directed the petitioner to provide free beds to the extent of 25% of the total beds and free OPD to the poor and indigent patients and had further directed that a representative of Directorate of Health Services, Govt of NCT of Delhi would also be a member of the Managing Committee of the Society/Hospital.

8. The CIC also observed that the Management is running the hospital from donations and income from patients and is also claiming exemption from payment of income tax.

9. The CIC analyzed the details of the extent of land, rates of premium and rents payable in respect of the land as submitted by the petitioner in terms of the directions issued by the CIC on 09.10.2014. A tabular statement indicating the same is set out below:-

Land Area (Acres)	Date of Execution	Date of Operation	Purpose	Total Payment	Annual Rent(%)
0.8325	03.05.1985	28.11.1983	Essential staff quarters	Rs. 4,99,500/-	2.5
4.7175	03.05.1985	28.11.1983	Hospital	Rs.47,175/-	5
0.64	03.05.1985	31.05.1979	Essential staff quarters	Rs.64,000/-	2.5
3.61	03.05.1985	31.05.1979	Hospital	Rs.18050/-	5
1.23	24.07.2000	14.03.1996	Dharamshala & Nursing School	Rs.9840000/-	2.5

10. In view of the above, the CIC concluded that the petitioner is funded directly or indirectly from the government coffers or public money. The CIC also referred to the decision of the Division Bench of this Court in the case of ***Delhi Sikh Gurudwara Management Committee v. Mohinder Singh: LPA no. 606/2010, dated 12.09.2012***, wherein this Court had held that "*if a body either owned by the appropriate government or controlled by the appropriate government or substantially financed directly or indirectly by the appropriate government, it would become public authority*".

11. The CIC concluded that the petitioner was a public authority since it is indirectly financed for promotion of public services by the Govt of NCT of Delhi; more particularly by the DDA. In view of the above, the CIC concluded the petitioner to be a 'public authority' within the meaning of Section 2(h) of the RTI Act.

Reasons and Conclusion

12. Before proceeding further, it would be relevant to refer to Section 2(h) of the RTI Act, which defines the expression 'public authority'. Section 2(h) of the RTI Act is set out below:-

> "2. Definitions.- In this Act, unless the context otherwise requires,-
>
> xxxx xxxx xxxx 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."

13. The aforesaid expression was examined by the Supreme Court in the case of ***Thalappalam Service Cooperative Bank Ltd. & Ors v. State of Kerala & Ors: (2013) 16 SCC 82***. The Court explained that

the use of the words "means" and "includes" in the definition of the term "public authority" clearly indicates that the categories listed therein are exhaustive. The Court also observed Section 2 (h) of the RTI Act referred to essentially six categories. The relevant extract of the said decision reads as under:-

> "31. 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.
>
> 32. 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."

14. In the present case, admittedly, the petitioner does not fall in the categories under clauses (a), (b) or (c) of Section 2(h) of the RTI Act. Thus, the only question that arises is whether the petitioner can be held to be 'public authority' within the meaning of Section 2(h)(d)(i) or 2(h)(d)(ii) of the RTI Act. In other words, whether the petitioner is a *body owned controlled or substantially financed* directly or indirectly by funds provided by the appropriate government or is a Non-Government Organization (NGO) substantially financed, directly or indirectly by funds provided by the appropriate government.

15. Concededly, there is no direct finance that is provided by the Government. According to CIC, the appropriate government in relation to the petitioner could be the Government of NCT of Delhi and more importantly the DDA. This conclusion is based principally on the ground that the land was allotted to the petitioner on concessional rates and the petitioner is paying a rental value which is lower than the market rate. The CIC has observed as under:-

> "This means, the society is enjoying to have its entire hospital on the land paying the rental value as per the rates of value fixed up long ago, which amounts to substantial funding indirectly. Whether it is called 'incentive' or 'subsidy'-or 'concession', to that extent of low value, compared, to market rate, the respondent authority has been indirectly financed which is 'substantial'"

16. This Court is unable to subscribe to the above view. In ***Thalappalam Service Cooperative Bank Ltd.*** (*supra*), the Supreme Court had further explained that mere providing subsidies, grants, exemptions, privileges cannot be said to be providing funding to the substantial extent.

The relevant observations of the Supreme Court are extracted below:-

> "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."

17. Concededly, the petitioner was not given any special grant or any special treatment by allotment of land. The land was leased to the petitioner as per the prevalent policy of the Government at the material time. Leasing of land for the purposes of education and health care to Non-Governmental Organizations for establishing educational institutes and health care facilities at a rate lower than what is charged for commercial establishments, cannot be considered as financing those institutions. The allocation of the resource of land for various purposes and charging appropriate rate for the same does not mean that the particular lessees that acquire leasehold interest in land are financed by the Government. The object of leasing land at lower rates is to ensure the availability of health services at lower rates to the public. The incentive, if at all, is directed towards ensuring availability of healthcare and education to public at affordable rates and not to

finance the concerned entity.

18. The expression "substantial finances" would take in its fold bodies which would struggle to exist without such finances and survive on the resources provided by the Government. In the present case, there is no material which would indicate that the petitioner would be unable to survive if the lease rentals were increased.

19. The CIC had also noted that the petitioner was required to provide free beds to the extent of 25% of the total beds available and further free OPD to poor/indigent patients. However, the CIC failed to appreciate that such demands were made on the petitioner as a condition of lease. The rationale of insisting on free services is clearly to extract due value for allocation of land (including at concessional rates). This clearly indicates that the intention of the DDA was not to finance the petitioner but to ensure that affordable health care is available to the public. As stated above, there is no material to indicate that non availability of land at concessional rates would put the petitioner's survival in peril. Cost of inputs for providing services is a pass through costs and there is no material to establish that the same is not the case with the petitioner.

20. In ***Thalappalam Service Cooperative Bank Ltd*** (*supra*), the Supreme Court had explained the meaning of the expression "a body owned". The relevant extract of the said decision reads as under:-

> "35. A body owned by the appropriate Government clearly falls under Section 2(h)(d)(i) of the RTI 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."

21. In the facts of the present case, it is difficult to accept that the petitioner is a body owned by the Government.

22. This Court is unable to accept the view that merely because the land on which the petitioner is running a hospital was allotted by the DDA at concessional rates, the same must be construed as financed by the Central/State Government. And, as there is no other material to indicate that the petitioner was funded by Central Government or any State Government.

23. The CIC's conclusion that the petitioner has been substantially funded by an appropriate government and is thus a 'public authority' cannot be sustained.

24. For the reasons stated above, the petition is allowed. The impugned orders are set aside. All the pending applications are also disposed of. The parties are left to bear their own costs. However, a sum of ₹10,000/- paid to respondent no.2 is not required to be refunded.

VIBHU BAKHRU, J

FEBRUARY 06, 2018/RK

MANU/WB/0812/2016

Equivalent Citation: AIR2017Cal24, (2017)1CALLT71(HC), 2017(2) CHN (CAL) 72 (2017)1WBLR(Cal)703

IN THE HIGH COURT OF CALCUTTA

W.P. No. 12549 (W) of 2016

Decided On: 01.09.2016

Appellants: **Dinesh Sinha and Ors.**
Vs.
Respondent: **Council for the India School Certificate Examinations and Ors.**

Hon'ble Judges/Coram:
Shivakant Prasad, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Ekramul Bari and Tanuja Basak

For Respondents/Defendant: Sanjay Kumar Baid, S.N. Bhattacharya and Arunima Lala Sengupta

Case Note:
Right to Information - Entitlement - Section 2(f) and 2(h) of Right to Information Act, 2005 - Writ Petition filed against order rejecting prayer of Petitioner No. 2 for disclosure of information under Act - Whether Respondent Council was a public authority under statutory scheme of Act - Held, Council was not a public authority or body or Institution of self-government established or constituted under Constitution, under law enacted by Parliament or by State Legislature or body owned, controlled or substantially financed, directly or indirectly by fund provided by appropriate Government - It did not come within purview of a public authority under Section 2(h) of Act - Evaluated answer book was an information under Act as it becomes documents or records containing opinion of examiner in terms of Section 2(f) of Act but Council origin being established by University and could not be said to be a public body in possession of a document or record and as it was not at par with Central Board of Secondary Education and was not a State instrumentality - Petitioner No. 2 being successful candidate in examination having obtained very good marks, there was no any reasons to quash Memorandum issued by Respondent Council - Writ Petition dismissed. [15],[19] and[25]

JUDGMENT

Shivakant Prasad, J.

1. The instant writ is directed against an order rejecting the prayer of the petitioner No. 2 for disclosure of information under Right to Information Act, 2005 on the ground that the respondent authority is not a public authority under the statutory scheme of Right to Information Act, 2005.

2. The petitioner No. 2 being a minor is represented by his father as guardian being the petitioner No. 1.

3. Petitioner No. 2 appeared for Class-X examination from the respondent No. 3 School under Council for the India School Certificate Examinations (hereinafter called as the Council) in the year 2016 and became successful on acquiring qualifying marks. However, after receiving the statement of marks and pass certificate on May 6, 2016 the petitioners felt extremely aggrieved as the marks and grade awarded to the petitioner No. 2 was not at all upon the mark and unexpected considering the quality and standard of the petitioner No. 2.

4. On being aggrieved the petitioner made an application under Right to Information Act, 2005 on June 1, 2016 with a prayer for issuance of original answer scripts upon due completion of formalities as per annexure "P-2."

5. On June 24, 2016 by vide Memorandum No. CISCE/RTI/2016, the respondent No. 2 rejected the prayer of the petitioner No. 2 under the said Act for the reason that the said Council is not a public authority and as such is not covered within the meaning of section 2(h) of the said Act, 2005 vide letter "P-3."

6. The petitioners contended that the Council has been so constituted as to secure suitable representation of Government of India, State Governments/Union Territories in which there are Schools affiliated to the Council and also the mission of the said Council is 'The Council for the Indian School Certificate Examinations is committed to serving the nation's children, through high quality educational endeavours, empowering them to contribute towards a humane, just and pluralistic society, promoting introspective living, by creating exciting learning opportunities, with a commitment to excellence.' Therefore, it is evident that the said Council is discharging a public function in the domain of education having National impact and also owes its allegiance to its State authority as contemplated under the expression 'State' enumerated under Article 12 of the Constitution of India. As such, the Council is covered by the expression public authority as perceived in the said Act, 2005.

7. It is also pointed out that Circular dated April 6, 2016 clearly provides that-

> "Public examinations conducted by the Council have been recognized under section 2(s) of the Delhi School Education Act, 1973 which states that- public examination means an examination conducted by Council for the India School Certificate Examinations and thus the Council is conducting public examination for which the Council has got all public element amenable to the said Act, 2005 and secondly that Class-X ICSE Examination of the Council has been expressly recognized by the Government of India vide issuance of Memorandum No. 6/9/69 -Estt. (D) dated August 3, 1974. As such, the Council is a public authority because various other Boards, Universities, Councils including CBSE do recognize the Council."

8. It is further submitted that the competent Court of law has also recognized the Council as per the website of the Union of India's list of all recognized Boards as bodies conducting public examinations under Delhi School Education Act, 1973.

9. Accordingly, it is submitted by Mr. Ekramul Bari the learned counsel for the petitioners that the Council is 'State' within the meaning of Article 12 of the Constitution of India and cannot deny the disclosure of the information as prayed by the petitioner by virtue of Section 2(h) of the RTI Act, 2005.

10. Mr. Bari further submitted that Memorandum being the Circular vide annexure "P-5" reflects that the existence and continuance of the Council has the backing of the

authority of law and the examinations conducted by the Council have received recognition and/or equivalence from the Central/State Boards & Universities of the Country as well as from abroad. The aforesaid legal and factual position has further been accepted and recognized by various Courts of law of the country. For example, the Punjab & Haryana High Court in several writ petition/s and Appeal/s has held "that CBSE & CISCE stand recognized and thus find mention in the list posted on the website of the Union of India's list of all recognized Boards and this is so because they have been listed as bodies conducting public examinations in Delhi School Education Act, 1973.

11. In my considered view the said Circular was to dispel with the misgiving arising out of the propaganda resorted to by certain persons with otherwise motive and its assurance to all its stake holders that they should not entertain any doubt or misgiving of the legal status and authority of the Council to continue as a premier affiliating and examining Board of the country.

12. The question is as to whether the Council is a State or State instrumentality within the meaning of Article 12 of the Constitution of India.

13. In this context it would be profitable to reproduce the regulations relating to the constitution and origin of the Council which provides thus-

> "Origin
>
> The Council for the Indian School Certificate Examinations was established in 1958 by the University of Cambridge Local Examinations Syndicate with the assistance of the Inter-State Board for Anglo-India Education. It is registered under the Societies Registration Act No. XXI of 1860.
>
> Recognition
>
> The Delhi Education Act, 1973 passed by Parliament in Chapter 1 under Definitions Section 2(s) recognizes the Council as a body conducting public examinations.
>
> Constituents
>
> The Council has been so constituted to secure suitable representation of: The Government of India, responsible for affiliated schools in their States/Territories- the Inter-State Board for Anglo-Indian Education, the Association of Indian Universities, the Association of Heads of Anglo-Indian Schools, the Indian Public Schools' Conference, the Association of Schools for the I.S.C. Examination and members co-opted by the Executive Committee of the Council.
>
> Administration
>
> The Council is administered by an Executive Committee consisting of the Chairman and four members. The Chief Executive and Secretary of the Council is ex-officio Secretary of the Committee.
>
> The Chief Executive and Secretary acts as Secretary to the Council under authority of the Chairman. subject to the overall control of the Council and the Executive Committee, the Chief Executive and Secretary exercises all powers of the Council related to the administration of the examinations in

accordance with the provisions of the Regulations and of other rules and procedures approved by the Council from time to time and for the time being in force."

14. It would also be apt to reproduce the definition of the term 'information' and 'public authority' as provided under Sections 2(f) and 2(h) of Right to Information Act, 2005 which reads as under-

"2(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 forth 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."

15. Bearing in mind the aforesaid definition of 'information' and the 'public authority,' this Court is, thus, of the view that the Council is not a public authority or body or Institution of self-government established or constituted under the Constitution, under the law enacted by the Parliament or by the State Legislature or body owned, controlled or substantially financed, directly or indirectly by the fund provided by the appropriate Government. Therefore, it does not come within the purview of a public authority under Section 2(h) of the said Act.

16. Learned Counsel for the petitioner has relied on a case of Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others reported in MANU/SC/0932/2011 : (2011) 8 Supreme Court Cases 497 wherein the issues arose for consideration as to 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 and as to 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 the RTI Act and whether such rights is subject to any limitations, conditions or safeguards. The Hon'ble Apex Court affirming the right of examinee to inspect the answer book held that the right to information is a facet of the freedom of "speech and expression" as contained in Article 19(1)(a), Constitution of India and such a right is subject to reasonable restriction in the interest of the security of the State

and to exemptions and exceptions. It also held that the answer book is a document or record as per of Sections 2(f) and 2(i) of RTI Act. 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. Having regard to Section 3, the citizens have the right to access to all the information held by or under the control of any public authority except those excluded or exempted under the RTI Act. The object of the RTI 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. The 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 to information recognized under Article 19 of the Constitution.

17. Certain safeguards have been built into the RTI 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 for exclusions by way of exemptions and exceptions (under Sections 8, 9 and 24) in regard to information held by the public authorities.

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

19. In respectful consideration of the above cited decision I am of the view that the evaluated answer book is also an information under the RTI Act as it becomes documents or records containing the opinion of the examiner in terms of Section 2(f) of RTI Act but in the present case the Council origin being established by the University of Cambridge legal with the assistance of the interested Board for Indian by Societies Registration Act No. XXI of 1860 does not fall within the definition clause of 2(h)(d)(ii) of RTI Act and cannot be said to be a public body in possession of a document or record and as it is not at par with the Central Board of Secondary Education and is not a State instrumentality within the meaning of Article 12 of the Constitution. The submissions of learned Counsel for the petitioner based on the observation made in paragraph 11 of the Hon'ble Supreme Court in case of Dr. Janet Jeyapaul v. SRM University & Ors reportable judgment dated 15th December, 2015 passed in Civil Appeal No. 14553 of 2015 that one cannot now perhaps dispute that "imparting education to students at large" is a "public function" and, therefore, if anybody or authority, as the case may be, is found to have been engaged in the activity of imparting education to the students at large then irrespective of the status of any such authority, it should be made amendable to writ jurisdiction of the High Court under Article 226 of the Constitution. There is no denial to such proposition held by the Hon'ble Supreme Court but I have taken into consideration the object of the Right to Information Act as held in CBSE v. Aditya Bondyopadhyay (supra) case since the CBSE Board is a public body duly constituted by the Central Government under the Ministry of Human Resources Development. Therefore, on account of its constitution and functioning the respondent No. 2 Council is not covered by the definition of public authority under Section 2(h) of the RTI Act.

20. Therefore, the facts situation of the instant case is distinguishable from the cited decision in case of Central Board of Secondary Education (supra).

21. Learned Counsel for the respondent No. 2 has relied on a decision in case of A.

Pavitra v. Union of India reported in MANU/UP/2639/2014 : 2015(3) ALJ 697 wherein it has been held that the Council for the Indian School Certificate Examinations is under no obligation to provide the answer scripts to the petitioners, in respect of examination conducted by the said Council.

22. Learned Counsel has also invited by attention to various regulations of the ICSE examination with regard to evaluation of answer scripts enquiries concerning examination results, therefore, for profitable understanding the regulations being G & H of Chapter-II of the said Regulation of ICSE which are reproduced as under-

"G. Evaluation of answer scripts:

1. The evaluation of answer scripts and of the other work done by candidates during the examination is within the domestic jurisdiction of the Council and, therefore, no candidate, outside person or authority has jurisdiction to check/scrutinise the answer scripts or other work done by any candidate.

2. The marking of answer scripts and of the other work done by candidates during the examination by the Council or its examiners and the results of such marking shall be final and legally binding on all candidates. The Chief Executive and Secretary of the Council will not, except in his absolute discretion, enter into correspondence about results with candidates or their parents or guardians or the person claiming to act in loco parentis.

The Council does not undertake to re-evaluate the answer booklets after the issue of the results.

H. Enquiries concerning examination results:

1. All enquires concerning examination results on behalf of the school candidates must be made to the Chief Executive and Secretary of the Council by the Head of the School concerned only and must reach the Council's office, not later than the specified date. Schools are asked to bear in mind that a large number of answer scripts are re-marked by Chief Examiners before the award.

Enquiries should be restricted only to results which are significantly below the standard suggested by the candidate's school work in the subject.

2. The accuracy of a subject grade awarded will be checked on request, in one or more subjects, provided that the Head of the School forwards the application. Such applications must be made in the proforma prescribed by the Council and must be received at the Council's office not later than one month after the declaration of results. Schools will be required to pay the charges for each recheck as prescribed by the Council from time to time

The recheck will be restricted to checking whether:

- all the answers have been marked;

- there has been a mistake in the totalling of marks for each

question in the subject and transferring the marks correctly into the first cover page of the answer booklet;

- the continuation sheets attached to the answer booklet, as mentioned by the candidate, are intact.

No other re-evaluation of the answer script or other work done by the candidate as part of the examination will be carried out.

(i) No candidate, person or organization shall be entitled to claim re-evaluation or disclosure or inspection of the answer scripts or copies of it and other documents as these are treated as most confidential by the Council.

(ii) The recheck will be carried out by a competent person appointed by the Chief Executive and Secretary of the Council.

(iii) On rechecking the scripts, if it is found that there is an error, the marks will be revised accordingly.

(iv) The communication regarding the revision of marks, if any, shall be sent to the Head of the School.

(v) The Council will not be responsible for any loss or damage or any inconvenience caused to the candidate, consequent to the revision of marks and no claims in this regard shall be entertained.

(vi) The Council shall revise the Statement of Marks and Pass Certificate in respect of such candidates whose results have changed and after the previous Statement of Marks and Pass Certificates have been returned by the Head of the School.

The decision of the Chief Executive and Secretary of the Council on the result of the scrutiny and recheck shall be final.

3. If the Head of a School considers that the results in any one subject are significantly below reasonable expectation, the Chief Executive and Secretary of the Council may ask the examiners for special notes on the main weaknesses shown by the work of a few selected candidates from the school. It is necessary to limit such notes to one subject per school on any one occasion of examination and to restrict the enquiry to the work of not more than six candidates whose work is significantly below the standard as suggested by the candidates school work in the subject. Applications for special notes must be received in the Council's office not later than one month after the declaration of results. Charges commensurate with the work involved will have to be paid to the Council by the school."

23. Bearing in mind the said regulations and in view of the definition clause under section 2(a) of RTI Act, 2005 'appropriate Government' means in relation to a public authority which is established, constituted, owned controlled or substantially financed by funds provided directly and indirectly by the Central Government or the Union territory administration or by the State Government and further that the Council is established under the Societies Registration Act, 1860 is not under the control of the Ministry of Human Resource Development.

24. It would appear from annexure-"P-1" being the statement of marks that fairly very good marks have been obtained by the petitioner No. 2 in ISCE Examination for the year 2016.

25. In the context above, the respondent No. 2 'the Council' is not a public authority within the meaning of Section 2(h) of the said Act and also considering the petitioner No. 2 being the successful candidate in the examination 2016 having obtained very good marks, I do not find reasons to quash the Memorandum No. CISCE/RTI/16 dated June 24, 2016 issued by respondent No. 2 as not being devoid of any merit.

26. Ergo, the writ application is dismissed, however, without any order as to costs.

27. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 22.05.2012

% Judgment delivered on: 01.06.2012

\+ **W.P.(C) 11271/2009**

REGISTRAR OF COMPANIES & ORS ..... Petitioners

Through: Mr. Pankaj Batra, Advocate.

versus

DHARMENDRA KUMAR GARG & ANR ..... Respondents

Through: Mr. Rajeshwar Kumar Gupta and Ms. Shikha Soni, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition has been preferred by the Registrar of Companies, NCT of Delhi & Haryana (ROC) and its CPIOs Sh. Raj Kumar Shah and Sh. Atma Shah to assail two similar orders dated 14.07.2009 passed by the Central Information Commission (CIC) in complaint case Nos. CIC/SG/C/2009/000702 and CIC/SG/C/2009/000753. By these similar orders, the appeals preferred by the same respondent- querist were allowed, rejecting the defence of the petitioners founded upon

Section 610 of the Companies Act, 1956, and it was directed that the complete information sought by the respondent-querist in his two applications under the Right to Information Act (RTI Act) be provided to him before 25.07.2009. The CIC has also directed issuance of show-cause notice to the petitioner-PIOs under Section 20(1) of the RTI Act asking them to show-cause as to why penalty should not be imposed upon them for not furnishing information as sought by the querist within thirty days.

2. The querist-Shri Dharmendra Kumar Garg filed an application under the RTI Act on 28.05.2009 requiring the PIO of the ROC to provide the following information in relation to company No. 056045 M/s Bloom Financial Services Limited:

> *"1. Who are the directors of this company? Please provide their name, address, date of appointment and copies of consent filed at ROC alongwith F-32 filed.*
>
> *2. After incorporation of above company, how many times directors were changed? Please provide the details of documents files and copies of Form 32 filed at ROC.*
>
> *3. Please provide the copies of Annual Returns filed at ROC since incorporation to 1998*
>
> *4. On what ground prosecution has been filed. Please provide the details of prosecution and persons included for prosecution. Please provide the copies of Order Sheets and related documents.*
>
> *5. On what ground the name of Dharmender Kumar Garg has been included for prosecution?*
>
> *6. Please provide the copies of Form No 5 and other documents filed for increase of capital?*

7. How much fee was paid for increase of Capital of above company? Please provide the details of payment of fee at ROC.

8. Please provide the copies of Statutory Report and Special Leave Petition (Statement in lieu of prospectus) filed at ROC."

3. The PIO-Sh. Atma Shah responded to the said queries on 29.05.2009. In respect of queries No. 1, 2, 3, 6, 7 & 8, the stand taken by the PIO was as follows:

"that in view of the provisions of Section 610 of the Companies Act, 1956 read with Companies (Central Government's) General Rules and Forms, 1956 framed in exercise of powers conferred by clauses (a) & (b) of sub-section (1) of Section 642 of the Companies Act, 1956, the documents filed by companies pursuant to various provisions of the Companies Act, 1956 with the ROCs are to be treated as 'information in public domain' and such information is accessible by public pursuant to the provisions of Section 610 of the Companies Act, 1956. There is an in built mechanism under the provisions of the Companies Act, 1956 for accessing information relating to documents filed which are in the public domain on payment of fees prescribed under the provisions of the Companies Act, 1956 and the Rules made there under. Hence you can obtain the desired information by inspecting the documents filed by the company in this office before filing of documents online i.e. prior to 8/03/2006 at O/o Registrar of Companies, NCT of Delhi & Haryana, 131, Sector-5, IMT Manesar, Haryana and after 18/3/06 on the Ministry's website www.mca.gov.in. Further certified copies of the desired documents can also be obtained on payment of fees prescribed thereof. In view of this, the information already available in the public domain would not be treated as 'information held by or under the control of public authority' pursuant to Section 2(j) of the Right to Information Act, 2005. Therefore, the provisions of RTI Act, 2005 would not be applicable for providing inspection/copies of such documents/information to the

public."

4. The queries at serial Nos. 4 & 5, as aforesaid, were also responded to by the PIO. However, I am not concerned with the answers given in response to the said queries, as the legal issue raised in the present petition by the petitioners relates to the interplay between Section 610 of the Companies Act on the one hand, and the provisions of the RTI Act on the other hand. Not satisfied with the response given by the PIO Sh. Atma Shah, as aforesaid, the respondent-querist, without preferring a first appeal, straightway preferred an appeal before the CIC, which has been disposed of vide impugned order dated 14.07.2009 in complaint case No. CIC/SG/C/2009/000702.

5. The respondent-querist raised further queries in respect of the same company vide an RTI application dated 06.06.2009. This application was also responded to by the PIO Sh. Atma Shah on 23.06.2009. In this reply as well, in respect of certain queries, the PIO responded by placing reliance on Section 610 of the Companies Act and gave more or less the same reply, as extracted above. Since the respondent-querist was not satisfied with the said response, he preferred a petition before the CIC, once again by-passing the statutory first appeal provided under the RTI Act. This appeal was registered as complaint case No. CIC/SG/C/2009/000753.

6. Before the CIC, the petitioners contended that the information which could be accessed by any person by resort to Section 610 of the Companies Act is information which is already placed in the public domain, and it cannot be said that the said information is "held by" or is "under the control" of the public authority. It was contended that such information, as has already been placed in the public domain, does not fall within the scope of the RTI Act and a citizen cannot by-pass the procedure, and avoid paying the charges prescribed for accessing the information placed in the public domain, by resort to provisions of the RTI Act.

7. In support of their submissions, before the CIC the petitioners placed reliance on a departmental circular No. 1/2006 issued by the Ministry of Company Affairs, wherein the view taken by the Director, Inspection & Investigation was that in the light of the provisions of Section 610 of the Companies Act read with Companies (Central Government's) General Rules & Forms, 1956 (Rules), framed in exercise of powers conferred under clauses (a) & (b) of sub-Section 1 of Section 642 of the Companies Act, the documents filed by the Companies pursuant to various provisions of the Companies Act with the ROC are to be treated as information in the public domain. It was also his view that there being a complete mechanism provided under the provisions of the Companies Act for accessing information relating to documents filed, which are in public domain, on payment of fees

prescribed under the Companies Act and the Rules made thereunder, such information could not be treated as information held by, or under the control of, the public authority. His view was that the provisions of RTI Act could not be invoked for seeking copies of such information by the public.

8. The petitioners also placed reliance on various earlier orders passed by the different CICs, upholding the aforesaid stand of the ROC and, in particular, reliance was placed on the decision of Sh. A.N. Tiwari, Central Information Commissioner in F.No. CIC/80/A/2007/000112 decided on 12.04.2007. Reference was also made to various orders of Prof. M.M. Ansari, Central Information Commissioner taking the same view. The petitioner has placed all these orders before this Court as well, as Annexure A-7(Colly.)

9. The first submission of learned counsel for the petitioners is that, while passing the impugned orders, the Central Information Commissioner Sh. Shailesh Gandhi has acted with impropriety. Despite the earlier orders of two Central Information Commissioners – taking the view that the information placed by the petitioner-ROC in the public domain and accessible under Section 610 of the Companies Act are out of the purview of the RTI Act, being specifically brought to his notice, he has simply brushed them aside after noticing them by observing that he differs with these decisions. It is submitted that

even if Sh. Shailesh Gandhi, Central Information Commissioner, was of the opinion that the earlier views taken by two other learned CICs were not correct, the proper course of action for him to adopt would have been to record his reasons for not agreeing with the earlier views of the Central Information Commissioners, and to refer the said issue for determination by a larger bench of the Central Information Commission. Sitting singly, Sh. Shailesh Gandhi, Central Information Commissioner, could not have taken a contrary view by merely observing that he disagrees with the earlier views.

10. The further submission of learned counsel for the petitioners is that, even on merits, the view taken by the CIC in the impugned orders is illegal and not correct. It is argued that Clause (a) of Section 610 (1) of the Companies Act, inter alia, entitles “any person” to inspect any document kept by the Registrar, which may have been filed or registered by him in pursuance of the Companies Act, or may inspect any document, wherein the Registrar has made a record of any fact required or authorized to be recorded to be registered in pursuance of the Companies Act, on payment for each inspection of such fee, as may be prescribed.

11. Further, by virtue of Clause (b) of Section 610 (1) any person can require the Registrar to provide certified copies of the Certificate of Registration of any company, or a copy or extract of any other

document, or any part of any other document, on payment in advance of such fee, as may be prescribed. It is submitted that the Registrar of Companies has placed all its records pertaining to, and in relation to the companies registered with it in the public domain. They have either been placed on the website of the ROC, or are available for inspection at the facility of the ROC. Any person can inspect such records either on-line, or at the facility of the petitioner-ROC and if the person so desires, can also obtain copies of all or any of such documents on payment of charges, as prescribed under the Rules.

12. Learned counsel for the petitioners submits that the Companies (Central Government's) General Rules & Forms, 1956, which have been framed in exercise of the power conferred upon the Central Government by clauses (a) & (b) of sub-Section (1) of Section 642 of the Companies Act, prescribe the fees for inspection of document and for obtaining certified copies thereof in Rule 21 A, which reads as follows:

> *"21A. Fees for inspection of documents etc.—The fee payable in pursuance of the following provisions of the Act, shall be—*
>
> | | | |
> |---|---|---|
> | *(1)* | *Clause (a) of sub-section (1) of section 118* | *rupees ten.* |
> | *(2)* | *Clause (b) of sub-section (1) of section 118* | *rupee one.* |
> | *(3)* | *Sub-section (2) of section 144* | *rupees ten.* |
> | *(4)* | *Clause (b) of sub-section (2) of section 163* | *rupees ten.* |

(5)	*Clause (b) of sub-section (3) of section 163*	*rupee one.*
(6)	*Sub-section (2) of section 196*	*rupee one.*
(7)	*Clause (a) of sub-section (1) of section 610*	*rupees fifty.*
(8)	*Clause (b) of sub-section (1) of section 610—*	
	(i) For copy of certificate of incorporation	*rupees fifty.*
	(ii) For copy of extracts of other documents including hard copy of such documents on computer readable media	*rupees twenty five per page."*

13. Learned counsel submits that there are two kinds of information available with the ROC. The first is the information/ documents, which the ROC is obliged to receive, record and maintain under the provisions of the Companies Act, and the second kind of information relates to the administration and functioning of the office of the ROC. The first kind of information, i.e., the returns, forms, statements, etc. received, recorded and maintained by the ROC in relation to the companies registered with it, is all available for inspection, and the certified copies thereof can be obtained by resort to Section 610 of the Companies Act and the aforesaid Rules. He submits that since this information is already in the public domain, same cannot be said to be information held by, or in the control of the public authority, i.e., ROC. He submits that it is the second kind of information, as aforesaid, which a citizen can seek by invoking provisions of the RTI Act from the ROC, and not the first kind of information which, in any event, is already available in

the public domain, and accessible to one and all, including non-citizens.

14. He submits that the right to information vested by Section 3 of the RTI Act is available only to citizens. However, the right vested by virtue of Section 610 of the Companies Act can be exercised by any person, whether, or not, he is a citizen of India. Therefore, the right vested by Section 610 of the Companies Act is much wider in its scope than the right vested by Section 3 of the RTI Act. It is argued that the object of the RTI Act is to enable the citizens to access information so as to bring about transparency in the functioning of public authorities, which is considered vital to the functioning of democracy and is also essential to contain corruption and to hold governments and their instrumentalities accountable to those who are governed, i.e., the citizens. The information accessible under Section 610 is, in any event, freely available and all that the person desirous of accessing such information is required to do, is to make the application in terms of the said provision and the Rules, to become entitled to receive the information.

15. Learned counsel submits that the fees prescribed for provision of information under the RTI Act is nominal and much less compared to the fees prescribed under Rule 21 A. Learned counsel for the petitioners submits that the petitioners have consciously prescribed

the fees under the RTI Act as a nominal amount of Rs.10/- per application since the petitioner-ROC does not wish to make it inconvenient or difficult for the citizens to obtain information held by or under the control of the ROC under the said Act. However, the said provision cannot be exploited or misused by a citizen for the purpose of seeking information, which is available in the public domain and is accessible under Section 610 of the Companies Act by payment of prescribed fee under Rule 21 A of the aforesaid Rules.

16. On the other hand, the submission of learned counsel for the respondent-querist is that the provisions of the RTI Act 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 the RTI Act itself. In this respect reference is made to Section 22 of the RTI Act. It is, therefore, argued that a citizen has an option to seek information from the ROC, either by resort to Section 610 of the Companies Act or by resort to the provisions of the RTI Act. Merely because Section 610 exists on the Statute Book, it does not mean that the right available under the RTI Act to seek information can be curtailed or denied.

17. Learned counsel for the respondent further submits that under Section 610 of the Companies Act, a person can access only such

information which has been filed or registered by him (i.e., the person seeking the information), in pursuance of the Companies Act. He submits that the expression *"being documents filed or registered by him in pursuance of this Act"* used in Section 610(1)(a) of the Companies Act connect with the words *"any person"* and not with the words *"inspect any documents kept by the Registrar"*.

18. Section 610 of the Companies Act, 1956 reads as follows:

> "*610. Inspection, production and evidence of documents kept by Registrar.*
>
> *(1) [Save as otherwise provided elsewhere in this Act, any person may]-*
>
> *(a) inspect any documents kept by the Registrar [in accordance with the rules made under the Destruction of Records Act, 1917] being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection, of [such fees as may be prescribed];*
>
> *(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, [on payment in advance of [such fees as may be prescribed:]*
>
> *Provided that the rights conferred by this sub-section shall be exercisable-*
>
> *(i) in relation to documents delivered to the Registrar with a prospectus in pursuance of sub-clause (i) of clause (b) of sub-section (1) of section 60, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and*

(ii) in relation to documents so delivered in pursuance of clause (b) of sub-section (1) of section 605, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court [or the [Tribunal]] except with the leave of that Court [or the [Tribunal]] and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court [or the [Tribunal]].

(3) A copy of, or extract from, any document kept and registered at any of the officers for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document".

19. The submission of learned counsel for the respondent that only the person who has filed documents with the Registrar of Companies is entitled to inspect the same is wholly fallacious and deserves to be outrightly rejected. This interpretation is clearly not borne out either from the plain language of section 610 or upon a scrutiny of the object and purpose of the said provision. Section 610 enables "any person" to inspect any documents kept by the registrar, being documents "filed or registered by him in pursuance of this Act". The obligation to file and register the documents, which may be submitted by a company registered, or seeking registration with the Registrar of Companies, is that of the Registrar of Companies. It is the Registrar, who makes a

record of any fact required or authorized to be recoded or registered in pursuance of the Companies Act, and not “any person”.

20. If the submission of learned counsel for the respondent were to be accepted, it would mean that it is the applicant under section 610, who is obliged to make a record of any fact required, or authorized to be recorded or registered in pursuance of the Companies Act, which is not the case. It is also not the obligation of “any person” either to file, or to receive and put on record, or to register, the documents lodged by him in the office of the ROC. That is the obligation of the Registrar of Companies. The whole purpose of section 610 is to bring about full and complete transparency in the matter of registration of companies and in the matter of their accounts and directorship, so that any person can obtain all the relevant information in relation to any registered company.

21. Pertinently, the language used in clause (b) does not support the submission of the respondent at all. If the submission of learned counsel for the respondent were to be accepted, it would mean that while a person can inspect only those documents which he has lodged in the office of the Registrar of Companies (by virtue of clause (a)), at the same time, under clause (b) of section 610(1), he can obtain the certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document duly certified by

the Registrar.

22. Section 610(2) puts a check on issuance of a process for compelling the production of any document by the Registrar, by any Court or Tribunal. It requires that such process would not be issued except with the leave of the Court or the Tribunal. This check has been placed, since any person can obtain information either through inspection, or by obtaining certified copies of documents filed by any company, by following the procedure prescribed, and a certified true copies of any such documents or extracts is admissible in evidence in all legal proceedings, and has the same efficacy and validity as the original documents filed and registered by the Registrar of Companies (see section 610(3)).

23. There can be no doubt that the documents kept by the Registrar, which are filed or registered by him, as well as the record of any fact required or authorized to be recorded by the Registrar or registered in pursuance of the Companies Act qualifies as "information" within the meaning of that expression as used in Section 2(f) of the RTI Act. However, the question is — whether the mere fact that the said documents/record constitutes "information", is sufficient to entitle a citizen to invoke the provisions of the RTI Act to access the same?

24. The Parliament has defined the expression "right to information" under Section 2(j). The same reads as follows:

> *"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;"*

25. The right to information is conferred by section 3 of the RTI Act, which reads as follows:

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

26. Pertinently, the Parliament did not use the language in Section 3: *"Subject to the provisions of this Act, citizens shall have a right to access all information",* or the like. Therefore, the right conferred by Section 3 of the RTI Act, which is the substantive provision, means the right to information "*accessible under the Act which is held by or under the control of any public authority and includes ....".*

27. It is not without any purpose that the Parliament took the trouble of defining "right to information". Parliament does not undertake a casual or purposeless legislative exercise. The definition of "right to information" specifically qualifies the said right with the words:

(1) "*accessible under this Act*", and;

(2) *"which is held by or under the control of any public authority"*.

28. The information should, firstly, be accessible under this Act. This means that if there is information which is not accessible under this Act, there is no "right to information" in respect thereof. Consequently, there is no right to information in respect of information, which is exempted from disclosure under Section 8 or Section 9 of the RTI Act.

29. A particular information may not be held by, or may not be under the control of the public authority concerned. There would be no right in a citizen to seek such information from that particular public authority, though he may have the right to seek the same information from another public authority who holds or under whose control the desired information resides. That is why Section 6(3) provides that an application to seek 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, shall be transferred to that other public authority.

30. But is that all to the expression "*held by or under the control of any public authority*" used in the definition of "Right to information" in

Section 2(j) of the RTI Act?

31. In the context of the object of the RTI Act, and the various provisions thereof, in my view, the said expression "*held by or under the control of any public authority*" used in section 2(j) of the RTI Act deserves a wider and a more meaningful interpretation. The expression "Hold" is defined in the Black's Law dictionary, 6th Edition, inter alia, in the same way as "*to keep*" i.e. to retain, to maintain possession of, or authority over.

32. The expression "held" is also defined in the Shorter Oxford Dictionary, inter alia, as "*prevent from getting away; keep fast, grasp, have a grip on*". It is also defined, inter alia, as "*not let go; keep, retain".*

33. The expression "control" is defined in the Advanced Law Lexicon by P.N. Ramanatha Aiyar 3rd Edition Reprint 2009 and it reads as follows:

> *"(As a verb) To restrain; to check; to regulate; to govern; to keep under check; to hold in restraint; to dominate; to rule and direct; to counteract; to exercise a directing, restraining or governing influence over; to govern with reference thereto; to subject to authority; to have under command, and authority over, to have authority over the particular matter. (Ame. Cyc)"*

34. From the above, it appears that the expression "held by" or "under the control of any public authority", in relation to "information",

means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already "let go", i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority "holds" or "controls" the same. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not this kind of information, which appears to fall within the meaning of the expression "right to information", as the information in relation to which the "right to information" is specifically conferred by the RTI Act is that information which *"is held by or under the control of any public authority"*.

35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever. The right available to any person to seek inspection/copies of documents under Section 610 of the Companies

Act is governed by the Companies (Central Government's) General Rules & Forms, 1956, which are statutory rules and prescribe the fees for inspection of documents, etc. in Rule 21A. The said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI Act to seek information. It would also be complete waste of public funds to require the creation and maintenance of two parallel machineries by the ROC – one under Section 610 of the Companies Act, and the other under the RTI Act to provide the same information to an applicant. It would lead to unnecessary and avoidable duplication of work and consequent expenditure.

36. The right to information is required to be balanced with the need to optimize use of limited fiscal resources. In this context I may refer to the relevant extract of the Preamble to the RTI Act which, inter alia, provides:-

> *"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 confidentially of sensitive information;*
>
> *AND WHEREAS* ***it is necessary to harmonise these conflicting interests*** *while preserving the paramountancy of the democratic ideal;"* (emphasis supplied).

37. Section 4(1)(a) also lays emphasis on availability of recourses, when it talks about computerization of the records. Therefore, in the exploitation and implementation of the RTI Act, a delicate and reasonable balance is required to be maintained. Nobody can go overboard or loose ones equilibrium and sway in one direction or assume an extreme position either in favour of upholding the right to information granted by the RTI Act, or to deny the said right.

38. The Supreme Court in ***The Institute of Chartered Accountants of India Vs. Shaunak H. Satya & Others,*** *Civil Appeal No. 7571/2011 decided on 02.09.2011,* observed 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.****"*(emphasis supplied).

39. Therefore, if another statutory provision, created under any other law, vests the right to seek information and provides the mechanism for invoking the said right (which is also statutory, as in this case) that mechanism should be preserved and operated, and not destroyed

merely because another general law created to empower the citizens to access information has subsequently been framed.

40. Section 4 of the RTI Act obliges every public authority, inter alia, to publish on its own, information described in clause (b) of sub-Section (1) of Section 4. Sub-clause (xv) of clause (b) obliges the public authority to publish *"the particulars of facilities available to citizens for obtaining information ...."*. In the present case, the facility is made available – not just to citizens but to any person, for obtaining information from the ROC, under Section 610 of the Companies Act, and the Rules framed thereunder above referred to. Section 4(2) of the RTI Act itself postulates that in respect of information provided by the public authority *suo moto*, there should be minimum resort to use of the RTI Act to obtain information.

41. The submission of learned counsel for the respondent founded upon Section 22 of the RTI Act also has no merit. Section 22 of the RTI Act reads as follows:

> *"22. The provisions of this 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 this Act."*

42. Firstly, I may notice that I do not find anything inconsistent between the scheme provided under Section 610 of the Companies Act

and the provisions of the RTI Act. Merely because a different charge is collected for providing information under Section 610 of the Companies Act than that prescribed as the fee for providing information under the RTI Act does not lead to an inconsistency in the provisions of these two enactments. Even otherwise, the provisions of the RTI Act would not override the provision contained in Section 610 of the Companies Act. Section 610 of the Companies Act is an earlier piece of legislation. The said provision was introduced in the Companies Act, 1956 at the time of its enactment in the year 1956 itself. On the other hand, the RTI Act is a much later enactment, enacted in the year 2005. The RTI Act is a general law/enactment which deals with the right of a citizen to access information available with a public authority, subject to the conditions and limitations prescribed in the said Act. On the other hand, Section 610 of the Companies Act is a piece of special legislation, which deals specifically with the right of any person to inspect and obtain records i.e. information from the ROC. Therefore, the later general law cannot be read or understood to have abrogated the earlier special law.

43. The Supreme Court in ***Ashoka Marketing Limited and Another Vs. Punjab National Bank and Others****, (1990) 4 SCC 406,* applied and explained the legal maxim: *leges posteriors priores conterarias abrogant*, (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalia specialibus non derogant*, (a general provision does not derogate from

a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34). One of the principles of statutory interpretation is that the later law abrogates earlier contrary laws. This principle is subject to the exception embodied in the second latin maxim mentioned above. The Supreme Court in paragraphs 50-52 of this decision held as follows:

> *"50. One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriors priores conterarias abrogant, (later laws abrogate earlier contrary. laws). This principle is subject to the exception embodied in the maxim: generalia specialibus non derogant, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34).*
>
> *51. The rationale of this rule is thus explained by this Court in the J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. The State of Uttar Pradesh & Others, [1961] 3 SCR 185:*
>
> > *"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as*

regards all the rest the earlier directions should have effect."

52. In U.P. State Electricity Board v. Hari Shankar Jain, [1979] 1 SCR 355 this Court has observed:

"*In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament.*" *"*

44. Justice G.P. Singh in his well-known work *"Principles of Statutory Interpretation 12th Edition 2010"* has dealt with the principles of interpretation applicable while examining the interplay between a prior special law and a later general law. While doing so, he quotes Lord Philimore from ***Nicolle Vs. Nicolle,*** *(1922) 1 AC 284,* where he observed:

"it is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. This, as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute, or be the underlying common or customary law of the country. Where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so."

45. The Supreme Court in ***R.S. Raghunath Vs. State of Karnataka & Another,*** *(1992) 3 SCC 335,* quotes from Maxwell on The Interpretation of Statutes, the following passage:

> "*A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act.*"

46. This principle has been applied in ***Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Dey & Others,*** *AIR 1996 SC 1931* as well. Therefore, Section 22 of the RTI Act, in any event, does not come in the way of application of Section 610 of the Companies Act, 1956.

47. Now, I turn to consider the submission of learned counsel for the petitioner that the Central Information Commissioner Sh. Shailesh Gandhi has acted with impropriety while passing the impugned order, by disregarding the earlier orders of the other Central Information Commissioners and by taking a decision contrary to them without even referring the matter to a larger bench.

48. In ***Sh. K. Lall Vs. Sh. M.K. Bagri, Assistant Registrar of Companies & CPIO,*** *F. No. CIC/AT/A/2007/00112,* the Central Information Commissioner Sh. A.N. Tiwari squarely considered the very same issue with regard to the interplay between Section 610 of the Companies Act and the rights of a citizen to obtain information under the RTI Act. Sh. A.N. Tiwari by a detailed and considered decision held that information which can be accessed by resort to Section 610 of the Companies Act cannot be accessed by resort to the provisions of the RTI Act. The discussion found in his aforesaid order on this legal issue reads as follows:

> *"9. It shall be interesting to examine this proposition. Section 2(j) of the RTI Act speaks of "the right to information accessible under this Act which is held by or under the control of any public authority……". The use of the words "accessible under this Act"; "held by" and "under the control of" are crucial in this regard. The inference from the text of this sub-section and, especially the three expressions quoted above, is that an information to which a citizen will have a right should be shown to be a) an information which is accessible under the RTI Act and b) that it is held or is under the control of a certain public authority. This should mean that unless an information is exclusively held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control of' the public authority and, thus would cease to be an information accessible under the RTI Act. This interpretation is further strengthened by the provisions of the RTI Act in Sections 4(2), 4(3) and 4(4), which oblige the public authority to constantly endeavour "to take steps in accordance with the requirement of clause b of subsection 1 of the Section 4 to provide as*

much information suo-motu to the public at regular intervals through various means of communication including internet, so that the public have minimum resort to the use of this Act to obtain information." (Section 4 sub-section 2). This Section further elaborates the position. It states that "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." The explanation to the subsection 4 section 4 goes on to further clarify that the word "disseminated" used in this Section would mean the medium of communicating the information to the public which include, among others, the internet or any other means including inspection of office of any public authority.

10. It is significant that the direction regarding dissemination of information through free or priced documents, or free or priced access to information stored on internet, electronic means, or held manually; free or on payment of predetermined cost for inspection of such documents or records held by public authorities, appear in a chapter on 'obligations of public authorities'. The inference from these sections is a) it is the obligation of the public authorities to voluntarily disseminate information so that "the public have minimum resort to the use of this Act to obtain information", b) once an information is voluntarily disseminated it is excluded from the purview of the RTI Act and, to that extant, contributes to minimizing the resort to the use of this Act, c) there is no obligation cast on the public authority to disseminate all such information free of cost. The Act authorizes the public authorities to disclose such information suo-motu "at such cost of a medium or the print cost price as may be prescribed", d) the RTI Act authorizes the public authority to price access to the information which it places in the public domain suo-motu.

11. These provisions are in consonance with the wording of the Section 2(j) which clearly demarcates the boundary between an information held or under the control of the public authority and, an information not so held, or under the control of that public authority who suo-motu places

that information in public domain. It is only the former which shall be "accessible under this Act" — viz. the RTI Act and, not the latter. This latter category of information forms the burden of sub-section 2, 3 and 4 of Section 4 of this Act.

12. The RTI Act very clearly sets the course for the evolution of the RTI regime, which is that less and less information should be progressively held by public authorities, which would be accessed under the RTI Act and more and more of such held information should be brought into the public domain suo-motu by such public authority. Once the information is brought into the public domain it is excluded from the purview of the RTI Act and, the right to access this category of information shall be on the basis of whether the public authority discloses it free, or at such cost of the medium or the print cost price "as may be prescribed". The Act therefore vests in the public authority the power and the right to prescribe the mode of access to voluntarily disclosed information, i.e. either free or at a prescribed cost / price.

13. The respondents are right therefore in arguing that since they had placed in the public domain a large part of the information requested by the appellant and prescribed the price of accessing that information either on the internet or through inspection of documents, the ground rules of accessing this information shall be determined by the decision of the public authority and not the RTI Act and the Rules. That is to say, such information shall not be covered by the provisions about fee and cost of supply of information as laid down in Section 7 of the RTI Act and the Rules thereof.

14. It is, therefore, my view that it should not only be the endeavour of every public authority, but its sacred duty, to suo-motu bring into public domain information held in its control. The public authority will have the power and the right to decide the price at which all such voluntarily disclosed information shall be allowed to be accessed.

15. There is one additional point which also needs to be considered in this matter. The appellant had brought up the issue of the overarching power of the RTI Act under Section 22. This Section of the Act states that the provisions of the 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 this Act. In his view, the pricing of the access to the records and information by the public authority at a scale different from the rates / fees for accessing the information prescribed under the Act amounts to inconsistency. A closer look at the provision shows that this is not so. As has been explained in the preceding paragraphs, the fees prescribed for access to information under the RTI Act applies only to information 'held' or 'under the control of' the public authority. It does not apply inferentially to the information not held or not under the control of the public authority having been brought into the public domain suo-motu in terms of sub-section 3 of Section 4. The price and the cost of access of information determined by the public authority applies to the latter category. As such, there is no inconsistency between the two provisions which are actually parallel and independent of each other. I therefore hold that no ground to annul the provision of pricing the information which the public authority in this case has done, exists.

16. In my considered view, therefore, the CPIO and the AA were acting in consonance with the provision of this Act when they called upon the appellant to access the information requested and not otherwise supplied to him by the CPIO, by paying the price / cost as determined by the public authority."

49. This view was followed by Sh. A.N. Tiwari in a subsequent order dated 29.08.2007 in ***"Shri Shriram (Dada) Tichkule Vs. Shri P.K. Galchor, Assistant Registrar of Companies & PIO".*** The same view was taken by another Central Information Commissioner namely, Prof. M.M. Ansari in his orders dated 29.03.2006 in ***Arun Verma Vs. Department of Company Affairs***, *Appeal No. 21/IC(A)/2006,* and in the case of ***Sh. Sonal Amit Shah Vs. Registrar of Companies***, *Decision No. 2146/IC(A)/2008 dated 31.03.2008,* and various others,

copies of which have been placed on record. It appears that all these decisions were cited before learned Central Information Commissioner Sh. Shailesh Gandhi. In fact, in the impugned order, he also refers to these decisions and states that *"I would respectfully beg to differ from this decision"*.

50. The Central Information Commission while functioning under the provisions of the RTI Act, no doubt, do not constitute a Court. However, there can be no doubt about the fact that Central Information Commission functions as a quasi-judicial authority, as he determines inter se rights and obligations of the parties in relation to the grant of information, which may entail civil and other consequences for the parties.

51. This Court in ***Union Public Service Commission Vs. Shiv Shambhu & Others,*** *L.P.A. No. 313/2007 decided on 03.09.2008*, while dealing with the issue whether the Central Information Commissioner should be impleaded as a party respondent in proceedings challenging its order and whether the Central Information Commission has a right of audience to defend its order before this Court in writ proceedings, observed as follows:

> *"2. At the outset this Court directs the deletion of the CIC which has been arrayed as Respondent No. 1 to this appeal, consequent upon it being arrayed as such in the writ petition. This Court has repeatedly issued practice directions stressing that a judicial or quasi-judicial body or Tribunal whose order is challenged in a writ petition (and*

thereafter possibly in appeal) ought not to itself be impleaded as a party respondent. The only exception would be if malafides are alleged against any individual member of such authority or Tribunal in which case again it would be such member, and not the authority/Tribunal, who may be impleaded as a respondent. Accordingly the cause title of the present appeal will read as ***Union Public Service Commission v. Shiv Shambhu & Ors.****"*

52. This decision has subsequently been followed in ***State Bank of India Vs. Mohd. Shahjahan****, W.P.(C.) No. 9810/2009*, wherein the Court held as follows:

"12. This Court is unable to accept the above submission. There is no question of making the CIC, whose order is under challenge in this writ petition, a party to this petition. Like any other quasi-judicial authority, the CIC is not expected to defend its own orders. Likewise, the CIC cannot be called upon to explain why it did not follow any of its earlier orders. That the CIC should not be made a party in such proceedings is settled by the judgment of the Division Bench in this Court in ***Union Public Service Commission v. Shiv Shambu 2008 IX (Del) 289.****"*

53. It is, therefore, a well-recognised position that the CIC discharges quasi-judicial functions while deciding complaints/appeals preferred by one or the other party before it.

54. It is a well-settled canon of judicial discipline that a bench dealing with a matter respects an earlier decision rendered by a coordinate bench (i.e., a bench of same strength), and is bound by the decision of a larger bench. If this discipline is breached, the same would lead to complete chaos and confusion in the minds of the

litigating public, as well as in the minds of others such as lawyers, other members/judges of quasi-judicial/judicial bodies, and the like. Breach of such discipline would result in discrimination and would shake the confidence of the consumers of justice. There can be no greater source of discomfiture to a litigant and his counsel, than to have to deal with diametrically opposite views of coordinate benches of the same judicial /quasi-judicial body. If the emergence of contradictory views is innocent i.e. due to ignorance of an earlier view, it is pardonable, but when such a situation is created consciously, with open eyes, and after having been put to notice, the judge/authority responsible for the later view should take the blame for creating confusion and for breaching judicial discipline.

55. The Supreme Court in ***Dr. Vijay Laxmi Sadho Vs. Jagdish***, *(2001) 2 SCC 247*, deprecated such lack of judicial discipline by observing as follows:

> *"33. As the learned Single Judge was not in agreement with the view expressed in Devilal's case, Election Petition No. 9 of 1980, it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed.* ***It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of***

law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs." (emphasis supplied)

56. In the present case, the Central Information Commissioner Mr.Shailesh Gandhi has also demonstrated complete lack of judicial discipline while rendering the impugned decisions. By no stretch of imagination, it cannot be said that the earlier decisions were not on the point. Particularly, the decision rendered by Sh. A.N. Tiwari in F. CIC/T/A/2007/0012 dated 12.04.2007 directly deals with the very same issue, and is an exhaustive, and detailed and considered decision. If the Central Information Commissioner Sh. Shailesh Gandhi had a different view in the matter – which he was entitled to hold, judicial discipline demanded that he should have recorded his disagreement with the view of Sh. A.N. Tiwari, Central Information Commissioner, and, for reasons to be recorded by him, required the constitution of a larger bench to re-examine the issue. He could not have ridden rough shot over the earlier decisions of Sh. A.N. Tiwari and Prof. M.M. Ansari, particularly when he was sitting singly to consider the same issue of law.

57. The consequence of the improper conduct of Sh. Shailesh Gandhi, Central Information Commissioner, is that there are now two sets of conflicting orders- taking diametrically opposite views, on the issue aforesaid. Therefore, unless the said legal issue is settled one

way or the other by a higher judicial forum, it would be open to any other Information Commissioner to choose to follow one or the other view. This would certainly lead to confusion and chaos. It would also lead to discrimination between the querists/public authority, who are either seeking information or are defending the action under the RTI Act. One such instance, cited by learned counsel for the petitioner is in the case of ***Smt. Dayawati Vs. Office of Registrar of Companies****, in CIC/SS/C/2011/000607 decided on 23.03.2012*. In this case, once again the same issue had been raised. The Central Information Commissioner Smt. Sushma Singh has preferred to follow the view of Sh. A.N. Tiwari in the case of ***K. Lall Vs. Ministry of Company Affairs****, Appeal No. CIC/AT/A/2007/00112 dated 14.04.2007*.

58. On this short ground alone, the impugned orders of the learned Central Information Commissioner deserve to be quashed and set aside.

59. The reasoning adopted by Shri Shailesh Gandhi, the learned Central Information Commissioner for taking a view contrary to that taken by Sh. A.N. Tiwari in his order dated 12.04.2007 (which has been extracted hereinabove), does not appeal to me. The view taken by Sh.A.N. Tiwari, Central Information Commissioner appeals to this Court in preference to the view taken by Sh. Shailesh Gandhi, Central Information Commissioner in the impugned orders. The impugned

orders do not discuss, analyse or interpret the expression "right to information" as defined in Section 2(j) of the RTI Act. They do not even address the aspect of Section 610 of the Companies Act being a special law as opposed to the RTI Act.

60. I may also observe that the approach of the Central Information Commission in seeking to invoke Section 20 of the RTI Act in the facts of the present case is wholly unjustified. By no stretch of imagination could it have been said that PIOs of the ROC had acted "*without any reasonable cause*" or "*malafidely denied the request for information or knowingly* gave incorrect, incomplete or misleading information, or destroyed information, which was the subject of the request, or obstructed in any manner the furnishing of information". The PIOs were guided by the departmental circular No. 1/2006 dated 24.01.2006 in the view that they communicate to the respondent-querist. This view was taken by none other than the Director Inspection & Investigation in the Ministry of Company Affairs, Government of India and circulated to all Regional Directors of Registrar of Companies and all Official Liquidators. There was nothing before the PIOs to suggest that the said view had been disproved by any judicial or quasi-judicial authority. Clearly, the PIOs acted bonafide and without any malice.

61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show-cause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with

objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.

62. For all the aforesaid reasons, I allow the present petition and quash the impugned orders passed by Sh. Shailesh Gandhi, Central Information Commissioner. The parties are left to bear their respective costs.

(VIPIN SANGHI)
JUDGE

JUNE 01, 2012
'BSR'/sr

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION (CIVIL) NO. 7265 OF 2007

Reserved on : 15th September, 2009.
% Date of Decision : 25th September, 2009.

POORNA PRAJNA PUBLIC SCHOOL ….Petitioner.

Through Mr. Maninder Singh, Sr. Advocate with Mr.Ankur S.Kulkarni, Mr.Nirnimesh Dube, advocates.

VERSUS

CENTRAL INFORMATION COMMISSION & OTHERS …..Respondents

Mr.Sanjeev Sabharwal, advocate for respondent no.2-GNCTD.
Mr.K.K. Nigam, advocate for respondent 3-CIC.
Mr.Tushti Chopra, advocate for respondent no.4.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J.:

1. The petitioner Poorna Prajna Public School is a private unaided school recognized under the Delhi School Education Act, 1973 (hereinafter referred to as DSE Act, for short). Mr. D.K.Chopra, respondent no.4 herein, father of a former student of the petitioner School, had filed an application under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act, for short) before the Public Information Officer appointed by the Department of Education, Government of National Capital Territory of

Delhi(GNCTD, for short) on or about 18th September, 2006. Respondent no.4 had asked for the following information :-

> "1. Please provide me the information under RTI Act as to what decision were taken on my representations filed in your office Vasant Vihar file no.133/2005 and other offices. Why they were not communicated to me within stipulated period? What are the office rules?
>
> 2. MVS Thakur, Education Officer, told me on 25.1.2006 that they cannot interfere much in the non-aided school, but what is the role of your observer who was present in Executive Committee Meeting in Pooran Prajna Public School on 24.1.2006. If school does not do two meetings in a year what punishment can be given and who will give it.
>
> 3. I may be provided all copies of the minutes of the school since 1988 and action taken report."

2. Information in respect of query no.3 i.e. copies of the minutes of the managing committee were not available with the Department of Education. Accordingly, a request was sent by the Department of Education to the petitioner School. The petitioner School by their letter dated 30th August, 2007 submitted that they were a private unaided institution and not covered under the RTI Act and respondent no.4 had no *locus standi* to ask for information. It was pointed out that respondent no.4 had filed a writ petition in the High Court against the petitioner School which was dismissed. The petitioner also relied upon Rule 180(i) of the Delhi School Education Rules, 1973 (hereinafter referred to as DSE Rules, for short) and submitted that the information sought for cannot be furnished and was outside the purview of the RTI Act.

3. Not satisfied with the order passed by the public information officer, the respondent no.4 filed the first appeal and then approached the Central Information Commission (hereinafter referred to as CIC, for short).

4. The CIC by their impugned Order dated 12th September, 2007 has held that the petitioner School was indirectly funded by the Government as it enjoyed income tax concessions; was provided with land at subsidized rates etc. Further, the petitioner school was a 'public authority' as defined in Section 2(h) of the RTI Act. Lastly, the Information Commissioner has held that the public authority i.e. GNCTD can ask for information from the petitioner School and therefore the public information officer should have collected the information with regard to the minutes of the managing committee from the petitioner School and furnished the same to the respondent no.4. It was noted that all aided and unaided schools perform governmental function of promoting high quality education and further an officer of the GNCTD was nominated by the Directorate of Education as a member of the managing committee. GNCTD has control over the functioning of the private schools and has access to the information required to be furnished.

5. RTI Act was enacted in the year 2005 as a progressive and enabling legislation with the object of assigning meaningful role and providing access to the citizens. It ensures openness and transparency consistent with the concept of participatory democracy and constitutional right to seek information and be informed. It also ensures that the Government

and their instrumentalities are accountable to the governed and checks corruption, harassment and red-tapism.

6. The provisions of the RTI Act have not been challenged by the petitioner School in the present petition. The contentions raised and argued relate to interpretation of the provisions of RTI Act.

7. The terms "information" and "right to information" have been defined in Sections 2(f) and 2(j) of the RTI Act and read as under:-

> "**2(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"
>
> **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;"
>
> (emphasis supplied)

8. Information as defined in Section 2(f) means details or material available with the public authority. The later portion of Section 2(f)

expands the definition to include details or material which can be accessed under any other law from others. The two definitions have to be read harmoniously. The term "held by or under the control of any public authority" in Section 2(j) of the RTI Act has to be read in a manner that it effectuates and is in harmony with the definition of the term "information" as defined in Section 2(f). The said expression used in Section 2(j) of the RTI Act should not be read in a manner that it negates or nullifies definition of the term "information" in Section 2(f) of the RTI Act. It is well settled that an interpretation which renders another provision or part thereof redundant or superfluous should be avoided. Information as defined in Section 2(f) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law for the time being in force. Therefore, if a public authority has a right and is entitled to access information from a private body, under any other law, it is "information" as defined in Section 2(f) of the RTI Act. The term "held by the or under the control of the public authority" used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body. A private body need not be a public authority and the said term "private body" has been used to distinguish and in contradistinction to the term "public authority" as defined in Section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access, under any law, from private body, is information as defined under Section 2(f) of the RTI Act and has to be furnished.

9. It may be appropriate here to refer to the definition of the term "third party" in Section 2(n) of the RTI Act which reads as under:-

> "**2(n).** "third party" means a person other than the citizen making a request for information and includes a public authority."

10. Thus the term "third party" includes not only the public authority but also any private body or person other than the citizen making request for the information. The petitioner School, a private body, will be a third party under Section 2(n) of the RTI Act.

11. The above interpretation is in consonance with the provisions of Sections 11(1) and 19(4) of the RTI Act. Section 11 prescribes the procedure to be followed when a public information officer is required to disclose information which relates to or has been supplied by a third party and has been treated as confidential by the said third party. Section 19(4) stipulates that when an appeal is preferred before the CIC relating to information of a third party, reasonable opportunity of hearing will be granted to the third party before the appeal is decided. Third party as stated above includes a private body. As held above, a public authority is not a private body.

12. A private body or third party can take objections under Section 8 of the RTI Act before the public information officer or the CIC. In terms of Section 11(4) of the RTI Act, an order under Section 11(3) rejecting objections of the third party is appealable under Section 19 of the RTI Act before the CIC.

13. Information available with the public authority falls within section 2(f) of the RTI Act. The last part of section 2 (f) broadens the scope of the term 'information' to include information which is not available, but can be accessed by the public authority from a private authority. Such information relating to a private body should be accessible to the public authority under any other law. Therefore, section 2(f) of the RTI Act requires examination of the relevant statute or law, as broadly understood, under which a public authority can access information from a private body. If law or statute permits and allows the public authority to access the information relating to a private body, it will fall within the four corners of Section 2(f) of the RTI Act. If there are requirements in the nature of preconditions and restrictions to be satisfied by the public authority before information can be accessed and asked to be furnished from a private body, then such preconditions and restrictions have to be satisfied. A public authority cannot act contrary to the law/statute and direct a private body to furnish information. Accordingly, if there is a bar, prohibition, restriction or precondition under any statute for directing a private body to furnish information, the said bar, prohibition, restriction or precondition will continue to apply and only when the conditions are satisfied, the public authority is obliged to get information. Entitlement of the public authority to ask for information from a private body is required to be satisfied.

14. 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."

15. Section 22 of the RTI Act is an overriding clause but it does not modify any other statute or enactment, on the question of right and power of a public authority to call for information relating to a private body. A bar, prohibition or restriction in a statutory enactment, before information can be accessed by a public authority, continues to apply and is not obliterated by section 22 of the RTI Act. Section 2(f) of the RTI Act does not bring about any modification or amendment in any other enactment, which bars or prohibits or imposes pre-condition for accessing information from private bodies. Rather, it upholds and accepts the said position when it uses the expression "which can be accessed" i.e. the public authority should be in a position and entitled to ask for the said information. Section 22 of the RTI Act, an overriding provision does not mitigate against the said interpretation for there is no contradiction or conflict between the provisions of Section 2(f) of the RTI Act and other statutory enactments/law. Section 22 will apply only when there is a conflict between the RTI Act and Official Secrets Act or any other enactment. As a private body, the Petitioner School is entitled to plead that they cannot be compelled to furnish information because the public authority is not entitled to information/documents under the law. The petitioner school can also claim that information should not be furnished because it falls under any of the sub-clauses to Section 8 of the RTI Act. Any such claim, when made, has to be considered by the public information officer, first appellate authority and the CIC. In other words, a

private body will be entitled to the same protection as is available to a public authority including protection against unwarranted invasion of privacy unless there is a finding that the disclosure is in larger public interest.

16. Section 8 of the RTI Act is a non-obstante provision which applies notwithstanding other sections of the RTI Act. In other words, Section 8 over-rides other provisions of the RTI Act. Section 8 stipulates the exceptions or rules when information is not required to be furnished. Section 8 of the RTI Act is a complete code in itself. Section 8 does not modify the term "information" as defined in Section 2(f) of the RTI Act. Whether or not Section 8 applies is required to be examined when information under Section 2(f) is asked for. To deny "information" as defined in section 2(f), the case must be brought under any of the clauses of Section 8 of the RTI Act. "Right to information" under the RTI Act is a norm and Section 8 adumbrates exceptions i.e. when information is not to be supplied. It is not possible to accept the contention of the petitioner School that "information" as defined in Section 2(f) need not be furnished under the RTI Act for reasons and grounds not covered in Section 8. This will be contrary to the scheme of the RTI Act. Information as defined in Section 2(f) of the RTI Act is to be furnished and supplied, unless a case falls under sub-clauses (a) to (j) of Section 8(1) of the RTI Act. Thus all information including information furnished and relating to private bodies available with public authority is covered by Section 2(f) of the RTI Act. Further, information which a public authority can access under any other

law from a private body is also "information" under section 2(f). The public authority should be entitled to ask for the said information under law from the private body. Details available with a public authority about a private body are "information" and details which can be accessed by the public authority from a private body are also "information" but the law should permit and entitle the public authority to ask for the said details from a private body. Restrictions, conditions and prerequisites imposed and prescribed by law should be satisfied. The question whether information should be denied requires reference to Section 8 of the RTI Act.

17. Learned counsel for the petitioner School submitted that the Directorate of Education does not have an access to the minutes of the managing committee. Under Rule 180 (i) of the DSE Rules, the private unaided schools are required to submit return and documents in accordance with Appendix 2 thereto and minutes of the managing committee are not included in Appendix 2. Rule 180 (i) of the DSE Rules is not the only provision in the DSE Rules under which Directorate of Education are entitled to have access to the records of a private unaided school. Rule 50 of the DSE Rules, stipulates conditions for recognition of a private school and states that no private school shall be recognized or continue to be recognized unless the said school fulfills the conditions mentioned in the said Section. Clause (xviii) of Rule 50 of the DSE Rules reads as under:-

> "**50. Conditions for recognition.**- No private school shall be recognized, or continue to be

recognized, by the appropriate authority unless the school fulfills the following conditions, namely-

(i) - (xvii) x x x x x x

(xviii) the school furnishes such reports and information as may be required by the Director from time to time and complies with such instructions of the appropriate authority or the Director as may be issued to secure the continue fulfillment of the condition of recognition or the removal of deficiencies in the working of the school;"

18. Under Rule 50(xviii) of the DSE Rules, the Directorate of Education can issue instructions and can call upon the school to furnish information required on conditions mentioned therein being satisfied. Rule 50 therefore authorizes the public authority to have access to information or records of a private body i.e. a private unaided school. Validity of Rule 50(xviii) of the DSE Rules is not challenged before me. Under Section 5 of the DSE Act, each recognized school must have a management committee. The management committee must frame a scheme for management of the school in accordance with the Rules and with the previous approval of the appropriate authority. Rule 59(1)(b)(v) of the DSE Rules states that the Directorate of Education will nominate two members of the managing committee of whom one shall be an educationist and the other an officer of the Directorate of Education. Thus an officer of the Directorate of Education is to be nominated as a member of the management committee. Minutes of the management committee have to be circulated and sent to the officer of the Directorate of Education. Obviously, the minutes once circulated to the officer of the Directorate of Education have to be regarded as 'information' accessible to the Directorate of Education,

GNCTD. In these circumstances, it cannot be said that information in the form of minutes of the meeting of the management committee are not covered under Section 2(f) of the RTI Act.

19. In view of the above findings, the question whether the petitioner school is a public authority is left open and not decided.

Writ Petition has not merit and is accordingly dismissed. No costs.

(SANJIV KHANNA)
JUDGE

SEPTEMBER 25, 2009.
P

IN THE HIGH COURT OF DELHI AT NEW DELHI

(CIVIL APPELLATE JURISDICTION)

LETTERS PATENT APPEAL NO. 24 of 2015

IN THE MATTER OF:

The Registrar, Supreme Court of India …. Appellant

Versus

Commodore Lokesh K. Batra (Retd.) & Ors …. Respondents

Written Submissions on behalf of the Respondent No. 1

1. In India, the people are the true sovereign. The Constitution begins with the words "*We the people of India having solemnly resolved to constitute India*" and ends with the words "*do hereby adopt, enact and give to ourselves this Constitution.*" Thus people have given themselves the Constitution of India. Through the said Constitution, people have created legislatures, executive and the judiciary to exercise such duties and functions as laid out in the Constitution itself. In this democratic republic, it is not only the right, but also the duty of the people to oversee the functioning of all the institutions, including the judiciary.

2. The right to information regarding the functioning of public institutions is a fundamental right as enshrined in Article 19 of the Constitution of India. The Courts of the country have declared in a plethora of cases that the most important value for the functioning of a healthy and well informed democracy is transparency. In the matter of *State of UP v. Raj Narain*, AIR 1975 SC 865, a constitutional bench of the Hon'ble Supreme Court held that: "*[I]n a government of*

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." (Para 74)

3. In the case of *S.P. Gupta v. President of India and Ors*, AIR 1982 SC 149, a seven Judge Bench of the Hon'ble Supreme Court of India 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 arid at tunes, 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." (Para 65)

4. In the case of the *Union of India v. 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 Parliament or the State Legislatures, a 3 judge bench of the Hon'ble Supreme Court of India, 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's Act 1951 that candidates need not provide such information. The Hon'ble Supreme Court in PUCL case (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."

5. RTI Act 2005 as is noted in its very preamble that it 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*". All public authorities and not just the Supreme Court have had to change their administrative practices and maintenance of records in order to bring it in conformity with the RTI Act and also to facilitate the right to information. The CIC and SICs have been given the statutory responsibility and power to over-see this process of reform in the management, maintenance and retention of records in a manner that facilitates the right to information. The Ld. Single Judge in his judgment has therefore rightly upheld the order of the CIC.

6. As is clear from the counter affidavit filed by the respondent that he had sought similar information (as was sought from Supreme Court), from this Hon'ble Court. The PIO of this Hon'ble Court collated the said data from various Court Masters and provided the information to the respondent judge wise. Thereafter the respondent had also sought file notings from this Hon'ble Court as to how the earlier RTI application was processed. The entire file including file notings were

made avilable by this Hon'ble Court and the same were annexed to the counter affidavit filed by the respondent. The said notings demonstrate a simple fact that every court including the Supreme Court retains this information in easily accessible manner.

7. The argument of the Supreme Court registry that they do not separately keep the information of cases where judgments are reserved is incorrect and false. If it were true, then that would mean that if a Hon'ble judge of the Supreme Court wishes to know the cases where he has to deliver his judgments, the Supreme Court Registry would not be of much help to him, and would instead ask the Hon'ble judge to recall from his own memory.

8. It is submitted that there are 2 types of cases: Pending and Disposed. And then there are 2 types of pending cases: (i) where next date of listing has to be given, (ii) where judgments are reserved. Registry has to fix dates and send the cases to listing branch of SC in cases where more arguments/hearing is required. These cases are also known as adjourned matters. In the other cases, which are also 'pending', no dates have to be fixed/given since the arguments have been concluded and judgment/order is reserved. Therefore, this information is easily available with the Registry and Court Masters.

9. In any case, CIC had not asked the Hon'ble Supreme Court to create a compilation (if according to SC it doesn't exist) and furnish it to the respondent. CIC has only given a direction for future as to how SC can maintain its record in order to better serve the citizen's right to

information. This is a stautory power of the CIC under Section 19(8)(a)(iii) and (iv) of the RTI Act. Even de hors the said sub-section, the CIC as the guardian of the RTI Act is well within its right to direct the PIO and other officers of any public authority to maintain its records in manner that effectuates the people's fundamental right to know. Therefore, the Ld. Single Judge has rightly upheld the said direction of the CIC.

10. The issue of keeping judgments reserved was considered by the Hon'ble Supreme Court in Anil Rai vs State of Bihar (2001) 7 SCC 318, where several observations were made and several directions were passed that have a particular bearing on the instant case. The Hon'ble Supreme Court held:

> "*Before adverting to the merits of the appeal, I propose to deal with the shocking state of affairs prevalent in some High Courts as brought to our notice by the learned Counsel for the Appellants. The dismay picture depicted before us on the basis of the facts of these appeals is that a few Judges in some High Courts, after conclusion of the arguments, keep the files withheld with them and do not pronounce judgments for periods spread over years."*
>
> *"The prevalence of such a practice and horrible situation in some of the High Courts in the country has necessitated the desirability of considering the effect of such delay on the rights of the litigant public. Though reluctantly, yet for preserving and strengthening the belief of the people in the institution of the judiciary, we have*

decided to consider this aspect and to give appropriate directions."

"In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eye-brows, some time genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the Rule of Law."

"Under the prevalent circumstances in some of the High Courts, I feel it appropriate to provide some guidelines regarding the pronouncement of judgments which, I am sure, shall be followed by all concerned, being the mandate of this Court. Such guidelines, as for present, are as under:

(i) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the court officer concerned.

(ii) That Chief Justice of the High Courts, on their administrative side, should direct the Court Officers/ Readers of the various Benches in the High Courts to furnish every month the list of

cases in the matters where the judgments reserved are not pronounced within the period of that months.

(iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the concerned Chief Justice shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(iv) Where a judgment is not pronounced within three months, from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.

(v) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said lis shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as deems fit in the circumstances."

11. There have been many occasions in SC in which judgments have been reserved more than a year, like in the Narco Analysis case, or in power of courts to order CBI investigation case, validity of Sec 377 IPC, and for months together in several others, as is well-known to advocates practicing in SC. This practice has been abhorred by many jurists and it is always held to be desirable that judgments are given in maximum two months of the conclusion of arguments. Judgments being reserved for a long time is also the reason of pendency and justice not being done as has been itself held by Hon'ble Supreme Court in Anil Rai judgment (quoted above). It is clear that the Appellant must be made to make available this information to effectuate the right to know of the litigants and of the general public.

12. Under these circumstances it is humbly submitted that the above appeal lacks merit and deserves to be dismissed. The respondent humbly submits that the orders of the Ld. CIC as well as of the Ld. Single Judge are correct both in law and the facts & circumstances of the case, and need no interference.

Dated: 27.01.2015 Prashant Bhushan

(Counsels for the Respondent No. 1)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 11.07.2012**

+ **W.P.(C) No.13090 of 2006**

Union of India ... Petitioner

versus

Central Information Commission & Anr. ... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr.Amarjeet Singh Chandhihok Additional Solicitor General with Mr. Sumeet Pushkarna Advocate, Mr. Ritesh Kumar and Mr. Gaurav Verma Advocate

For Respondents : Mr. Prashant Bhushan Advocate with Mr. Ramesh K.Mishra Advocate for Respondent no.2

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

ANIL KUMAR, J.

1. This writ petition has been filed by the petitioner, Union of India, seeking the quashing of the order/judgment dated 8th August, 2006 passed by respondent no.1, Central Information Commission, directing the production of the document/correspondences, disclosure of which was sought by respondent no.2, Shri C. Ramesh, under the provisions of the Right to Information Act, 2005.

2. The brief facts of the case are that the respondent no.2, Shri C. Ramesh, by way of an application under Section 6 of the Right to Information Act, 2005 sought the disclosure from the Central Public Information Officer (hereinafter referred to as 'CPIO') of all the letters sent by the former President of India, Shri K.R. Narayanan, to the then Prime Minister, Shri A.B. Vajpayee, between 28th February, 2002 to 15th March, 2002 relating to '*Gujarat riots*'.

3. The CPIO by a communication dated 28th November, 2005 denied the request of respondent no.2 on the following grounds:-

> "(1) .....that Justice Nanavati/Justice Shah commission of enquiry had also asked for the correspondence between the President, late Shri K.R.Narayanan and the former Prime minister on Gujarat riots and the privilege under section 123 & 124 of the Indian Evidence Act, 1872 and Article 74(2) read with Article 78 and 361 of the Constitution of India has been claimed by the Government, for production of those documents;
>
> (2) .....that in terms of Section 8(1) (a) of the Right to Information Act, 2005, the information asked for by you, the disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State etc."

4. The respondent no.2, thereafter, filed an appeal under Section 19(1) of the Right to Information Act, 2005 before the Additional Secretary (S & V), Department of Personnel and Training, who is the designated first appellate authority under the Act, against the order of the CPIO on the ground that the Right to Information Act, 2005 has an

overriding effect over the Indian Evidence Act, 1872 and that the document disclosure of which was sought by him are not protected under Section 8 of the Right to Information Act, 2005 or Articles 74(2), 78 and 361 of the Constitution of India, which appeal was also dismissed by an order dated 2nd January, 2006. The respondent no.2 aggrieved by the order of the first appellate authority preferred a second appeal under Section 19(3) of the Act before the Commission, Respondent no.1. The Commission after hearing the appeal by an order dated 7th July, 2006 referred the same to the full bench of the Commission, respondent no.1, for re-hearing.

5. After hearing the appeal, the full bench of the Commission, upholding the contentions of respondent no.2 passed an order/judgment dated 8th August, 2006, calling for the correspondences, disclosure of which was sought by the respondent no.2 under the provisions of the Right to Information Act, so that it can examine as to whether the disclosure of the same would serve or harm the public interest, after which, appropriate direction to the public authority would be issued. This order dated 8th August, 2006 is under challenge. The direction issued by respondent no.1 is as under:-

> "The Commission, after careful consideration has, therefore, decided to call for the correspondence in question and it will examine as to whether its disclosure will serve of harm the public interest. After examining the documents, the Commission will first consider whether it would be in

public interest to order disclosure or not, and only then it will issue appropriate directions to the public authority."

6. The order dated 8th August, 2006 passed by the Central Information Commission, respondent no.1, has been challenged by the petitioner on the ground that the provisions of the Right to Information Act, 2005 should be construed in the light of the provisions of the Constitution of India; that by virtue of Article 74(2) of the Constitution of India, the advise tendered by the Council of Ministers to the President is beyond the judicial inquiry and that the bar as contained in Article 74(2) of the Constitution of India would be applicable to the correspondence exchanged between the President and the Prime Minister. Thus, it is urged that the consultative process between the then President and the then Prime Minister, enjoys immunity. Further it was contended that since the correspondences exchanged cannot be enquired into by any Court under Article 74(2) consequently respondent no.1 cannot look into the same. The petitioner further contended that even if the documents form a part of the preparation of the documents leading to the formation of the advice tendered to the President, the same are also 'privileged'. According to the petitioner since the correspondences are privileged, therefore, it enjoys the immunity from disclosure, even in proceedings initiated under the Right to Information Act, 2005.

7. The petitioner further contended that by virtue of Article 361 of the Constitution of India the deliberations between the Prime Minister and the President enjoy complete immunity as the documents are 'classified documents' and thus it enjoys immunity from disclosure not because of their contents but because of the class to which they belong and therefore the disclosure of the same is protected in public interest and also that the protection of the documents from scrutiny under Article 74(2) of the Constitution of India is distinct from the protection available under Sections 123 and 124 of the Indian Evidence Act, 1872. Further it was contended that the documents which are not covered under Article 74(2) of the Constitution, privilege in respect to those documents could be claimed under section 123 and 124 of the Evidence Act.

8. The petitioner stated that the freedom of speech and expression as provided under Article 19(1)(a) of the Constitution of India, which includes the right to information, is subject to Article 19(2) of the Constitution of India wherein restrictions can be imposed on the fundamental rights of freedom of speech and expression. Therefore, it was contended that the right to information cannot have a overriding effect over and above the provisions of Article 19(2) of the Constitution of India and since the Right to Information, Act originates from the

Constitution of India the same is secondary and is subject to the provisions of the Constitution. The petitioner contended that the observation of respondent no.1 that the Right to Information Act, 2005 erodes the immunity and the privilege afforded to the cabinet and the State under Articles 74(2), 78 and 361 of the Constitution of India is patently erroneous as the Constitution of India is supreme over all the laws, statutes, regulations and other subordinate legislations both of the Centre, as well as, of the State. The petitioner has sought the quashing of the impugned judgment on the ground that the disclosure of the information which has been sought by respondent no.2 relates to Gujarat Riots and any disclosure of the same would prejudicially affect the national security, sovereignty and integrity of India, which information is covered under Sections 8(1)(a) and 8(1)(i) of the RTI Act. It was also pointed out by the petitioner that in case of conflict between two competing dimensions of the public interest, namely, right of citizens to obtain disclosure of information vis-à-vis right of State to protect the information relating to the crucial state of affairs in larger public interest, the later must be given preference.

9. Respondent no.2 has filed a counter affidavit refuting the averments made by the petitioner. In the affidavit, respondent no.2 relying on section 18(3) & (4) of the Right to Information Act, 2005 has contended that the Commission, which is the appellate authority under

the RTI Act, has absolute power to call for any document or record from any public authority, disclosure of which documents, before the Commission cannot be denied on any ground in any other Act. Further the impugned order is only an interim order passed by the Commission by way of which the information in respect of which disclosure was been sought has only been summoned in a sealed envelope for perusal or inspection by the commission after which the factum of disclosure of the same to the public would be decided and that the petitioner by challenging this order is misinterpreting the intent of the provisions of the Act and is questioning the authority of the Commission established under the Act. It was also asserted by respondent no.2 that the Commission in exercise of its jurisdiction in an appeal can decide as to whether the exemption stipulated in Section 8(1)(a) of the RTI Act is applicable in a particular case, for which reason the impugned order was passed by the Commission, and thus by prohibiting the disclosure of information to the Commission, the petitioner is obstructing the Commission from fulfilling its statutory duties. Also it is urged that the Right to Information Act, 2005 incorporates all the restrictions on the basis of which the disclosure of information by a public authority could be prohibited and that while taking recourse to section 8 of the Right to Information Act for denying information one cannot go beyond the parameters set forth by the said section. The respondent while admitting that the Right to Information Act cannot override the

constitutional provisions, has contended that Articles 74(2), 78 and 361 of the Constitution do not entitle public authorities to claim privilege from disclosure. Also it is submitted that the veil of confidentiality and secrecy in respect of cabinet papers has been lifted by the first proviso to section 8(1)(i) of the Right to Information Act, which is only a manifestation of the fundamental right of the people to know, which in the scheme of Constitution overrides Articles 74(2), 78 and 361 of the Constitution. Respondent no.2 contended that the information, disclosure of which has been sought, only constitutes the documents on the basis of which advice was formed/decision was made and the same is open to judicial scrutiny as under Article 74(2) the Courts are only precluded from looking into the 'advice' which was tendered to the President. Thus in terms of Article 74(2) there is no bar on production of all the material on which the ministerial advice was based. The respondent also contended that in terms of Articles 78 and 361 of the constitution which provides for participatory governance, the Government cannot seek any privilege against its citizens and under the Right to Information Act what cannot be denied to the Parliament cannot be denied to a citizen. Relying on Section 22 of the Right to Information Act the respondent has contended that the Right to Information Act overrides not only the Official Secrets Act but also all other acts which ipso facto includes Indian Evidence Act, 1872, by virtue of which no public authority can claim to deny any information

on the ground that it happens to be a 'privileged' document under the Indian Evidence Act, 1872. The respondent has sought the disclosure of the information as same would be in larger public interest, as well as, it would ensure the effective functioning of a secular and democratic country and would also check non performance of public duty by people holding responsible positions in the future.

10. This Court has heard the learned counsel for the parties and has carefully perused the writ petition, counter affidavit, rejoinder affidavit and the important documents filed therein. The question which needs determination by this Court, which has been agreed by all the parties, is whether the Central Information Commission can peruse the correspondence/letters exchanged between the former President of India and the then Prime Minster of India for the relevant period from 28th February, 2002 till 1st March, 2002 in relation to 'Gujarat riots' in order to decide as to whether the disclosure of the same would be in public interest or not and whether the bar under Article 74(2) will be applicable to such correspondence which may have the advice of Council of Minister or Prime Minister.

11. The Central Information Commission dealt with the following issues while considering the request of respondent No. 2:

> (1) Whether the Public Authority's claim of privilege under the Law of Evidence is justifiable under the RTI Act 2005?

(2) Whether the CPIO or Public Authority can claim immunity from disclosure under Article 74(2) of the Constitution?

(3) Whether the denial of information to the appellant can be justified in this case under section 8(1) (a) or under Section 8(1) (e) of the Right to Information Act 2005?

(4) Whether there is any infirmity in the order passed by the CPIO or by the Appellate Authority denying the requested information to the Appellant?

While dealing with the first issue the Central Information Commission observed that on perusing Section 22 of the Right to Information Act, 2005, it was clear that it not only over-rides the Official Secrets Act, but also all other laws and that ipso facto it includes the Indian Evidence Act as well. Therefore, it was held that no public authority could claim to deny any information on the ground that it happens to be a "privileged" one under the Indian Evidence Act. It was also observed that Section 2 of the Right to Information Act cast an obligation on all public authorities to provide the information so demanded and that the right thus conferred is only subject to the other provisions of the Act and to no other law. The CIC also relied on the following cases:

(1) S.R. Bommai vs. Union of India: AIR 1994 SC 1918, wherein it was held that Article 74(2) is no bar to the production of all the material on which the ministerial advice was based.

(2) Rameshwar Prasad and Ors. vs. Union of India and Anr. AIR 2006 SC 980 wherein the above ratio was further clarified.

(3) SP Gupta vs. Union of India, 1981 SCC Supp. 87 case, wherein it was held that what is protected from disclosure under clause (2) of the Article 74 is only the advice tendered by the Council of Ministers. The reasons that have weighed with the Council of Ministers in giving the advice would certainly form part of the advice. But the material on which the reasoning of the Council of Ministers is based and advice given cannot be said to form part of the advice. It was also held that disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest.

(4) R.K. Jain vs. Union of India & Ors. AIR 1993 SC 1769 wherein the SC refused to grant a general immunity so as to cover that no document in any particular class or one of the categories of Cabinet papers or decisions or contents thereof should be ordered to be produced.

Based on the decisions of the SC in the above cases, the CIC had also inferred that Article 74(2), 78 and 361 of the Constitution of India do not per se entitle the public authorities to claim privilege from disclosure.

12. However, instead of determining whether the correspondence in question comes under the special class of documents exempted from disclosure on account of bar under Article 74 (2) of the Constitution of India, the CIC has called for it in order to examine the same. The petitioners have contended that the CIC does not have the power to call for documents that have been expressly excluded under Article 74(2),

read with Article 78 and Article 361 of the Indian Constitution, as well as the provisions of the Right to Information Act, 2005 under which the CIC is established and which is also the source of all its power. As per the learned counsel for the petitioner, the exemption from the disclosure is validated by Section 8(1)(a) and Section 8(1)(i) of the Right to Information Act, 2005 as well. The respondents, however, have contended that the correspondence is not expressly barred from disclosure under either the Constitution or the Provisions of the Right to Information Act, 2005. Therefore, the relevant question to be determined by this Court is whether or not the correspondence remains exempted from disclosure under Article 74(2) of the Constitution of India or under any provision of the Right to information Act, 2005. If the answer to this query is in the affirmative then undoubtedly what stands exempted under the Constitution cannot be called for production by the CIC as well. Article 74 (2) of the Constitution of India is as under:

> **74. Council of Ministers to aid and advise President.—**
>
> (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:
>
> [Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

13. Clearly Article 74(2) bars the disclosure of the advice rendered by the Council of Ministers to the President. What constitutes this advice is another query that needs to be determined. As per the learned counsel for the petitioner, the word "advice" cannot constitute a single instance or opinion and is instead a collaboration of many discussions and to and fro correspondences that give result to the ultimate opinion formed on the matter. Hence the correspondence sought for is an intrinsic part of the "advice" rendered by the Council of Ministers and the correspondence is not the material on which contents of correspondence, which is the advise, has been arrived at and therefore, it is barred from any form of judicial scrutiny.

14. The respondents have on the other hand have relied on the judgments of S.R. Bommai vs. Union of India: AIR 1994 SC 1918; Rameshwar Prasad and Ors. vs. Union of India and Anr. AIR 2006 SC 980 and SP Gupta vs. Union of India, 1981 SCC Supp. 87, with a view to justify that Article 74(2) only bars disclosure of the final "advice" and not the material on which the "advice" is based.

15. However, on examining these case laws, it is clear that the factual scenario which were under consideration in these matters, where wholly different from the circumstances in the present matter. Even the slightest difference in the facts could render the ratio of a particular case otiose when applied to a different matter.

16. A decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in facts or additional facts may make a lot of difference in the precedent value of a decision. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.,(2003) 2 SCC 111*, at page 130, the Supreme Court had held in para 59 relying on various other decision as under:

> "59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See *Ram Rakhi* v. *Union of India* AIR 2002 Del 458 (db), *Delhi Admn. (NCT of Delhi)* v. *Manohar Lal* (2002) 7 SCC 222, *Haryana Financial Corpn.* v. *Jagdamba Oil Mills* (2002) 3 SCC 496 and *Nalini Mahajan (Dr)* v. *Director of Income Tax (Investigation)* (2002) 257 ITR 123 (Del).]"

17. In Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr. (AIR 2004 SC 778), the Supreme Court had held that a decision cannot be relied on without considering the factual situation. In the said judgment the Supreme Court had observed:-

> " Court 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.

18. In the case of S.R. Bommai (supra) Article 74(2) and its scope was examined while evaluating if the President's functions were within the constitutional limits of Article 356, in the matter of his satisfaction. The extent of judicial scrutiny allowed in such an evaluation was also ascertained. The matter dealt with the validity of the dissolution of the Legislative Assembly of States of Karnataka, Meghalaya, Nagaland, Madhya Pradesh, Himachal Pradesh and Rajasthan, by the President under Article 356, which was challenged.

19. Similarly in Rameshwar Prasad (supra) since no political party was able to form a Government, President's rule was imposed under Article 356 of the Constitution over the State of Bihar and consequently the Assembly was kept in suspended animation. Thereafter, the assembly was dissolved on the ground that attempts are being made to cobble a majority by illegal means as various political parties/groups

are trying to allure elected MLAs and that if these attempts continue it would amount to tampering of the constitutional provisions. The issue under consideration was whether the proclamation dissolving the assembly of Bihar was illegal and unconstitutional. In this case as well reliance was placed on the judgment of S.R. Bommai (supra). However it is imperative to note that only the decision of the President, taken within the realm of Article 356 was judicially scrutinized by the Supreme Court. Since the decision of the President was undoubtedly based on the advice of the Council of Ministers, which in turn was based on certain materials, the evaluation of such material while determining the justifiability of the President's Proclamation was held to be valid.

20. Even in the case of S.P Gupta (supra) privilege was claimed against the disclosure of correspondences exchanged between the Chief Justice of the Delhi High Court, Chief Justice of India and the Law Minister of the Union concerning extension of the term of appointment of Addl. Judges of the Delhi High Court. The Supreme Court had called for disclosure of the said documents on the ground that the non disclosure of the same would cause greater injury to public interest than what may be caused by their disclosure, as the advice was tendered by the Council of Ministers after consultation with the Chief Justice of Delhi High Court and the Chief Justice of India and thus it

was held that the views expressed by the Chief justices could not be said to be an advice and therefore there is no bar on its disclosure.

21. It will be appropriate to consider other precedents also relied on by the parties at this stage. In State of U.P. vs. Raj Narain, AIR 1975 SC 865 the document in respect of which exclusion from production was claimed was the Blue Book containing the rules and instructions for the protection of the Prime Minister, when he/she is on tour or travelling. The High Court rejected the claim of privilege under section 123 of the Evidence Act on the ground that no privilege was claimed in the first instance and that the blue book is not an unpublished document within the meaning of section 123 of Indian Evidence Act, as a portion of it had been published, which order had been challenged. The Supreme Court while remanding the matter back to the High Court held that if, on the basis of the averments in the affidavits, the court is satisfied that the Blue Book belongs to a class of documents, like the minutes of the proceedings of the cabinet, which is per se entitled to protection, then in such case, *no question of inspection of that document by the court would arise*. If, however, the court is not satisfied that the Blue Book belongs to that class of privileged documents, on the basis of the averments in the affidavits and the evidence adduced, which are not sufficient to enable the Court to make up its mind that its disclosure will injure public interest, then it will be open to the court to inspect the

said documents for deciding the question of whether it relates to affairs of the state and whether its disclosure will injure public interest.

22. In R.K.Jain vs. Union Of India, AIR 1993 SC 1769 the dispute was that no Judge was appointed as President in the Customs Central Excise and Gold (Control) Appellate Tribunal, since 1985 and therefore a complaint was made. Notice was issued and the ASG reported that the appointment of the President has been made, however, the order making the appointment was not placed on record. In the meantime another writ petition was filed challenging the legality and validity of the appointment of respondent no.3 as president and thus quashing of the said appointment order was sought. The relevant file on which the decision regarding appointment was made was produced in a sealed cover by the respondent and objection was raised regarding the inspection of the same, as privilege of the said documents was claimed. Thereafter, an application claiming privilege under sections 123, 124 of Indian Evidence Act and Article 74(2) of the Constitution was filed. The Government in this case had no objection to the Court perusing the file and the claim of privilege was restricted to disclosure of its contents to the petitioner. The issue before the Court was whether the Court would interfere with the appointment of Shri Harish Chander as President following the existing rules. Considering the circumstances, it was held that it is the duty of the Minister to file an affidavit stating the grounds

or the reasons in support of the claim of immunity from disclosure in view of public interest. It was held that the CEGAT is a creature of the statute, yet it intended to have all the flavors of judicial dispensation by independent members and President, therefore the Court ultimately decided to set aside the appointment of Harish Chandra as President.

23. In People's Union For Civil Liberties & Anr. vs. Union of India (UOI) and Ors. AIR 2004 SC 1442, the appellants had sought the disclosure of information from the respondents relating to purported safety violations and defects in various nuclear installations and power plants across the country including those situated at Trombay and Tarapur. The respondents claimed privilege under Section 18 (1) of the Atomic Energy Act, 1962 on the ground that the same are classified as 'Secrets' as it relates to nuclear installations in the country which includes several sensitive facilities carried out therein involving activities of classified nature and that publication of the same would cause irreparable injury to the interest of the state and would be prejudicial to the national security. The Court while deciding the controversy had observed that the functions of nuclear power plants are sensitive in nature and that the information relating thereto can pose danger not only to the security of the state but to the public at large if it goes into wrong hands. It was further held that a reasonable restriction on the exercise of the right is always permissible in the interest of the

security of the state and that the functioning and the operation of a nuclear plant is information that is sensitive in nature. If a reasonable restriction is imposed in the interest of the State by reason of a valid piece of legislation the Court normally would respect the legislative policy behind the same. It was further held that that normally the court will not exercise power of judicial review in such matters unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonesty or corrupt practices. For a claim of immunity under Section 123 of the IEA, the final decision with regard to the validity of the objection is with the Court by virtue of section 162 of IEA. The balancing between the two competing public interests (i.e. public interest in withholding the evidence be weighed against public interest in administration of justice) has to be performed by the Court even where an objection to the disclosure of the document is taken on the ground that it belongs to a class of documents which are protected irrespective of their contents, as there is no absolute immunity for documents belonging to such class. The Court further held that there is no legal infirmity in the claim of privilege by the Government under Section 18 of the Atomic Energy Act and also that perusal of the report by the Court is not required in view of the object and the purport for which the disclosure of the report of the Board was withheld.

24. In Dinesh Trivedi vs. Union of India (1997) 4 SCC 306, the petitioner had sought making public the complete Vohra Committee Report on criminalization of politics including the supporting material which formed the basis of the report as the same was essential for the maintenance of democracy and ensuring that the transparency in government was secured and preserved. The petitioners sought the disclosure of all the annexures, memorials and written evidence that were placed before the committee on the basis of which the report was prepared. The issue before the Court was whether the supporting material (comprising of reports, notes and letters furnished by other members) placed before the Vohra Committee can be disclosed for the benefit of the general public. The Court had observed that Right to know also has recognized limitations and thus by no means it is absolute. The Court while perusing the report held that the Vohra Committee Report presented in the parliament and the report which was placed before the Court are the same and that there is no ground for doubting the genuineness of the same. It was held that in these circumstances the disclosure of the supporting material to the public at large was denied by the court, as instead of aiding the public it would be detrimentally overriding the interests of public security and secrecy.

25. In State of Punjab vs. Sodhi Sukhdev Singh, AIR 1961 SC 493, on the representation of the District and Sessions Judge who was removed

from the services, an order was passed by the Council of Ministers for his re-employment to any suitable post. Thereafter, the respondent filed a suit for declaration and during the course of the proceedings he also filed an application under Order 14, Rule 4 as well as Order 11, Rule 14 of the Civil Procedure Code for the production of documents mentioned in the list annexed to the application. Notice for the production of the documents was issued to the appellant who claimed privilege under section 123 of the IEA in respect of certain documents. The Trial Court had upheld the claim of privilege. However, the High Court reversed the order of the Trial Court in respect of four documents. The issue before the Supreme Court was whether having regard to the true scope and effect of the provisions of Sections 123 and 162 of the Act, the High Court was in error in refusing to uphold the claim of privilege raised by the appellant in respect of the documents in question. The contention of the petitioner was that under Sections 123 and 162 when a privilege is claimed by the State in the matter of production of State documents, the total question with regard to the said claims falls within the discretion of the head of the department concerned, and he has to decide in his discretion whether the document belongs to the privileged class and whether or not its production would cause injury to public interest. The Supreme Court had ultimately held that the documents were 'privilege documents' and that the disclosure of the same cannot

be asked by the appellant through the Court till the department does not give permission for their production.

26. In S.P. Gupta (supra)the Supreme Court had observed that a seven Judges' bench had already held that the Court would allow the objection to disclosure, if it finds that the document relates to affairs of State and its disclosure would be injurious to public interest, but on the other hand, if it reaches the conclusion that the document does not relate to affairs of the State or that the public interest does not compel its non-disclosure or that the public interest in the administration of justice in the particular case before it overrides all other aspects of public interest, it will overrule the objection and order disclosure of the document. It was further observed that 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 the democratic rights given to them and make the democracy a really effective and 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. Therefore, disclosure of information with regard to the functioning of the Govt. must be the rule and secrecy can be exceptionally justified only where strict requirement of public

information is assumed. It was further observed that 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, at all times that the disclosure also serves an important aspect of public interest. In that the said case, the correspondence between the constitutional functionaries was inspected by the Court and disclosed to the opposite parties to formulate their contentions.

27. It was further held that under Section 123 when immunity is claimed from disclosure of certain documents, a preliminary enquiry is to be held in order to determine the validity of the objections to production which necessarily involves an enquiry in the question as to whether the evidence relates to an affairs of State under Section 123 or not. In this enquiry the court has to determine the character or class of the document. If it comes to the conclusion that the document does not relate to affairs of State then it should reject the claim for privilege and direct its production. If it comes to the conclusion that the document relates to the affairs of the State, it should leave it to the head of the department to decide whether he should permit its production or not. 'Class Immunity' under Section 123 contemplated two kinds of public interest which may clash. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of

justice shall not be frustrated by the withholding of documents; which must be produced if justice is to be done. It is for the Court to decide the claim for immunity against disclosure made under Section 123 by weighing the competing aspects of public interest and deciding which, in the particular case before the court, predominates. It would thus seem clear that in the weighing process, which the court has to perform in order to decide which of the two aspects of public interest should be given predominance, the character of the proceeding, the issues arising in it and the likely effect of the documents on the determination of the issues must form vital considerations, for they would affect the relative weight to be given to each of the respective aspects of public interest when placed in the scales.

28. In these circumstance the Court had called for the disclosure of documents on the ground that the non disclosure of the same would cause greater injury to public interest than what may be caused by their disclosure as the advice was tendered by the Council of Ministers after consultation with the Chief Justice of High Court and Chief Justice of India and the views expressed by the Chief Justices could not be said to be an advice and therefore it was held that there is no bar to its disclosure. Bar of judicial review is on the factum of advice but not on the reasons i.e. material on which the advice was founded.

29. These are the cases where for proper adjudication of the issues involved, the court was called upon to decide as to under what situations the documents in respect of which privilege has been claimed can be looked into by the Court.

30. The CIC, respondent No.1 has observed that Article 74(2), 78 and 361 of the Constitution of India do not per se entitle the public authorities to claim privilege from disclosure. The respondent No.1 had observed that since the Right to information Act has come into force, whatever immunity from disclosure could have been claimed by the State under the law, stands virtually extinguished, except on the ground explicitly mentioned under Section 8 and in some cases under Section 11 of the RTI Act. Thus, CIC has held that the bar under Section 74(2) is not absolute and the bar is subject to the provisions of the RTI Act and the only exception for not disclosing the information is as provided under Sections 8 & 11 of the RTI Act. The proposition of the respondent No.1 is not logical and cannot be sustained in the facts and circumstances. The Right to Information Act cannot have overriding effect over the Constitution of India nor can it amend, modify or abrogate the provisions of the Constitution of India in any manner. Even the CIC cannot equate himself with the Constitutional authorities,

the Judges of the Supreme Court of India and all High Courts in the States.

31. The respondent No.1 has also tried to create an exception to Article 74(2) on the ground that the bar within Article 74(2) will not be applicable where correspondence involves a sensitive matter of public interest. The CIC has held as under:-

> ".....Prima facie the correspondence involves a sensitive matter of public interest. The sensitivity of the matter and involvement of larger public interest has also been admitted by all concerned including the appellant. .....in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make final decision depending upon the particular facts involved in each individual case.....therefore we consider it appropriate that before taking a final decision on this appeal, we should personally examine the documents to decide whether larger public interest would require disclosure of the documents in question or not..."

32. The above observation of respondent No.1 is legally not tenable. Right to Information Act, 2005 which was enacted by the Legislature under the powers given under the Constitution of India cannot abrogate, amend, modify or change the bar under Article 74(2) as has been contended by the respondent No.1. Even if the RTI Act overrides Official Secrets Act, the Indian Evidence Act, however, this cannot be construed in such a manner to hold that the Right to Information Act will override the provisions of the Constitution of India. The learned

counsel for the respondent No.2 is unable to satisfy this Court as to how on the basis of the provisions of the RTI Act the mandate of the Constitution of India can be amended or modified. Amendment of any of the provisions of the Constitution can be possible only as per the procedure provided in the Constitution, which is Article 368 and the same cannot be deemed to be amended or obliterated merely on passing of subsequent Statutes. There can be no doubt about the proposition that the Constitution is supreme and that all the authorities function under the Supreme Law of land. For this Golak Nath v. State of Punjab, AIR 1967 SC 1643 can be relied on. In these circumstances, the plea of the respondents that since the Right to Information Act, 2005 has come into force, whatever bar has been created under Article 74(2) stands virtually extinguished is not tenable. The plea is not legally sustainable and cannot be accepted.

33. A bench of this Court in Union of India v. CIC, 165 (2009) DLT 559 had observed as under:-

> "…when Article 74 (2) of the Constitution applies and bars disclosure, information cannot be furnished. RTI Act cannot and does not have the ability and mandate to negate the constitutional protection under Article 74 (2). The said Article refers to inquiry by Courts but will equally apply to CIC."

Further it has been observed in para 34 as under:-

> " ….Possibly the only class of documents which are granted immunity from disclosure is those mentioned under Article 74 (2) of the Constitution. These are documents or

> information which are granted immunity from disclosure not because of their contents but because of the class to which they belong."

34. In the circumstances, the bar under Article 74(2) cannot be diluted and whittled down in any manner because of the class of documents it relates to. The respondent No.1 is not an authority to decide whether the bar under Article 74(2) will apply or not. If it is construed in such a manner then the provision of Article 74(2) will become sub serving to the provisions of the RTI Act which was not the intention of the Legislature and even if it is to be assumed that this is the intention of the Legislature, such an intension, without the amendment to the Constitution cannot be sustained.

35. The judgments relied on by the CIC have been discussed hereinbefore. It is apparent that under Article 74(2) of the Constitution of India there is no bar to production of all the material on which the advice rendered by the Council of Ministers or the Prime Minister to the President is based.

36. The correspondence between the President and the Prime Minister will be the advice rendered by the President to the Council of Ministers or the Prime Minister and vice versa and cannot be held that the information in question is a material on which the advice is based.

In any case the respondent No.2 has sought copies of the letters that may have been sent by the former President of India to the Prime Minster between the period 28th February, 2002 to 15th March, 2002 relating to the Gujarat riots. No exception to Article 74(2) of the Constitution of India can be carved out by the respondents on the ground that disclosure of the truth to the public about the stand taken by the Government during the Gujarat carnage is in public interest. Article 74(2) contemplates a complete bar in respect of the advice tendered, and no such exception can be inserted on the basis of the alleged interpretation of the provisions of the Right to Information Act, 2005.

37. The learned counsel for the respondents are unable to satisfy this Court that the documents sought by the respondent No.2 will only be a material and not the advice tendered by the President to the Prime Minister and vice versa. In case the correspondence exchanged between the President of India and the Prime Minister during the period 28th February, 2002 to 15th March, 2002 incorporates the advice once it is disclosed to the respondent No.1, the bar which is created under Article 74(2) cannot be undone.

38. In the case of S.R.Bommai v. Union of India, (1994) 3 SCC 1 at page 242, Para 323 the Supreme Court had held as under:-

" But, Article 74(2) does not and cannot mean that the Government of India need not justify the action taken by the President in the exercise of his functions because of the provision contained therein. No such immunity was intended — or is provided — by the clause. If the act or order of the President is questioned in a court of law, it is for the Council of Ministers to justify it by disclosing the material which formed the basis of the act/order..... The court will not ask whether such material formed part of the advice tendered to the President or whether that material was placed before the President. **The court will not also ask what advice was tendered to the President, what deliberations or discussions took place between the President and his Ministers and how was the ultimate decision arrived at**..... The court will only see what was the material on the basis of which the requisite satisfaction is formed and whether it is relevant to the action under Article 356(1). The court will not go into the correctness of the material or its adequacy.

The Supreme Court in para 324 had held as under:-

24. In our respectful opinion, the above obligation cannot be evaded by seeking refuge under Article 74(2). The argument that the advice tendered to the President comprises material as well and, therefore, calling upon the Union of India to disclose the material would amount to compelling the disclosure of the advice is, if we can say so respectfully, to indulge in sophistry. The material placed before the President by the Minister/Council of Ministers does not thereby become part of advice. Advice is what is based upon the said material. Material is not advice. The material may be placed before the President to acquaint him — and if need be to satisfy him — that the advice being tendered to him is the proper one. But it cannot mean that such material, by dint of being placed before the President in support of the advice, becomes advice itself. **One can understand if the advice is tendered in writing; in such a case that writing is the advice and is covered by the protection provided by Article 74(2).** But it is difficult to appreciate how does the supporting material become part of advice. The respondents cannot say that whatever the President sees — or whatever is placed before the President becomes prohibited material and cannot be seen or summoned by the court.

39. The plea of the respondents that the correspondence may not contain the advice but it will be a material on which the advice is rendered is based on their own assumption. On such assumption the CIC will not be entitled to get the correspondences and peruse the same and negate the bar under said Article of the Constitution of India. As already held the CIC cannot claim parity with the Judges of Supreme Court and the High Courts. The Judges of Supreme Court and the High Courts may peruse the material in exercise of their power under Article 32 and 226 of the Constitution of India, however the CIC will not have such power.

40. In the case of S.P.Gupta (supra) the Supreme Court had held that what is protected against disclosure under clause (2) of Article 74 is the advice tendered by the Council of Ministers and the reason which weighed with the Council of Ministers in giving the advice would certainly form part of the advice.

41. In case of Doypack Systems Pvt Ltd v. Union of India, (1988) 2 SCC 299 at para 44 the Supreme Court after examining S.P.Gupta (supra) had held as under:-

> "44. Shri Nariman however, submitted on the authority of the decision of this Court in S.P. Gupta v. Union of India that the documents sought for herein were not privileged.

> The context and the nature of the documents sought for in S.P. Gupta case were entirely different. **In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitution which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired into in any court. This Court is precluded from asking for production of these documents...**.....
>
> **....It is well to remember that it is the duty of this Court to prevent disclosure where Article 74(2) is applicable."**

42. The learned counsel for the respondents had laid lot of emphasis on S.P.Gupta (supra) however, the said case was not about what advice was tendered to the President on the appointment of Judges but the dispute was whether there was the factum of effective consultation. Consequently the propositions raised on behalf of the respondents on the basis of the ratio of S.P.Gupta will not be applicable in the facts and circumstances and the pleas and contentions of the respondents are to be repelled.

43. The Commission under the Right to Information Act, 2005 has no such constitutional power which is with the High Court and the Supreme Court under Article 226 & 32 of the Constitution of India, therefore, the interim order passed by the CIC for perusal of the record in respect of which there is bar under Article 74(2) of the Constitution of

India is wholly illegal and unconstitutional. In Doypack Systems (supra) at page 328 the Supreme Court had held as under:-

> **"**43. The next question for consideration is that by assuming that these documents are relevant, whether the Union of India is liable to disclose these documents. Privilege in respect of these documents has been sought for under Article 74(2) of the Constitution on behalf of the Government by learned Attorney General.
>
> 44. Shri Nariman however, submitted on the authority of the decision of this Court in *S.P. Gupta* v. *Union of India* that the documents sought for herein were not privileged. The context and the nature of the documents sought for in *S.P. Gupta case* were entirely different. In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitution which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired into in any court. **This Court is precluded from asking for production of these documents.** In *S.P. Gupta case* the question was not actually what advice was tendered to the President on the appointment of judges. The question was whether there was the factum of effective consultation between the relevant constitutional authorities. In our opinion that is not the problem here. We are conscious that there is no sacrosanct rule about the immunity from production of documents and the privilege should not be allowed in respect of each and every document. We reiterate that the claim of immunity and privilege has to be based on public interest. Learned Attorney-General relied on the decision of this Court in the case of *State of U.P.* v. *Raj Narain*. The principle or ratio of the same is applicable here. We may however, reiterate that the real damage with which we are concerned would be caused by the publication of the actual documents of the Cabinet for consideration and the minutes recorded in its discussions and its conclusions. It is well settled that the privilege cannot be waived. In this connection, learned Attorney General drew our attention to an unreported decision in *Elphistone Spinning and Weaving Mills Co. Ltd.* v. *Union of India*. This resulted ultimately in *Sitaram Mills case.*. The Bombay High Court held that the Task Force Report was withheld deliberately as it would

support the petitioner's case. It is well to remember that in *Sitaram Mills case* this Court reversed the judgment of the Bombay High Court and upheld the take over. Learned Attorney General submitted that the documents there were not tendered voluntarily. **It is well to remember that it is the duty of this Court to prevent disclosure where Article 74(2) is applicable. We are convinced that the notings of the officials which lead to the Cabinet note leading to the Cabinet decision formed part of the advice tendered to the President as the Act was preceded by an ordinance promulgated by the President.**

45. We respectfully follow the observations in *S.P. Gupta* v. *Union of India* at pages 607, 608 and 609. We may refer to the following observations at page 608 of the report: (SCC pp. 280-81, para 70)

"It is settled law and it was so clearly recognised in *Raj Narain case* that there may be classes of documents which public interest requires should not be disclosed, no matter what the individual documents in those classes may contain or in other words, the law recognizes that there may be classes of documents which in the public interest should be immune from disclosure. There is one such class of documents which for years has been recognised by the law as entitled in the public interest to be protected against disclosure and that class consists of documents which it is really necessary for the proper functioning of the public service to withhold from disclosure. The documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong. This class includes cabinet minutes, minutes of discussions between heads of departments, high level inter-departmental communications and dispatches from ambassadors abroad (vide *Conway* v. *Rimmer*) and *Reg* v. *Lewes Justices, ex parte Home Secretary*, papers brought into existence for the purpose of preparing a submission to cabinet (vide: *Lanyon Property Ltd.* v. *Commonwealth 129 Commonwealth Law Reports 650*) and indeed any documents which relate to the framing of Government policy at a high level (vide: *Re Grosvenor Hotel, London* 1964 (3) All E.R. 354 (CA).

46. Cabinet papers are, therefore, protected from disclosure not by reason of their contents but because of the class to

which they belong. It appears to us that Cabinet papers also include papers brought into existence for the purpose of preparing submission to the Cabinet. See Geoffrey Wilson — *Cases and Materials on Constitutional and Administrative Law,* 2nd edn., pages 462 to 464. At page 463 para 187, it was observed:

"The real damage with which we are concerned would be caused by the publication of the actual documents of the Cabinet for consideration and the minutes recording its discussions and its conclusions. Criminal sanctions should apply to the unauthorized communication of these papers."

44. Even in R.K.Jain (supra) at page 149 the Supreme Court had ruled as under:-

'34. Equally every member is entitled to insist that whatever his own contribution was to the making of the decision, whether favorable or unfavorable, every other member will keep it secret. Maintenance of secrecy of an individual's contribution to discussion, or vote in the Cabinet guarantees the most favorable and conducive atmosphere to express views formally. To reveal the view, or vote, of a member of the Cabinet, expressed or given in Cabinet, is not only to disappoint an expectation on which that member was entitled to rely, but also to reduce the security of the continuing guarantee, and above all, to undermine the principle of collective responsibility. Joint responsibility supersedes individual responsibility; in accepting responsibility for joint decision, each member is entitled to an assurance that he will be held responsible not only for his own, but also as member of the whole Cabinet which made it; that he will be held responsible for maintaining secrecy of any different view which the others may have expressed. The obvious and basic fact is that as part of the machinery of the government. **Cabinet secrecy is an essential part of the structure of the government.** 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 affectivity 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.

45. Consequently for the foregoing reason there is a complete bar under Article 74(2) of the Constitution of India as to the advice tendered by the Ministers to the President and, therefore, the respondent No.1 CIC cannot look into the advice tendered by the President to the Prime Minster and consequently by the President to the Prime Minister or council of Ministers. The learned counsel for the respondents also made an illogical proposition that the advice tendered by the Council of Ministers and the Prime Minster to the President is barred under Article 74(2) of the Constitution of India but the advice tendered by the President to the Prime Minister in continuation of the advice tendered by the Prime Minster or the Council of Ministers to the President of India is not barred. The proposition is not legally tenable and cannot be accepted. The learned counsel for the respondent No.2, Mr. Mishra also contended that even if there is a bar under Article 74(2) of the Constitution of India, the respondent No.2 has a right under Article 19(1) (a) to claim such information. The learned counsel is unable to show any such precedent of the Supreme Court or any High Court in support of his contention and, therefore, it cannot be accepted. The

freedom of speech and expression as provided under Article 19(1)(a) of the Constitution of India, which includes the right to information, is subject to Article 19(2) of the Constitution of India wherein restrictions can be imposed on the fundamental rights of freedom of speech and expression. The right to information cannot have a overriding effect over and above the provisions of Article 19(2) of the Constitution of India and since the Right to Information, Act originates from the Constitution of India the same is secondary and is subject to the provisions of the Constitution.

46. The documents in question are deliberations between the President and the Prime Minister within the performance of powers of the President of India or his office. As submitted by the learned counsel for the petitioner such documents by virtue of Article 361 would enjoy immunity and the immunity for the same cannot be asked nor can such documents be perused by the CIC. Thus the CIC has no authority to call for the information in question which is barred under Article 74(2) of the Constitution of India. Even on the basis of the interpretation to various provisions of the Right to Information Act, 2005 the scope and ambit of Article 74(2) cannot be whittled down or restricted. The plea of the respondents that dissemination of such information will be in public interest is based on their own assumption by the respondents. Disclosure of such an advice tendered by the Prime Minster to the

President and the President to the Prime Minister, may not be in public interest and whether it is in public interest or not, is not to be adjudicated as an appellate authority by respondent No.1. The provisions of the Right to Information Act, 2005 cannot be held to be superior to the provisions of the Constitution of India and it cannot be incorporated so as to negate the bar which flows under Article 74(2) of the Constitution of India. Merely assuming that disclosure of the correspondence between the President and the Prime Minster and vice versa which contains the advice may not harm the nation at large, is based on the assumptions of the respondents and should not be and cannot be accepted in the facts and circumstances. In the circumstances the findings of the respondent No.1 that bar under Article 74(2), 78 & 361 of the Constitution of India stands extinguished by virtue of RTI Act is without any legal basis and cannot be accepted. The respondent No.1 has no authority to call for the correspondent in the facts and circumstances.

47. The learned junior counsel for the respondent no.2, Mr. Mishra who also appeared and argued has made some submissions which are legally and prima facie not acceptable. His contention that the bar under Article 74(2) of the Constitution will only be applicable in the case of the High Courts and Supreme Court while exercising the power of judicial review and not before the CIC as the CIC does not exercise

the power of judicial review is illogical and cannot be accepted. The plea that bar under Article 74(2) is not applicable in the present case is also without any basis. The learned counsel has also contended that the correspondence between the President and the Prime Minster cannot be termed as advice is based on his own presumptions and assumptions which have no legal or factual basis. As has been contended by the learned Additional Solicitor General, the bar under Article 74(2) is applicable to all Courts including the CIC. In the case of S.R.Bommai v. Union of India, (1994) 3 SCC 1 at page 241 it was observed as under:-

> **"**321**.** Clause (2) of Article 74, understood in its proper perspective, is thus confined to a limited aspect**. It protects and preserves the secrecy of the deliberations between the President and his Council of Ministers.**"

48. Consequently the bar of Article 74(2) is applicable in the facts and circumstances and the CIC cannot contend that it has such power under the Right to Information Act that it will decide whether such bar can be claimed under Article 74 (2) of the Constitution of India.. In case of UPSC v. Shiv Shambhu, 2008 IX AD (Delhi) 289 at para 2 a bench of this Court had held as under:-

> " At the outset this Court directs the deletion of the CIC which has been arrayed as Respondent No.1 to this appeal, consequent upon it being arrayed as such in the writ petition. This Court has repeatedly issued practice directions stressing that a judicial or quasi-judicial body or Tribunal whose order is challenged in a writ petition ought not to itself be impleaded as a party respondent. The only exception would be if mala fides are alleged against any

> individual member of such authority or Tribunal in which case again it would be such member, and not the authority/Tribunal who may be impleaded as a respondent."

49. The respondent No.2 has sought copies of the letters that may have been sent by the President of India to the Prime Minister during the period 28th February, 2002 to 15th March, 2002 relating to Gujarat riots. In the application submitted by respondent No.2 for obtaining the said information, respondent No.2 had stated as under:-

> "I personally feel that the contents of the letters, stated to have been sent by the former President of India to the then Prime Minister are of importance for foreclosure of truth to the public on the stand taken by the Government during the Gujarat carnage. I am therefore interested to know the contents of the letters"

50. Considering the pleas and the averments made by the respondents it cannot be construed in any manner that the correspondence sought by the respondent No.2 is not the advice rendered, and is just the material on which the advice is based. What is the basis for such an assumption has not been explained by the counsel for the respondent No.2. The impugned order by the respondent No.1 is thus contrary to provision of Article 74(2) and therefore it cannot be enforced and the petitioner cannot be directed to produce the letters exchanged between the President and the Prime Minister or the

Council of Ministers as it would be the advice rendered by the President in respect of which there is a complete bar under Article 74(2).

51. In the case of S.R.Bommai (supra) at page 241 the Supreme Court had observed as under:-

> "321. Clause (2) of Article 74, understood in its proper perspective, is thus confined to a limited aspect. It protects and preserves the secrecy of the deliberations between the President and his Council of Ministers."

The Supreme Court at para 324 had also observed as under:-

> "..... **One can understand if the advice is tendered in writing; in such a case that writing is the advice and is covered by the protection provided by Article 74(2).** But it is difficult to appreciate how does the supporting material become part of advice. The respondents cannot say that whatever the President sees — or whatever is placed before the President becomes prohibited material and cannot be seen or summoned by the court.

52. Thus there is an apparent and conspicuous distinction between the advice and the material on the basis of which advice is rendered. In case of Doypack (supra) the Supreme Court had held as under:-

> "44. Shri Nariman however, submitted on the authority of the decision of this Court in S.P. Gupta v. Union of India that the documents sought for herein were not privileged. The context and the nature of the documents sought for in S.P. Gupta case were entirely different. In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitution which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired

> into in any court. This Court is precluded from asking for production of these documents…….
>
> ….It is well to remember that it is the duty of this Court to prevent disclosure where Article 74(2) is applicable."

53. The learned counsel for the respondents also tried to contend that even if Article 74(2) protects the disclosure of advice from the Council of Ministers/Prime Minister to President it does not bar disclosure of communication from President to the Prime Minister. In case of PIO vs. Manohar Parikar, Writ Petition No. 478 of 2008, the Bombay High Court at Goa Bench had held that the protection under Article 361 will not be available for the Governor if any information is sought under RTI Act. However, the reliance on the said precedent cannot be made, as the same judgment has been stayed by the Supreme Court in SLP (C) No.33124/2011 and is therefore sub judice and consequently the respondents are not entitled for any direction to produce the correspondence which contains the advice rendered by the President to the Prime Minister for the perusal by the CIC. The plea of the respondents that the CIC can call the documents under Section 18 of RTI Act, therefore, cannot be sustained. If the bar under Article 74(2) is absolute so far as it pertains to advices, even under Section 18 such bar cannot be whittled down or diluted nor can the respondents contend that the CIC is entitled to see that correspondence and consequently the respondent No.2 is entitled for the same. For the foregoing reasons

and in the facts and circumstances the order of the CIC dated 8th August, 2006 is liable to be set aside and the CIC cannot direct the petitioner to produce the correspondence between the President and the Prime Minister, and since the CIC is not entitled to peruse the correspondence between the President and the Prime Minister, as it is be barred under Article 74(2) of the Constitution of India, the application of the petitioner seeking such an information will also be not maintainable.

54. Consequently, the writ petition is allowed and the order dated 8th August, 2006 passed by Central Information Commission in Appeal No.CIC/MA/A/2006/00121 being 'C.Ramesh v. Minister of Personnel & Grievance & Pension' is set aside. The application of the respondent No.2 under Section 6 of the Right to Information Act, 2005 dated 7th November, 2005 is also dismissed, holding that the respondent No.2 is not entitled for the correspondence sought by him which was exchanged between the President and the Prime Minster relating to the Gujarat riots. Considering the facts and circumstances the parties are, however, left to bear their own cost.

July 11, 2012 **ANIL KUMAR, J.**

'k/vk'

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 04.05.2012

% Judgment delivered on: 17.05.2012

\+ **W.P.(C) 2651/2012**

UNION OF INDIA ..... Petitioner
Through: Ms. Indira Jaising, ASG with Mr.Rohit Sharma, Advocate

versus

G KRISHNAN ..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner, Union of India assails the order dated 09.04.2012 passed by the Central Information Commission (CIC) in Appeal No.CIC/SG/A/2012/000374, whereby the second appeal preferred by the respondent, Sh. G. Krishnan has been allowed, and a direction has been issued to the petitioner to provide an attested copy of the summary of the Western Ghats Ecology Expert Panel (WGEEP) Report and the report on the Athirappilly Hydro Electric Project, Kerala

to the respondent before 05.05.2012. It has further been directed that the WGEEP report be placed on the website of the Ministry of Environment and Forest (MOEF) before 10.05.2012. A further direction has been issued to the (MOEF) to publish all reports of commissions, special committees or panels within 30 days of receiving the same, unless it is felt that any part of such report is exempted under the provisions of Section 8(1) and Section 9 of the Right to Information (RTI) Act. Further directions have been issued in this regard.

2. The respondent sought from the PIO of the petitioner the summary of the report submitted to the MOEF by the WGEEP under the chairmanship of Prof. Madhav Gadgil and their report on the Athirappilly HEP Kerala. The PIO of the MOEF replied to the said query by observing that:

> *"The Ministry of Environment and Forests is still in the process of examining the report of the Western Ghats Ecology Expert Panel in consultation with the six State Governments of the Western Ghats region. As such the report is not final, still a draft under consideration of the Ministry and thus not complete or ready for disclosure under RTI.*
>
> *You may repeat your application at a later date after completion of the process."*

3. Dissatisfied with the aforesaid, the respondent preferred a first appeal, which was also rejected on the ground that the disclosure

of the said report would prejudicially affect the "*strategic, scientific or economic interests of the State*". Consequently, the petitioner raised the defence available under Section 8(1)(a) of the RTI Act to deny the supply of the information sought by the respondent.

4. As aforesaid, the CIC has allowed the appeal preferred by the respondent.

5. The submission of learned ASG Ms. Indira Jaising, who appears for the petitioner, is that so as to take an informed decision while acting under Section 3(2)(v) of the Environment Protection Act, 1986, which empowers the Central Government to take measures with respect to "*restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards*", the MOEF constituted an expert panel on 04.03.2010 called the WGEEP under the chairmanship of Prof. Madhav Gadgil. This expert panel had 13 members and one chairman, namely Prof. Madhav Gadgil.

6. It is argued that this expert panel was constituted in recognition of the fact that the western ghats is one of the 34 global biodiversity hotspots, and that it is considered environmentally sensitive and ecologically significant. The function to be performed by the panel included assessment of current status of ecology of the

western ghats as well as to demarcate the areas with recommendation for the same being notified as ecologically sensitive areas under the Environment Protection Act, 1986.

7. The learned ASG submits that the WGEEP report, inter alia, contains recommendations regarding demarcation of the ecologically sensitive areas in the western ghats, broad sectoral guidelines for regulation of activity therein and establishment of western ghats ecology authority under the Environment Protection Act, 1986 for the entire western ghats region.

8. It is also argued that the western ghats have complex inter-state character as they are spread across an approximate area of 1,29,000 sq. kms. of the six western ghat States, namely, Tamil Nadu, Kerala, Karnataka, Goa, Maharashtra and Gujarat. Therefore, the recommendations of WGEEP would influence many sectoral activities, such as agricultural land use, mining industry, tourism, water resources, power, roads and railways. The learned ASG submits that the said report itself records that the same has been prepared on the basis of deficient and incomplete data. She submits that declaring the Western Ghats as an ecologically sensitive zone would have far reaching implications on all on-going as well as proposed industrial activities in different States.

9. It is argued that the said report is still under consideration of the concerned States and any hasty decision on making the report public without adequate consultative process would lead to misuse of the report, and the same may become a stumbling block in the process of development of the western ghats regions.

10. She submits that before the recommendations of the WGEEP panel are accepted by the Central Government, the views of different States that are likely to be affected are required to be considered. If, at this stage, the WGEEP panel report is made public, even before obtaining and considering the views of the affected States, there would be a spate of applications seeking notification of certain areas as ecologically sensitive, based on the recommendations contained in the WGEEP report.

11. The learned ASG submits that the petitioner is not averse to the disclosure of the WGEEP report. However, the same would be released after the process of examination of the said report, in consultation with the affected State Governments of the western ghats region, is completed, and a final decision with regard to acceptance or rejection, in whole or in part or with modification/ conditions/ qualification is taken. This process is not final, and consequently the report cannot be disclosed in the scientific or economic interests of the

State.

12. The learned ASG points out that a host of information in relation to the minutes of the meeting/report of the Madhav Gadgil committee/panel; 42 commissioned papers; 7 brainstorming sessions; 1 expert consultative meeting; 8 consultations with Govt. Agencies; 40 consultations with civil society groups; 14 field visits have already been made public by placing the same on the website – www.westernghatsindia.org. Consequently, the materials which have gone into the preparation of the report of the WGEEP have been made public.

13. It is also argued that under section 4(1)(c) of the RTI Act, every public authority is obliged to "*publish all relevant facts while formulating important policies or announcing decisions which affects the public*". It is argued that in compliance with section 4(1)(c), the aforesaid information which contains the relevant facts and which would be taken into account while formulating a policy in respect of the ecology of the western ghats has been made public and the decision, as and when taken, would also be made public.

14. A perusal of the impugned order shows that the petitioner did not deny that Prof. Madhav Gadgil had already submitted the WGEEP report. The CIC noticed that since the report has already been

submitted by the panel to MOEF, it cannot be called a "Draft" report. The CIC also observes that there is no exemption from disclosure of a report which has not been accepted by a public authority.

15. The submission raised by the learned ASG before this Court with regard to the scientific or economic interests of the State being affected in case the WGEEP report is disclosed has been considered by the learned CIC in the impugned order, *inter alia*, in the following manner:

> *"... .... It must be remembered that the object and purpose of governance in a democracy is to fulfill the will of the people. The PIO has claimed that the policy is being formulated and hence the report cannot be disclosed. This Bench would like to remember Justice Mathew's clarion call in State of Uttar Pradesh v. Raj Narain (1975) 4 SCC 428 - "In a government of 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 public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their 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".*
>
> *With the advent of the RTI Act, citizens have access to a variety of information held by the government and its instrumentalities. It includes information impacting the environment such as impact assessment reports, clearances, permissions/licenses provided by the concerned ministries, etc. This has enabled citizens to knowledgeably understand the environmental issues affecting our country. Citizens and civil society, who are actively pursuing the*

objective of protecting the biodiversity of ecologically sensitive regions, flora, fauna, and endangered species, now have access to information which allows them to obtain a true picture of our ecosystem. The RTI Act has proved to be a crucial tool for creating awareness among citizens and making them cognizant of the realities.

....

Implementation of proposals for demarcation of eco-sensitive zones, whether before or after finalisation of the WGEEP report, is an executive decision. Mere apprehension of proposals being put forth by citizens and civil society who are furthering the cause of environment protection cannot be said to prejudicially affect the scientific and economic interests of the country. Disclosing a report or information does not mean that the government has to follow it. It may perhaps have to explain the reasons to public for disagreeing with a report based on logic and coherent reasons. This cannot be considered as prejudicially affecting the scientific and economic interests of the State.

... ...

The RTI Act recognises the above mandate and in Section 4 contains a statutory direction to all public authorities "to provide as much information suo moto 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". More specifically, Section 4(1)(c) of the RTI Act mandates that all public authorities shall- "publish all relevant facts while formulating important policies or announcing the decisions which affect public". It follows from the above that citizens have a right to know about the WGEEP report, which has been prepared with public money, and has wide ramifications on the environment. Disclosure of the WGEEP report would enable citizens to debate in an informed manner and provide useful feedback to the government, which may be taken into account before finalizing the same. It is claimed by the PIO that the policy is being formulated and hence the report cannot be disclosed. The law requires

suo moto disclosure by the public authority 'while' formulating important policies and not 'after' formulating them. Obviously, the thinking was that our democracy is improved and deepened by public participation in the process of decision-making, and not when a policy is finalised and then merely announced in the name of the people.

The disclosure of the WGEEP report would enable citizens to voice their opinions with the information made available in the said report. Such opinions will be based on the credible information provided by an expert panel constituted by the government. This would facilitate an informed discussion between citizens based on a report prepared with their/public money. MOEF's unwillingness to be transparent is likely to give citizens an impression that most decisions are taken in furtherance of corruption resulting in a serious trust deficit. This hampers the health of our democracy and the correct method to alter this perception is to become transparent. Such a move would only bring greater trust in the government and its functionaries, and hurt only the corrupt.

The PIO has not been able to give any reason how disclosure would affect the scientific interests of the State. The PIOs claim for exemption is solely based on Section 8 (1) (a) of the RTI Act. The Commission has examined this claim and does not find any merit in his contention that disclosure would impact the economic interests of the Nation. The Commission therefore rejects the PIOs contention that the information sought by the appellant is exempt under Section 8 (1) (a) of the RTI Act".

16. Having considered the submissions of the learned ASG and perused the record including the impugned order, I am of the view that there is no merit in this petition, and I am inclined to agree with the reasoning adopted by the learned CIC for allowing the respondent's appeal and directing disclosure of the WGEEP report prepared by Prof.

Madhav Gadgil committee and panel.

17. It is not the petitioners contention before me that the said WGEEP report is not the final document prepared by the panel headed by Prof. Madhav Gadgil in relation to the western ghats ecology and Athirappilly HEP Kerala. So far as the said panel is concerned, they have tendered their report to the MOEF. Now, it is for the MOEF, in consultation with the affected Sates, to act on the said report. It is for the MOEF and the affected States to either accept/reject, wholly or partially, or with conditions/qualifications/modifications the said report, by taking into account the interests of all stakeholders, and by taking into account the relevant laws, including those applicable in relation to the protection of environment and ecology.

18. If there are any shortcomings or deficiencies in the said report, inter alia, for the reason that the same is based on incomplete or deficient data, or for any other reason, the said factor would go into the decision making process of the MOEF and the concerned States. But it cannot be said that the said report is not final. What is not final is the governmental policy decision on the aspects to which the WGEEP report relates. The said report is one of the ingredients, which the MOEF and the concerned States would take into consideration while formulating their policy in relation to the western ghats ecology.

19. The consultative process and the involvement of the civil rights groups and all those who are concerned, and who may be affected by the policy that may eventually be made, does not stop after the making of the said report by the WGEEP. In fact, after the making of the said report, the said consultative and participatory process, ideally speaking, should become even more interactive and intense.

20. The endeavour of the petitioner appears to be to withhold the WGEEP report, so as to curb participation of the civil society and the interested environmental groups as also the common man, who is likely to be affected by the policy as eventually framed, in the debate that should take place before the policy is formulated. Before the formation of the policy, all the stakeholders should be able to deal with the report and consider whether to support or oppose the findings and recommendations made therein, and the policy should be eventually formulated after due consideration of all points of view.

21. Obviously, the MOEF and the concerned States would also have their opinion and points of view, which they should put across in the process of any such debate, which may take place either publically or in judicial proceedings. There is no reason for the petitioner to entertain the apprehension that the disclosure of the WGEEP report, at

this stage, would impede the decision making process, and also would adversely affect the scientific or economic interests of the States. The broad based participative process of debate would, in fact, help the MOEF and the concerned States in arriving at a policy decision, which is in the larger interest and for public good.

22. The submission of the learned ASG founded upon section 4(1)(c) has no merit for the reason that "all relevant facts" which go into the formulation of important policies would not only include the reports and minutes of commissioned papers, brainstorming sessions, expert consultative meetings, field visits etc., but would also include the report prepared by the expert panel on the basis of such raw material. Therefore, it cannot be said that the petitioner, by placing on its website some of the materials which have gone into the preparation of the WGEEP report, has entirely complied with the requirements of section 4(1)(c) of the Act.

23. The scientific, strategic and economic interests of the State cannot be at cross purposes with the requirement to protect the environment in accordance with the Environment Protection Act, which is a legislation framed to protect the larger public interest and for promotion of public good. Policies framed with the sole object of advancing the scientific and economic interests of the State, but in

breach of the State's obligations under the Environment Protection Act, and other such like legislations, such as the Water (Prevention and Control of Pollution) Act, Air (Prevention and Control of Pollution) Act etc. would be vulnerable to challenge and may eventually not serve the purpose for which such a policy is framed. Therefore, while formulating its policies, the State is obliged to take into account all the relevant laws and the statutory obligations which the State is obliged to fulfill, lest the policy of the State which becomes one sided and imbalanced. A policy evolved in the largest public interest and public good can certainly not be said to be against the strategic, scientific or economic interest of the State.

24. For the aforesaid reasons, I find no merit in this petition and no reason to interfere with the impugned order passed by the learned CIC. Accordingly, the present petition is dismissed.

(VIPIN SANGHI)
JUDGE

MAY 17, 2012
sr

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6773/2011

JOGINDER PAL GULATI ..... Petitioner

Through: Dr. Rakesh Gupta, Ms Rani Kiyala, Mrs Ayushi Pareek and Mr Shubham Rastogi, Advs.

versus

THE OFFICER ON SPECIAL DUTY

(ITA II) CUM CPIO and ANR ..... Respondents

Through: Mr Jatan Singh, CGSC with Mr Soayib Qureshi, Adv. for Resp./UOI.

Mr A.S. Singh, Adv. for R- 3 and 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

02.04.2013

1. This writ petition has been filed to impugn the order of the Central Information Commission dated 12.07.2011. In addition, a writ of mandamus has been sought directing the respondents to supply the copy of the Central Board of Direct Taxes (in short CBDT) circular/ instruction dated 19.06.2009.

2. The petitioner, who is an advocate by profession, and is principally practicing in the field of income tax law, had filed an application dated 05.07.2010, with the CBDT under Section 6 of the Right to Information Act, 2005 (in short the RTI Act) seeking information pertaining to cases excluded from scrutiny, where the disclosure was made during survey. In addition to this, further information was sought qua scrutiny guidelines for the financial year 2009-10. The CPIO of the CBDT vide letter dated 19.07.2010 refused to supply information as sought for by the petitioner.

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3. Aggrieved by the same, petitioner filed an appeal with the first appellate authority. In the appeal an additional request was made, for being supplied, the judgment dated 11.02.2008, passed by the CIC, in the case of Shri Kamal Anand. By order dated 03.08.2010 the appeal of the petitioner was dismissed. The petitioner was, however, supplied a copy of the CIC?s judgment in the case of Kamal Anand.

4. Aggrieved by the same, petitioner preferred an appeal with the CIC, which was dismissed by the impugned order. Importantly, with the appeal the petitioner had furnished copies of scrutiny guidelines for the financial year 2004-05 and 2007-08, which were in public domain.

5. Learned counsel for the petitioner submits that the impugned order is erroneous in law and on facts for the following reasons:

(i) The information with regard to scrutiny guidelines has all along been in public domain. For this purpose he has referred me to instructions issued by CBDT, from time to time, which have been appended at pages 83 to 99 of the paper book. These guidelines have been issued in the year 1983, 1999, 2003 and 2005.

(ii) The receipt of information qua scrutiny guidelines is necessary as it would enable him to advise his clients as to whether his client has been correctly picked up for random scrutiny. The aspects pertaining exercise of jurisdiction by concerned officer of the Income Tax Department, according to Mr Gupta, would turn on the contents of scrutiny guidelines.

(iii) Information has been denied purportedly under the provisions of Section 8(1)(a) of the RTI Act on a specious ground that furnishing information with regard to scrutiny guidelines would impact the economic

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interest of the country.

5.1 Mr Gupta has submitted, given the fact that, in the past such information has been supplied, it is difficult to appreciate as to how economic interest of the country would now suddenly get impacted in scrutiny guidelines are put in public realm. This is especially so, in the circumstances that in order to ascertain whether or not an Assessing Officer has correctly exercised his jurisdiction, availability of the scrutiny guidelines in public domain, attains importance.

6. In rebuttal, Mr A.N. Singh and Mr Jatan Singh submitted that, in

order to avoid harassment to the general public, and to ensure fairness in the selection of cases, which are taken up for scrutiny, the selection is done through what is known as : Computer Assisted Selection Scheme (CASS).

6.1 It is further submitted that, where there is economic manipulation, the selection of an assessee for scrutiny is carried out manually under the overall guidance of CBDT. In this category of cases, according to the learned counsels for the respondents, are included cases which are taken up for search and survey under Section 132 and 133 of the Income Tax Act, 1961 (in short the I.T. Act). It is submitted, in order to ensure that, there is no unfairness in selection of cases for scrutiny; guidelines are issued to the Assessing Officers in this behalf which, if revealed, would enable the assessees to manipulate their returns.

6.2 It is the contention of learned counsels for the respondents that, scrutiny guidelines are issued in the beginning of each financial year, which not only applies to pending returns, but also those returns which are filed thereafter. Any guideline issued, operates till such time a fresh guidelines

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is issued. By way of illustration, it is submitted that in respect of financial year 2009-10, the guideline would have been issued in the beginning of the financial year which would apply not only to the returns which were filed prior to the issuance of the guideline, but would also

apply to those returns which are filed thereafter. It is the submission of the learned counsel for the respondents that, therefore, the CIC has correctly upheld the stand of the respondents in declining the request of the petitioner for supply of information sought for, in the instant case. This information according to the learned counsels for respondents falls within the realm of Section 8(1)(a) of the RTI Act and thus stands excluded as it would impact the economic interest of the country.

7. I have heard the learned counsel for the parties and perused the record. Undoubtedly, the instructions with regard to procedure for selection of cases for scrutiny have been issued from time to time both qua corporate assessees as well as non-corporate assessees. By way of example, one may only refer to instructions no. 1509 dated 13.05.1983, instruction no. 1967 dated 07.06.1999, instruction no. Nil of 2005 reported in (2005) 199 CTR (St.) 1, Instruction No. 11/2003 dated 17.10.2003 and Instruction no. 10/2003 dated 26.09.2003. These instructions give detailed procedure on the basis on which the concerned officers are required to make a random selection of assessees whose cases are taken up for scrutiny. As would be evident, these instructions were in public domain even prior to the enactment of the RTI Act.

7.1 Another aspect which comes to fore on perusal of the said instructions, is that most of these instructions have been issued in the middle

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of the financial year and not in the beginning as is sought to be contended before me; which is incidently also the stand taken before the CIC in Kamal Anand case.

7.2 Even if I were to accept the argument that the instructions for scrutiny are issued in the beginning of the financial year, that would make no material difference qua the case at hand as it is the case of the respondents themselves that, they apply the guidelines to pending returns as well. Therefore, the argument, that assessees would configure their returns in the

manner, which would impact the economic interest of the country, cannot be accepted.

7.3 There is no definition of the expression ?economic interest? in the RTI Act. As is ordinarily understood, the term economic would mean connected with or related to the economy. Economy would generally relate to aspects of wealth and resources of the country, its production, consumption and distribution. The term wealth, would include, I take it, the financial resources of the country. While the term ?interest? in the context of the RTI would mean financial stake. (See Concise Oxford Dictionary 9th Edition Pages 429-430 and Page 710).

7.4 The expression, economic interest, thus takes within its sweep matters which operate at a macro level and not at an individual, i.e., micro level. In my view, by no stretch of imagination can scrutiny guidelines impact economic interest of the country. These guidelines are issued to prevent harassment to assessees generally. It is not as if, de hors the scrutiny guidelines, the I.T. Department cannot take up a case for scrutiny, if otherwise, invested with jurisdiction, in that behalf. This is an information

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which has always been in public realm, and therefore, there is no reason, why the respondents should keep it away from the public at large. Thus, in my opinion, provisions of Section 8(1)(a) of the RTI Act would have no applicability in the instant case.

8. In so far as the impugned order is concerned, there is nothing stated in the operative part which would seem to indicate that the CIC has come to the conclusion which it has, is based on the fact that, the economic interest of the country, will get effected. The CIC, in the

operative part has merely recorded what has been conveyed to it vis-a-vis the procedure for selection of cases for scrutiny.

9. In view of the above, the impugned order is set aside. The respondents shall supply the relevant scrutiny guidelines to the petitioner for the financial year 2009-10. The respondents shall hereafter upload the guidelines with regard to scrutiny on their website.

10. With the aforesaid observations, the writ petition is disposed of.

RAJIV SHAKDHER, J

APRIL 02, 2013

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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 28th May, 2012**

\+ **LPA No.487/2011**

ALL INDIA INSTITUTE OF MEDICAL SCIENCES **.....** Appellant
Through: Mr. Sahil S. Chauhan, Adv for Mr. Mehmood Pracha, Adv.

Versus

VIKRANT BHURIA **.....** Respondent
Through: None.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This intra court appeal impugns the order dated 22nd December, 2010 of the learned Single Judge dismissing *in limine* WP(C) No. 8558/2010 preferred by the appellant. The said writ petition was preferred impugning the decision dated 12th November, 2010 of the Central Information Commission (CIC) directing the appellant to furnish to the respondent the information sought by the respondent. Notice of this appeal and of the application for condonation of 106 days delay in filing this appeal was issued vide order dated 26th May, 2011 and the operation of the order dated 22nd December, 2010 of the learned Single Judge was also stayed. The

respondent remained unserved with the report that "a lady at the address of the respondent refused to accept the notice on the ground that the respondent was working at "Jabwa" and she had no knowledge of the notice". The respondent was directed to be served afresh but no steps were taken by the appellant. When the matter came up before us on 1st March, 2012, being of the view that the matter was fully covered by the judgment of the Supreme Court in ***The Institute of Chartered Accountants of India v. Shaunak H. Satya*** (2011) 8 SCC 781, the counsel for the appellant was asked to satisfy this Court as to the merit of this appeal. The counsel for the appellant sought adjournment from time to time and in these circumstances on 30th March, 2012 orders were reserved in the appeal with liberty to the counsel for the appellant to file written arguments. Written arguments dated 11th April, 2012 have been filed by the appellant and which have been considered by us.

2. The respondent in his application dated 5th April, 2010 had sought the following information from the Information Officer of the appellant.

> "1. Certified copies of original questions papers of all Mch super-speciality entrance exam conducted from 2005-2010.

2. Certified copies of correct answers of all respective questions asked in Mch super-speciality entrance exam conducted from 2005-2010."

3. The Information Officer of the appellant vide reply dated 21st April, 2010 refused to supply the information sought on the ground that the "questions and their answers are prepared and edited by AIIMS, thus the product remains 'intellectual property' of AIIMS. Since these questions are part of the question bank and likely to be used again, the supply of question booklet would be against larger public interest". The provisions of Section 8 (1) (d) and 8(1) (e) of the Right to Information Act, 2005 were also invoked.

4. The respondent preferred an appeal to the First Appellate Authority. The First Appellate Authority sought the comments of the appellant AIIMS. AIIMS, besides reiterating what was replied by its Information Officer added that the information asked was a part of confidential documents which compromises the process of selection and thus could not be disclosed. Though the order of the First Appellate Authority is not found in the paper book, but it appears that the appeal was dismissed as the respondent preferred a second appeal to the CIC.

5. It was the contention of the appellant before the CIC that there are limited number of questions available with regard to super-speciality subjects in the question bank and that the disclosure of such questions would only encourage the students appearing for the exam to simply memorize the answers for the exam, thereby adversely affecting the selection of good candidates for super-speciality courses. It was thus argued that the question papers of the entrance examination for super-speciality courses could not be made public.

6. CIC vide its order dated 12th November, 2010 (supra), noticing the admission of the appellant that the question papers could not be termed as 'intellectual property' and observing that the appellant had been unable to invoke any exemption sub-clause of Section 8(1) of the Act to deny information and further holding that the refusal of information was not tenable under the Act, allowed the appeal of the respondent and directed the appellant to provide complete information to the respondent.

7. The learned Single Judge, as aforesaid dismissed the writ petition of the appellant challenging the aforesaid order of CIC *in limine* observing that the appellant had not been able to show how the disclosure of the entrance

exam question papers would adversely affect the competitive position of any third party and thus Section 8(1)(d) was not attracted. It was further observed that there was no fiduciary relationship between the experts who helped to develop the question bank and the appellant and thus Section 8(1)(e) also could not be attracted.

8. The appellant in its written submissions before us urges:

i. that the subject matter of this appeal is not covered by the judgment of the Supreme Court in ***Shaunak H. Satya*** (supra) as the facts and circumstances are completely different;

ii. that the entrance examination for super-speciality courses was introduced by the appellant only in the year 2005;

iii. that at the level of super-speciality examinations, there can be very limited questions, which are developed gradually; that such question papers are not in public domain; that a declaration is also taken from the examinee appearing in the said examination that they will not copy the questions from the question papers or carry the same;

iv. per contra, in ***Shaunak H. Satya*** (supra) the Institute of Chartered Accountants (ICA) was voluntarily publishing the suggested answers of the question papers in the form of a paper book and offering it for sale every year after examination and it was owing to the said peculiar fact that it was held that disclosure thereof would not harm the competitive position of any third party;

v. that the information seeker in ***Shaunak H. Satya*** (supra) was a candidate who had failed in examination and who was raising a question of corruption and accountability in the checking of question papers; per contra the respondent herein is neither a candidate nor has appeared in any of the super-speciality courses examination conducted by the appellant;

vi. that the appellant consults the subject experts, designs the question papers and takes model answers in respect of each question papers; such question papers prepared by experts in a particular manner for the appellant are original literary work and copyright in respect thereof vests in the appellant;

vii that the examinees taking the said examination are informed by a stipulation to the said effect on the admit card itself that civil and criminal proceedings will be instituted if found taking or attempting to take any part of the question booklets;

viii. that copyright of appellant is protected under Section 8(1)(d);

ix. that Section 9 of the Act also requires the Information Officer to reject a request for information, access whereto would involve an infringement of copyright subsisting in a person other than a State;

x. that the appellant also gives a declaration to the paper setters to protect their literary work - reliance in this regard is placed on Section 57 of the Copyright Act, 1957;

xi. that at the stage of super-speciality, there can be very limited questions which can be framed and if the question papers of all the examinations conducted from 2005-2010 are disclosed, then all possible questions which can be asked would be in public

domain and that would affect the competitive position of students taking the examinations.

9. We have minutely considered the judgment of the Apex Court in ***Shaunak H. Satya*** (supra) in the light of the contentions aforesaid of the appellant and find -

i. that the information seeker therein was an unsuccessful examinee of the examination qua which information was sought;

ii. that the ICA had pleaded confidentiality and invoked Section 8(1)(e) of the Act for denying the information as to "number of times the marks of any candidate or class of candidates had been revised, the criteria used for the same, the quantum of such revision and the authority which exercised the said power to revise the marks";

ii. that the CIC in that case had upheld the order refusing disclosure observing that the disclosure would seriously and irretrievably compromise the entire examination process and the instructions issued by the Examination Conducting Public Authority to its examiners are strictly confidential;

iii. it was also observed that the book annually prepared and sold by the ICA was providing 'solutions' to the questions and not 'model answers';

iv. however the High Court in that case had directed disclosure for the reason of the suggested answers being published and sold in open market by the ICA itself and there being thus no confidentiality with respect thereto. It was also held that the confidentiality disappeared when the result of the examination was declared.

10. The Supreme Court, on the aforesaid finding, held-

i. that though the question papers were intellectual property of the ICA but the exemption under Section 8(1)(d) is available only in regard to intellectual property disclosure of which would harm the competitive position of any third party;

ii. that what may be exempted from disclosure at one point of time may cease to be exempted at a later point of time;

iii. that though the question papers and the solutions/model answers and instructions cannot be disclosed before the

examination but the disclosure, after the examination is held would not harm the competitive position of any third party inasmuch as the question paper is disclosed 'to everyone' at the time of examination and the ICA was itself publishing the suggested answers in the form of a book for sale every year, after the examination;

iv. the word "State" used in Section 9 of the Act refers to the Central Government or the State Government, Parliament or Legislature of a State or any local or other authority as described under Gazette of the Constitution;

v. use of the expression "State" instead of "public authority" showed that State includes even non-government organizations financed directly or indirectly by funds provided by the appropriate Government;

vi. ICA being a 'State' was not entitled to claim protection against disclosure under Section 9.

vii. furnishing of information by an examining body, in response to a query under RTI Act, may not be termed as an infringement of copyright. 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 the Act and there is no larger public interest requiring denial of the statutory exemption regarding such information;

viii. the competent authorities under the RTI Act 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.

11. The dissection aforesaid of the judgment ***Shaunak H. Satya*** in the light of the arguments of the appellant noted above does show that the

learned Single Judge has not dealt therewith. We have satisfied ourselves from perusal of the writ record that, at least in the writ petition, the same grounds were taken, whether orally urged or not. The same do require consideration and we do not at this stage deem it appropriate to remand the matter to the Single Judge.

12. We are conscious that though notice of this appeal was issued to the respondent but the respondent remains unserved. We have wondered whether to again list this appeal for service of the respondent, to consider the aforesaid arguments of the appellant and the response if any of the respondent thereto but have decided against the said course, finding the respondent to be a resident of Indore, having participated in the hearing before the CIC also through audio conferencing and also for the reason that inspite of the order of the learned Single Judge having remained stayed for the last nearly two years, the respondent has not made any effort to join these proceedings. We have in the circumstances opted to decipher the contentions of the respondent from the memoranda of the first and the second appeals on record and from his contention in the audio conferencing, as recorded in the order of the CIC.

13. The respondent in the memorandum of first appeal, while admitting the question papers and model answers to be intellectual property of appellant, had pleaded that publication thereof was in larger public interest as the aspiring students would be able to prepare and understand the pattern of questions asked in super-speciality entrance examination in future. It was also pleaded that question papers of most of the other examinations held were available to the students and generally only 10-20% of the questions were repeated. It was also his case that with the galloping advancement in medical science, the average student is not able to understand what to study and follow and preparation for the examination would be facilitated for the prospective examinees if the question papers are made public. In the memorandum of the second appeal it was also pleaded that when the best faculty was available to the appellant, if did not need to depend on old question papers. During the hearing via audio conferencing before the CIC, the respondent had contended that the question papers could not be termed as intellectual property and it was in larger public interest to provide the questions to the aspiring students who will be able to understand the pattern in which the questions are framed.

14. We tend to agree with the counsel for the appellant that the judgment of the Apex Court in ***Shaunak H. Satya*** (supra) cannot be blindly applied to the facts of the present case. The judgment of the Apex Court was in the backdrop of the question papers in that case being available to the examinees during the examination and being also sold together with suggested answers after the examination. Per contra in the present case, the question papers comprises only of multiple choice questions and are such which cannot be carried out from the examination hall by the examinees and in which examination there is an express prohibition against copying or carrying out of the question papers. Thus the reasoning given by the Supreme Court does not apply to the facts of the present case.

15. We are satisfied that the nature of the examination, subject matter of this appeal, is materially different from the examination considered by the Supreme Court in the judgment supra. There are few seats, often limited to one only, in such super-speciality courses and the examinees are highly qualified, post graduates in the field of medicine. Though the respondent, as aforesaid, has paid tributes to the faculty of the appellant and credited them with the ingenuity to churn out now questions year after year but we cannot ignore the statement in the memorandum of this appeal supported by the

affidavit of the Sub-Dean (Examinations) of the appellant to the effect that the number of multiple choice questions which can be framed for a competitive examination for admission to a super-speciality course dealing with one organ only of the human body, are limited. This plea is duly supported by the prohibition on the examinees from copying or carrying out from the examination hall the question papers or any part thereof. We have no reason to reject such expert view.

16. The Sub-Dean of Examinations of the appellant in the Memorandum of this appeal has further pleaded that if question papers are so disclosed, the possibility of the examination not resulting in the selection of the best candidate cannot be ruled out. It is pleaded that knowledge of the question papers of all the previous years with correct answers may lead to selection of a student with good memory rather than an analytical mind. It is also pleaded that setting up of such question papers besides intellectual efforts also entails expenditure. The possibility of appellant, in a given year cutting the said expenditure by picking up questions from its question bank is thus plausible and which factor was considered by the Supreme Court also in the judgment aforesaid.

17. We also need to remind ourselves of the line of the judgments of which reference may only be made to ***State of Tamil Nadu Vs. K. Shyam Sunder*** AIR 2011 SC 3470, ***The Bihar School Examination Board Vs. Subhas Chandra Sinha*** (1970) 1 SCC 648, ***The University of Mysore Vs. C. D. Govinda Rao*** AIR 1965 SC 491, ***Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth*** (1984) 4 SCC 27 holding that the Courts should not interfere with such decisions of the academic authorities who are experts in their field. Once the experts of the appellant have taken a view that the disclosure of the question papers would compromise the selection process, we cannot lightly interfere therewith. Reference in this regard may also be made to the recent dicta in ***Sanchit Bansal Vs. The Joint Admission Board (JAB)*** (2012) 1 SCC 157 observing that the process of evaluation and selection of candidates for admission with reference to their performance, the process of achieving the objective of selecting candidates who will be better equipped to suit the specialized courses, are all technical matters in academic field and Courts will not interfere in such processes.

18. We have in our judgment dated 24.05.2012 in LPA No.1090/2011 titled ***Central Board of Secondary Education Vs. Sh. Anil Kumar Kathpal***,

relying on the ***Institute of Chartered Accountants of India Vs. Shaunak H. Satya*** (2011) 8 SCC 781 held that in achieving the objective of transparency and accountability of the RTI Act, other equally important public interests including preservation of confidentiality of sensitive information are not to be ignored or sacrificed and that it has to be ensured that revelation of information in actual practice, does not harm or adversely affect other public interests including of preservation of confidentiality of sensitive information. Thus, disclosure of, marks which though existed, but were replaced by grades, was not allowed. Purposive, not literal interpretation of the RTI Act was advocated.

19. We may further add that even in ***Central Board of Secondary Education Vs. Aditya Bandopadhyay*** (2011) 8 SCC 497 that Apex Court though holding that an examining body does not hold evaluated answer books in fiduciary relationship also held that the RTI Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy i.e. of transparency and accountability on one hand and public interest on the other hand. It was further held that when Section 8 exempts certain information, it should not be considered to be a fetter on the Right to Information, but an equally important provision

protecting other public interests essential for fulfillment and preservation of democratic ideas. The Supreme Court further observed that it is difficult to visualize and enumerate all types of information which require to be exempted from disclosure in public interest and the legislature has in Section 8 however made an attempt to do so. It was thus held that while interpreting the said exemptions a purposive construction involving a reasonable and balanced approach ought to be adopted. It was yet further held that indiscriminate and impractical demands under RTI Act for disclosure of all and sundry information, unrelated to transparency and accountability would be counter productive and the RTI Act should not be allowed to be misused or abused.

20. The information seeker as aforesaid is not the examinee himself. The possibility of the information seeker being himself or having acted at the instance of a coaching institute or a publisher and acting with the motive of making commercial gains from such information also cannot be ruled out. The said fact also distinguishes the present from the context in which ***Shaunak H. Satya*** (supra) was decided. There are no questions of transparency and accountability in the present case.

21. When we apply the tests aforesaid to the factual scenario as urged by the appellants and noted above, the conclusion is irresistible that it is not in public interest that the information sought be divulged and the information sought is such which on a purposive construction of Section 8 is exempt from disclosure.

22. We therefore allow this appeal and set aside the orders of the CIC directing the appellant to disclose the information and the order of the learned Single Judge dismissing the writ petition preferred by the appellant. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MAY 28, 2012
'M'

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 18.07.2013**

\+ **W.P.(C) 1388/2012**

RESERVE BANK OF INDIA ..... Petitioner

Through: Mr Rajiv Nayar, Senior Advocate with Mr Kuleep S. Parihar and Mr H.S. Parihar, Advs.

versus

KISHANLAL MITTAL ..... Respondent

Through: Mr Pranav Sachdeva, Adv.

And

\+ **W.P.(C) 1763/2012**

STATE BANK OF INDIA & ANR ..... Petitioner

Through: Mr Neeraj Kishan Kaul, Sr. Adv with Mr Rajiv Kapur, Adv.

versus

KISHAN LAL MITTAL ..... Respondent

Through: Mr Pranav Sachdeva, Adv.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

W.P.(C) 1388/2012

The respondent before this Court vide application dated 24.08.2013, *inter alia*, sought the following information from the CPIO of the petitioner Reserve Bank of India:-

> "(f) Kindly provide details of minutes of meeting of RBI Board for 2 years and minutes of meeting of committees of directors."

The CPIO filed his reply dated 23.09.2011, *inter alia*, responded as under:-

> "2. Having carefully examined your request for minutes of the RBI Board and its Committees for the last two years, we would like to state that the papers sought by you contain various information. As you have not identified the information required by you with reference to the subject matter, or otherwise, we regret our inability to comply with your requests. In case you need any specific information contained in the said papers, it is open to you to make a fresh application for the information required by you. We request you to identify the information required with reference to the subject matter or otherwise, which would facilitate the supply of the information required.
>
> 3. We also advise our inability to furnish the papers you have asked for the last two years as they are voluminous, spread over several files and concern various departments of RBI. The task of screening and compiling them would be extremely labourious and time consuming. As this would disproportionately divert our resources, we are not under obligation to provide them by virtue of the provision contained under Section 7(9) of the RTI Act, 2005."

2. Being aggrieved from the order passed by the CPIO, the respondent approached the First Appellate Authority. Vide order dated 25.10.2011, the First Appellate Authority, *inter alia*, held as under.

"My observations: In his query at Point No. (f) of the original application the appellant had requested to provide details of the minutes of the meetings of RBI Board for the last two years and minutes of the meeting of the Committees of Directors and also copies of all correspondence with file notings on suo moto disclosure, as directed by CIC/SM/A/2010/000148. The CPIO, Secretary's Department had vide her reply dated September 23, 2011 stated that as regards file noting on disclosure mandated by CIC, the CPIO of the RIA Division Will be sending a direct reply to the appellant. In response to the said request, CPIO, HRMD vide his reply dated September 23, 2011 intimated the appellant that the policy in that regard approved by the Committee of the Central Board on April 27, 2011 is available on the website of the Reserved Bank and further provided a copy of the internal process note sheet. I do not find any infirmity in the reply given by the CPIOs. As regards minutes of RBI Board meetings and minutes of the meetings of the Committees of Directors for the last two years, I observe that CPIO vide her letter dated September 23, 2011 expressed her inability to comply with the request as the papers sought by the appellant contained various information spread over several files and concern various departments of RBI and the task of screening and compiling them would be extremely laborious and time consuming. The CPIO held that this would disproportionately divert the resources of the Reserved Bank and as such they are not under obligation to provide the requested information by virtue of the provisions contained under Section 7(9) of the Act. The CPIO, Secretary's Department, however, stated that in case the appellant needs any specific information he may make a fresh request for the same after identifying the information required with reference to the subject matter

which would facilitate the CPIO to supply the information required.

Also, the appellant has contended that CPIO could have provided information without screening or granted access to the appellant to screen the information from various files because information has also been asked to be provided by CIC in another case. The records before me indicate that the appellant has sought voluminous information which covers several subject matters which are inextricably intertwined. It is possible that some of the material cannot be disclosed on account of the exemptions contained in Section 8. Further, I also observe that the queries of the appellant are open ended and appear to be a fishing and roving nature. I, therefore, cannot attribute any fault in the decision of the CPIO asking to specify the information sought. As regards the appellant's contention that the CIC has already directed disclosure of the information sought in one of the decisions, I observe that the CIC had in its decision CIC/SM/A/2010/000148 dated October 28, 2010 conceding that the information sought is voluminous, directed to provide information for the preceding three months after deleting all references which are exempt. That order does not support the present request of the appellant."

3. Being aggrieved from the order passed by the First Appellate Authority, the respondent approached the Central Information Commission by way of an appeal under Section 19 of the Right to Information Act and vide order dated 09.02.2012, the said Commission, *inter alia,* directed as under:-

> **"**The PIO will provide the minutes of the board meetings of the RTI for the last two years on a CB to the appellant. If any of the details are exempt under Section 8(1) of the RTI Act they may be severed as per the provisions of Section 10 of the RTI Act. The Commission also directs RBI to disclose minutes of its meetings on its website as per the requirements of Section -4 of the RTI Act. RBI may severe any information that is exempt as per the provisions under Section 10 of the RTI Act. The RBI will display minutes of its board meetings by 01 April, 2012 of all board meetings held thereafter."

4. It would be seen from the response sent by CPIO that he had given two grounds for declining the minutes of the RBI Board and its Committees. The first ground given by the CPIO was that the respondent had not identified the information required by him with reference to the subject matter. He was accordingly asked to specify the information required by him and was given liberty to apply fresh for such specified information. The second reason given by the CPIO for declining the information was that the papers which the respondent was seeking were voluminous, spread over several files, concerned various departments of RBI and the task of screening and compiling them would be extremely labourious and time, consuming thereby disproportionately diverting their resources. The CPIO, therefore, claimed benefit of Section 7(9) of the Right to Information Act, 2005.

The First Appellate Authority not only upheld the order passed by the CPIO, but also felt that there was a possibility that some of the material could be such which could not be disclosed on account of exemptions contained in Section 8 of the Act. He was also of the view that the queries of the petitioner were open ended and in the nature of a fishing and roving inquiry. However, none of the grounds given by CPIO and the First Appellate Authority for refusing the information sought by the respondent were discussed and commented upon by the Commission. This was not the view of the Commission that the respondent could not have been asked by the CPIO to identify any particular information, and was required to supply the whole of the information sought by him, unless it was except under Section 8(1) of the Right to Information Act, 2005. The Commission did not expressly reject the contention of the CPIO that the record sought by the respondent being quite voluminous, compiling and providing said information would disproportionately diverge their resources towards screening, collection and compilation of the said information.

5. It appears from the order passed by the Commission that copy of the order passed by the First Appellate Authority was not annexed to the appeal. If that is so, the Commission, considering that it was hearing an appeal against the order passed by the First Appellate Authority, should, in the first instance, have asked the respondent to file the copy of the said order or should have called for the file of the First Appellate Authority and examined the order itself before passing the

impugned order. This is yet another legal infirmity in the order passed by the Commission.

W.P.(C) 1763/2012

6. The respondent, vide application dated 31.05.2010, *inter alia* sought the following information from the petitioner State Bank of India:-

> "Kindly provide details of minutes of meetings of board of directors of SBI from April, 2008 onwards."

The CPIO of the petitioner-Bank, however, declined to provide the aforesaid information, on the ground that the said information was exempt from disclosure under Section 8(1)(d) of the RTI Act, 2005. Being aggrieved from the order of the CPIO, the respondent preferred an appeal before the First Appellate Authority expressing a grievance that the CPIO had refused to provide information, without explaining how Section 8(1)(d) was attracted to his case. He also took the plea that information sought by him was required to be displayed on the website of the bank in terms of Section 4 of the Act. The First Appellate Authority, however, rejected the appeal holding that the information sought was of commercial confidence, disclosure of which could harm the competitive position of the bank and no larger public interest had been shown by the respondent/applicant which would warrant disclosure of the said information.

Being aggrieved from the order passed by the First Appellate Authority, the respondent preferred an appeal before the Central Information Commission under Section 19 of the Act. The Commission vide impugned order dated 09.02.2012 passed the following order with respect to the aforesaid information:-

> "Query(f): The PIO will provide the minutes of the board meetings of the RTI for the last two years on a CD to the appellant. If any of the details are exempt under Section 8(1) of the RTI Act they may be severed as per the provisions of Section 10 of the RTI Act. The Commission also directs RBI to disclose minutes of its meetings on its website as per the requirements of Section 4 of the RTI Act. RBI may severe any information that is exempt as per the provisions under Section 10 of the RTI Act. The RBI will display minutes of its board meetings by 01 April, 2012 of all board meetings held thereafter."

7. It would thus be seen that the Commission did not at all deal with the view taken by the CPIO and the First Appellate Authority that the information sought by the respondent was exempt under Section 8 (1)(d) of the Act which exempts that 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. The Commission did not opine that the minutes of the board meetings for the last two years would not contain any information in the nature of commercial confidence, trade secret or intellectual property of the petitioner-bank, the disclosure of which could harm the competitive position of a

third party. The Commission also did not take the view that larger pubic interest warranted disclosure of the information sought by the respondent. In fact, probably, the Commission could not even have recorded such a finding without examining the minutes of the board meetings held in the last two years.

It is true that the Commission directed exclusion of the information which was exempt under Section 8(1)(d) of the Act, but, that, in my view, was not a correct approach to deal with the matter. By doing so, the Commission left the whole thing to the discretion of the petitioner to decide as to which information would be exempt from disclosure and which information would not attract the exemption provisions contained in the Act. The correct approach, in my view, would have been to call upon the petitioner-bank to satisfy the Commission as to how and to what extent the information sought by the petitioner, included matters of commercial confidence, trade secret or intellectual property of the petitioner the disclosure of which would harm the competitive position of a third party and then take a view in the matter. For this purpose, the Commission could also have examined such part of the information which the petitioner claimed to be exempt under Section 8(1)(d) of the Act, without disclosing the same to the respondent. Of course, if the Commission was of the view that larger public interest warranted disclosure of the information, it could have directed such disclosure even if the information was in the nature of commercial confidence, trade secret or intellectual property of the petitioner, but, to leave it to the petitioner to decide as to which

information was exempt from disclosure and which could be disclosed to the applicant is likely to result in further litigation since the applicant may not be satisfied with the decision of the petitioner-bank in this regard and may be constrained to again knock at the door of the Commission.

8. The Commission, while deciding appeals of this nature, also needs to keep in mind the following view taken by the Apex Court in ***Central Board of Secondary Education and Anr vs. Aditya Bandopadhyay and Ors.*** (2011) 8 SCC 497:

> "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."

9. When the order passed by the First Appellate Authority is challenged before the Commission, it is required to deal, at least briefly with the reasons given by the First Appellate Authority in support of its decision. As observed by Supreme Court in ***Union of India vs. Mohan Lal Capoor and others***, AIR 1974 SC 87, "reasons are the links between the material on which certain conclusions are based and the actual conclusions. In my view, it is not open to the Commission to pass an order which contains only directions, without giving reasons for setting aside the order passed by the First Appellate Authority. Such an order by the Second Appellate Authority, when it sets aside the order of the First Appellate Authority, in my view, is not envisaged, since in the event of the order being challenged before a Writ Court the said Court would not be in a position to know what were the reasons which impelled the Commission to set aside the order passed by the First Appellate Authority. The order of the Commission must necessarily disclose at least brief reasons for disagreeing the view taken by the First Appellate Authority, and setting aside the order.

10. In M/s. Woolcombers of India Ltd. vs. Woolcombers Workers Union and another, AIR 1973 SC 2758, Supreme Court, while considering an award under Section 11 of the Industrial Disputes Act, insisting upon the need of giving reasons in support of the conclusions in the award observed that the very requirement of giving reason is to prevent unfairness or arbitrariness in reaching conclusions. It

was further observed that that a just but unreasoned conclusion does not appear to be just to those who read the same. Reasoned and just conclusion on the other hand will also have the appearance of justice. The Apex Court emphasized that since the awards are subject to Article 136 jurisdiction of the Apex Court, it would be difficult for the Court, in the absence of reasons, to ascertain whether the decision was right or wrong.

In ***Siemens Engineering and Manufacturing Co. of India Ltd. vs. The Union of India and another***, AIR 1976 SC 1785, the Apex Court again emphasized that every quasi- judicial order must be supported by reasons, the rule needs to be observed in its proper spirit and a mere pretence of compliance would not satisfy the required law.

In ***Charan Singh vs. Healing Touch Hospital and others***, AIR 2000 SC 3138, a Three-Judge Bench of the Apex Court, dealing with a grievance under Consumer Protection Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons. The Court observed that the requirement of recording reasons being too obvious to be reiterated needed no emphasizing.

11. For the reasons stated hereinabove the impugned orders dated 09.02.2012 and 28.06.2011 passed by the Central Information Commission are aside and both

the matters are remitted back to the said Commission to pass fresh orders to the extent the matter relates to the information extracted in this order.

The parties shall appear before the Commission on 05.08.2013. The Commission shall pass fresh orders, after hearing the parties, within two months thereafter.

V.K. JAIN, J

JULY 18, 2013
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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 23rd March, 2012**

\+ **LPA No. 900/2010**

BHARAT SANCHAR NIGAM LTD. ..... Appellant
Through: Mr. Sameer Agarwal, Advocate

Versus

SHRI CHANDER SEKHAR ..... Respondent
Through: Mr. Surinder Bir, Advocate.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the judgment dated 03.05.2010 of the learned Single Judge dismissing W.P.(C) No.2946/2010 preferred by the appellant. The said writ petition was preferred impugning the order dated 10.11.2009 of the Central Information Commission (CIC) allowing the appeal filed by the respondent and directing the appellant to disclose the information sought.

2. The appellant had floated a tender titled 'GSM Phase-VI' for the installation of 93 million GSM lines in four parts. M/s KEC International Ltd. was one of the bidders in the said tender. The respondent, claiming to be one of the shareholders of the said KEC International Ltd., on 02.07.2009 applied under the provisions of the Right to Information Act, 2005 seeking the following information:

"a. Copy of the complete Report of Evaluation of Tender on the Financial Bids received from various bidders against Part 3 of Tender No. IMPCS/PHASE VI/WZ/CGMT-MH/2008-09/1 dated 01.05.2009 opened on 28.02.2009 for West Zone;

b. Copy of the complete Report of Evaluation of Tender on the Financial Bids received from various bidders against Part 3 of Tender No.CTD/IMPCS/TENDER/ PHASE VI/2008-09 dated 01.05.2009 opened on 28.02.2009 for East Zone;

c. Copy of the complete Report of Evaluation of Tender on the financial Bids received from various bidders against Part 3 of Tender No. CMTS/PB/P&D/PHASE VI/25M/TENDER/2008-09 dated 01.05.2009 opened on 28.02.2009 for North Zone;

d. Copy of the complete Report of Evaluation of Tender on the Financial Bids received from various bidders against Part 3 of Tender No. TA/Cellone/SZ/2008/01 dated 01.05.2009 opened on 28.02.2009 for South Zone."

The respondent further claimed that by then the financial bids had been opened in February, 2009 and evaluation thereof was over.

3. The CPIO of the appellant vide letter dated 30.07.2009 declined the request of the respondent for information on the ground that the information

sought was of "commercial confidence" in nature and claiming exemption from disclosure under Section 8(1)(d) of the Act.

4. The respondent preferred first appeal contending that, the appellant was a Government of India enterprise carrying on works in public interest, utilizing government funds; that the tenders were open tenders; the financial bids were already read out to other bidders at the time of opening of the bids and nothing confidential remained therein; that the bidding process having attained finality, no issues of commercial confidence remained. The first appellate authority however vide order dated 08.09.2009 confirmed the order of the CPIO, also for the reason of the appellant having signed Non Disclosure Agreements with all the participating vendors and the disclosure of the information sought being in violation of the said agreement.

5. The CIC in its order dated 10.11.2009 allowing the appeal of the respondent observed / held, i) that the evaluation process stood completed and thus the commercial position of any of the bidders could not be adversely affected by such disclosure; ii) the exemption under Section 8(1)(d) of the Act is not available since the information was already in public domain owing to the finalization and completion of the bidding process and evaluation and cannot pose a threat to the competitive position of any of the bidders; iii) it was in the larger public interest to disclose such information; iv) that the Non Disclosure Agreements were valid only for the "Confidentiality Period" i.e. till the opening of the bids; v) even otherwise such Non Disclosure Agreements debarring access to information and thereby disrupting the transparency and accountability of the public authority were in violation of the very spirit of the Act and therefore illegal

to the extent they prevented disclosure beyond what was exempted under the Act; vi) that thus the Non Disclosure Agreements if prevented disclosure beyond the confidentiality period also, were illegal; vii) that the public interest "far outweighs the weak contentions put up by the appellant to protect the so called private interests"; viii) that even though the tender process had been challenged in some of the High Courts but the same also did not entitle the appellant to exemption. Accordingly, directions for disclosing the information were issued.

6. The learned Single Judge dismissed the writ petition preferred by the appellant impugning the order aforesaid of the CIC observing / holding, a) that the writ petition filed by KEC International Ltd. impugning the tender process had been finally dismissed by the Supreme Court finding no illegality in the decision making process and declaring the party which was awarded the contract as the lowest bidder – thus the objection to disclosure of information on the ground of the matter being *sub judice* did not survive; b) that the plea of the appellant of the confidentiality period as per the Non Disclosure Agreements being in vogue for the reason of the formal contract having not been entered into with the successful bidder was of no avail since the bidding process was complete and the selection of the successful bidder stood finalized; c) again for the reason of the bidding process having stood completed, the question of the commercial interest of any of the bidders being adversely affected by the disclosure did not arise; d) Section 22 of the Act gives effect to the provisions of the Act 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 the RTI Act - consequently the Non Disclosure Agreements cannot be used by the appellant to defeat the right to information under the Act; e) even otherwise the Non Disclosure Agreements cannot be said to extend beyond the confidentiality period defined in the agreement itself as the period between the opening of the tender and the finalization of the bids.

7. It was the contention of the appellant before this Bench that the bids in the tender aforesaid had never been given the shape of the contract and had been cancelled. This Bench before issuing notice of the appeal directed the filing of an affidavit in this regard by the Chairman of the appellant. An affidavit dated 24.01.2011 has been filed informing that the bids were evaluated and L1, L2 etc. selected for Part-III and price negotiations held with L1; that after negotiations the rates were recommended by the Negotiation Committee to the competent authority for finalization / approval; that since the case pertaining to GSM Phase-VI was being examined qua the allegation of irregularity, the competent authority in its wisdom cancelled / scrapped the tender; as a result of the scrapping, no contract came into existence and even the Advance Purchase Order was not issued; that thus no question of giving any kind of information arose; that making public the confidential information of the tenderers particularly in view of signing of the Non Disclosure Agreements would certainly affect the goodwill of the appellant and would result in reduction in number of participating vendors / tenderers in subsequent tenders floated by the appellant and which would further result in monetary loss as due to reduction in competition there would be an increase in prices.

8. The appellant during the hearing has placed reliance on judgment of this Court in ***Exmar NV Vs. Union of India*** 2006 (1) RAJ 229 (DB) on the aspect of when the contract can be said to be concluded. It has further been contended that the learned Single Judge has failed to notice Clause 18 of the Non Disclosure Agreement whereunder the obligations of confidentiality were to survive the expiration or termination of the agreement, for a period of two years from the date the confidential information was disclosed or the completion of business purpose, whichever is later. It is yet further urged that the learned Single Judge has wrongly assumed that the contract stood awarded to the successful bidder.

9. Per contra, the respondent in the reply filed to the appeal has pleaded that the appellant inspite of numerous representations and Court cases averring irregularities, stonewalled and did not come clean; that ultimately on representations to the Prime Minister's Office, a High Powered Committee was constituted which found irregularities in the evaluation process and recommended the scrapping of the tender; that the objection of the appellant to disclosure of information is not for protection of the commercial and confidential information furnished by any of the bidders but to safeguard its own misdeeds during the evaluation process; that the Non Disclosure Agreements signed by the appellant with the bidders are contrary to the spirit of the Act and illegal; that the reluctance of the appellant to disclose information relating to the tender which had already been scrapped was incomprehensible; that the commercial confidentiality of bids is over once the financial bids are opened and prices of all items of all the bidders including other details are disclosed to all the bidders; that in fact in one of

the writ petitions aforesaid in other High Courts challenging the tender such information had already been brought in public domain. The counsel for the respondent during the hearing has also relied on the judgment dated 02.07.2009 of the High Court of Punjab & Haryana in W.P.(C) No.9474/2009 titled ***Nokia Siemens Networks Pvt. Ltd. Vs. Union of India*** and on ***Canara Bank Vs. The Central Information Commission*** AIR 2007 Kerala 225. He has also drawn attention to the proviso after Section 8(1)(j) of the Act laying down that the information which cannot be denied to the Parliament or State Legislature shall not be denied to any person. It is contended that the information aforesaid cannot be denied to the Parliament and hence the exemptions provided in Section 8(1) of the Act would not be attracted.

10. We, at the outset, deem it appropriate to discuss the issue generally as the same is likely to arise repeatedly. Confidentiality or secrecy is the essence of sealed bids. The same helps the contract awarding party to have the most competitive and best rates / offer. The essential purpose of sealed bidding is that the bids are secret bids that are intended by the vendor and expected by bidders to be kept confidential as between rival bidders until such time as it is too late for a bidder to alter his bid. Sealed bidding means and must be understood by all those taking part in it to mean that each bidder must bid without actually knowing what any rival has bid. The reason for this, as every bidder must appreciate, is that the vendor wants to avoid the bidders bidding (as they would do in open bidding such as at an auction) by reference to other bids received and seeking merely to top those bids by the smallest increment possible. The vendor's object is to get the bidders to bid

"blind" in the hope that then they will bid more than they would if they knew how far other bidders had gone. Additionally, from each bidder's point of view his own bid is confidential and not to be disclosed to any other bidder, and he makes his bid in the expectation, encouraged by the invitation to submit a sealed bid, that his bid will not be disclosed to a rival. If, therefore, a rival has disclosed to him by the vendor the amount of another's bid and uses that confidential information to pitch his own bid enough to outbid the other, this is totally inconsistent with the basis on which each bidder has been invited to bid, and the rival's bid is not a good bid; likewise if the rival adopts a formula that necessarily means that he is making use of what should be confidential information (viz. the bid of another) in composing his own bid. In such a case, the amount of the other's bid is being constructively divulged to him. The process of inviting tenders has an element of secrecy − since nobody knows what would be the bid of the competitor, every one will try to show preparedness for the best of the terms which will be acceptable to the institution calling the tenders. This requires ensuring that the tenders are not tampered with, the offers are not leaked to another bidder or even to the officers of the institution for which the tenders are called. Secret bids thus promote competition, guard against favouritism, improvidence, extravagance, fraud and corruption and lead to award of contract, to secure the best work at the lowest price practicable.

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

institution to evaluate the suitability and reliability of the contracting party. The bidders are often required to, in their bids disclose information about themselves, their processes, turnover and other factors which may help the tender calling institution to evaluate the capability of the bidder to perform the contracted work. The secret bids/tenders are often divided into technical and financial parts. The bidders in the technical part may reveal to the tender calling institution their technology and processes evolved and developed by them and which technology and processes may not otherwise be in public domain and which the bidder may not want revealed to the competitors and which technology/processes the bidder may be using works for the other clients also and which technology/processes if revealed to the competitors may lead to the bidder losing the competitive edge in subsequent awards of contracts. If it were to be held that a bidder by virtue of participating in the tender becomes entitled to all particulars in the bids of all the bidders, the possibility of unscrupulous businessmen participating in the tender merely for acquiring such information, cannot be ruled out. Such disclosure may lead to the competitors undercutting in future bids. We may at this stage notice that the Freedom of Information Act prevalent in United States of America as well as the Freedom of Information Act, 2000 in force in United Kingdom, both carve out an exception qua trade secrets and commercial or financial information obtained from a person and which is privileged or confidential. The tests laid down in those jurisdictions also, is of 'if disclosure of information is likely to impair government's ability to obtain necessary information in future or to cause substantial harm to competitive position of person from whom information is obtained'. It has been held

that unless persons having necessary information are assured that it will remain confidential, they may decline to cooperate with officials and the ability of government to make intelligent well-informed decisions will be impaired. Yet another test of whether the information submitted with the bids is confidential or not is of 'whether such information is generally available for public perusal' and of whether such information 'is customarily made available to the public by the business submitter'. If it is not so customarily made available, it is treated as confidential.

12. Though the report of the appellant of evaluation of tenders, is a document of the appellant but the evaluation therein is of the tenders of the various bidders and the report of evaluation may contain data and other particulars from the bids and which data/particulars were intended to be confidential. If any part of the bids is exempt from disclosure, the same cannot be supplied obliquely through the disclosure of evaluation report.

13. What thus emerges is that a balance has to be struck between the principle of promoting honest and open government by ensuring public access to information created by the government on the one hand and the principle of confidentiality breach whereof is likely to cause substantial harm to competitive position of the person from whom information is obtained and the disclosure impairing the government's ability to obtain necessary information in future on the other hand. Also, what has been discussed above may not apply in a proceeding challenge wherein is to the evaluation process. It will then be up to the Court before which such challenge is made, to decide as to what part of the evaluation process is to be disclosed to the challengers.

14. Questions also arise as to the information contained in the bids / tenders of the unsuccessful tenderers. Often it is found that the same is sought, to know the method of working and to adversely use the said information in future contracts. Generally there can be no other reason for seeking such information.

15. Once we hold that the information of which disclosure is sought relates to or contains information supplied by a third party and which the third party may claim confidential, the third party information procedure laid down in Section 11 of the Act is attracted. The said aspect has not been considered either by the CIC or by the learned Single Judge.

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

process, of commercial confidence and containing trade secret or intellectual property of the bidders whose bids were evaluated.

17. Though in the light of the view taken by us hereinabove, the question of validity of the agreement need not to be adjudicated but since we have heard the counsels, we deem it our duty to adjudicate upon the said aspect also. Section 22 of the Act relied on by the learned Single Judge though giving overriding effect to the provisions of the Act still saves the instruments "having effect by virtue of any law other than this Act". This Court in ***Vijay Prakash v. Union of India*** AIR 2010 Delhi 7 has held that though Section 22 the Act overrides other laws, the opening non-obstante clause in Section 8 confers primacy to the exemptions enacted under Section 8(1). Thus, once the information is found to be exempt under Section 8(1), reliance on Section 22 is misconceived. Whether the information is of such nature as defined in Section 8(1)(d) of the Act, can be adjudicated only by recourse to Section 11 of the Act.

18. We however do not deem it necessary to adjudicate on the proviso after Section 8(1)(j) of the Act and leave the same to be adjudicated in an appropriate proceedings. We may however notice that a Division Bench of the Bombay High Court in ***Surupsingh Hrya Naik Vs. State of Maharashtra*** AIR 2007 Bombay 121 has held that the proviso has been placed after Section 8(1)(j) and would have to be so interpreted in that context and the proviso applies only to Section 8(1)(j) and not to other sub-sections.

19. The appeal is therefore partly allowed. The matter is remanded back to the CIC. If the respondent is still desirous of the information sought, the CIC shall issue notice to the parties whose bids are evaluated in the evaluation process information qua which is sought by the respondent and decide the request of the respondent after following the procedure under Section 11 of the Act.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 23, 2012
'gsr'..

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.11.2014

\+ **W.P.(C) 85/2010 & CM Nos.156/2010 & 5560/2011**

NARESH TREHAN ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 251/2010 & CM No.526/2010**

AAA PORTFOLIO PVT LTD AND ANR. ..... Petitioners

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 206/2010 & CM No.392/2010**

ESCORTS LTD ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 214/2010 & CM No.445/2010**

CPIO CUM ASSISTANT COMMISSIONER
OF INCOME TAX ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 202/2010 & 389/2010**

ESCORTS HEART INSTITUTE AND
RESEARCH CENTRE ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 207/2010 & CM No.394/2010**

RAJAN NANDA ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Rajiv Nayar, Sr. Advocate with Ms Shyel Trehan and Ms Manjira Dasgupta in W.P.(C) 85/2010.
Mr Sandeep Sethi, Sr. Advocate with Mr Simran Mehta and Mr Prabhat Kalia in W.P.(C) Nos. 251/2010, 206/2010 & 207/2010.
Mr Rohit Puri in W.P.(C) 202/2010.

For the Respondent : In person.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These petitions are filed *inter alia* impugning a common order dated 14.12.2009 passed by the Central Information Commission (hereafter 'CIC') directing the Public Information Officers, Commissioner of Income-tax (hereafter 'PIO') to provide inspection of the records and also other information sought for by the respondent relating to the income tax returns filed by the petitioners (other than the petitioner in W.P.(C) No.214 of 2010).

2. Brief facts which are relevant for examining the controversy in the present petitions are that on 13.01.2009, Rakesh Kumar Gupta – respondent, who is stated to be an informer to the income tax department, filed an application under the Right to Information Act, 2005 (hereafter the 'Act') with the PIO *inter alia* seeking information and all the records available with the Income tax department in respect of nine assessees (out of the said assesses one assessee was deleted due to repetition) for various assessment years. The respondent had also sought:-

> "1. Inspection of all records in above respect.
>
> 2. Kindly provide the copies of the documents mentioned at the time of inspection.
>
> 3. Kindly provide the officers (from assessing officers to CCIT), who are the officers to take action on "Tax Evasion Petition" given by me from 1/8/2003 till date.
>
> Request
>
> 4 If you want to treat the above information as third party information and want to send the notice to so called third parties inviting their objection, then kindly send the complete request to them including all the annexure e.g. citing public interest by me due to which information should be given to me."

3. The details sought by the respondent of the eight assessees (hereinafter collectively referred to as 'assessees') including the details of the assessment years are as under:-

i) Dr. Naresh Trehan - petitioner in W.P.(C) No.85/2010 pertaining to Assessment Year 1998-99 to 2005-06

ii) Mr. Rajan Nanda - petitioner in W.P.(C) No.207/2010 pertaining to Assessment Year 1998-99 to 2005-06

iii) AAA Portfolio Pvt. Ltd. – petitioner in W.P.(C) No.251/2010 pertaining to Assessment Year 1998-99 to 2005-2006

iv) Big Apple Clothing Pvt. Ltd. – petitioner in W.P.(C) No.251/2010 pertaining to Assessment Year 1998-99 to 2005-06

v) Escorts Ltd. - petitioner in W.P.(C) No.206/2010 pertaining to Assessment Year 1998-99 to 2005-06.

vi) Escorts Heart Institute & Research Centre Ltd. (Delhi) - petitioner in W.P.(C) No.202/2010 pertaining to Assessment Year 1998-99 to 2001-02.

vii) Escorts Heart Institute & Research Centre Chandigarh (Society) pertaining to Assessment Year (2001-2002)

viii) Escorts Heart Institute & Research Centre Limited, Chandigarh pertaining to Assessment Year 2000-01 to 2005-06.

4. Since the information sought by the respondent is third party information, the Deputy Commissioner of Income-tax issued separate notices dated 04.02.2009 under Section 11(2) of the Act to the assessees. The assessees submitted their separate objections and objected to the inspection and furnishing of the information. PIO considered the objections of the assessees and rejected the RTI application of the respondent, by its common order dated 16.02.2009, on the ground that the respondent has failed to substantiate the public interest involved in disclosing the

information relating to third parties. PIO, however, held that the Tax Evasion Petition is under compilation and would be provided in due course.

5. The respondent preferred separate appeals before the First Appellate Authority - Addl. Commissioner of Income-tax (hereafter the 'FAA') against the order of PIO. By a common order dated 08.05.2009, FAA rejected the appeal of the respondent. Aggrieved by the order dated 08.05.2009 of FAA, the respondent preferred an appeal before the CIC. By the impugned order dated 14.12.2009, the CIC allowed the appeal and directed PIO to provide inspection of the records and also other information sought for by the respondent.

6. The learned counsel for the petitioner contended:-

6.1 that the information sought for by the respondent such as income tax returns are personal information and are exempt from disclosure under Section 8(1)(j) of the Act. Reliance was placed on decision of Supreme Court in ***Girish Ramchandra Deshpande v. Central Information Commr.*: (2013) 1 SCC 212,** decision of Full Bench of this Court in ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal & Anr.*: 166 (2010) DLT 305** and decision of Full Bench of the CIC in ***G R Rawal v. Director General of Income Tax (Investigation)*: Appeal No. CIC/AT/A/2007/00490, decided on 05.03.2008.**

6.2 that the disclosure of the income tax returns is prohibited under Section 138 of the Income Tax Act, 1961 and can be made only if the Commissioner is satisfied that the disclosure is in public interest, which in the present case was rejected by the Commissioner. Reference was made to

***Hanuman Pershadganeriwala v. The Director of Inspection, Income Tax, New Delhi*: (1974) 10 DLT 96.**

6.3 that the disclosure of information is also exempted under Section 8(1)(e) of the Act as the income tax department is holding the information of the assessees in fiduciary capacity.

6.4 that the respondent has failed to disclose the public interest which is a mandatory requirement under Section 11 of the Act for disclosure of confidential and personal third party information.

6.5 that the disclosure of the information sought for would be violative of the right to privacy, which has been read into Article 21 of the Constitution of India. Reference was made to paragraph 110 to 112 of the decision of this court in ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal & Anr.*: 166 (2010) DLT 305.**

6.6 that the disclosure of income tax returns is expressly forbidden to be published by a tribunal, in the present case and the CIC therefore, exempted under Section 8(1)(b) of the Act.

7. The respondent contended:-

7.1 that he is an informer with the income tax department and sought the information in public interest in order to recover the tax evaded by the petitioners, to recover the properties mis-appropriated by the petitioners and to curb corruption and therefore, the exemptions provided under Section 8(1)(e) and (j) of the Act are not applicable.

7.2 that the bank details and tax details should be given to public, where *prima facie* wrong doing is detected by the government. Reliance was placed on ***Ram Jethmalani & Ors. v. Union of India*****: (2011) 8 SCC 1.**

7.3 that the activities performed by the income tax department are public in nature and the income tax records are public documents. Reliance was placed on ***Bhagat Singh v. Chief Information Commissioner and Ors.*****: 146 (2008) DLT 385**.

7.4 that the disclosure of information under Section 3 of the Act is the rule and exemption under Section 8 of the Act is the exception.

8. The controversy that needs to be addressed is whether income tax returns and the information provided to the income tax authorities during the course of assessment and proceedings thereafter, are exempt under the provision Section 8(1) of the Act and further whether in the given circumstances of this case, the CIC was correct in holding that such information was required to be disclosed in public interest.

9. By virtue of Section 3 of the Act all citizens have a right to information subject to provisions of the Act. The expression "information" is defined under Section 2(f) of the Act as under:-

> "2(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;"

(emphasis provided)

10. It is also relevant to note that by virtue of Section 22 of the Act, the provisions of the Act have an overriding effect over any other inconsistent law or instrument.

11. The petitioners have contended that the income tax returns and other information provided by the assessees during the course of assessment would be exempt from disclosure by virtue of section 8(1)(d), Section 8(1)(e) and 8(1)(j) of the Act. It is thus necessary to examine the applicability of each of the above provisions with respect to the information sought by the respondent.

12. Section 8(1)(d) of the Act expressly provides an exemption in respect of such information. At this stage, it is necessary to refer to Section 8(1)(d) of the Act which reads 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 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;

13. Certain petitioners had specifically pleaded that information provided in the income tax returns could not be disclosed as the information was provided in confidence. The CIC rejected the same by holding that the parties had failed to explain as to how that ground could apply or how

disclosure of information relating to commercial confidence would harm their competitive interest.

14. The income tax returns filed by an assessee and further information that is provided during the assessment proceedings may also include confidential information relating to the business or the affairs of an assessee. An assessee is expected to truly and fairly disclose particulars relevant for the purposes of assessment of income tax. The nature of the disclosure required is not limited only to information that has been placed by an assessee in public domain but would also include information which an assessee may consider confidential. As a matter of illustration, one may consider a case of a manufacturer who manufactures and deals in multiple products for supplies to different agencies. In the normal course, an Assessing Officer would require an assessee to disclose profit margins on sales of such products. Such information would clearly disclose the pricing policy of the assessee and public disclosure of this information may clearly jeopardise the bargaining power available to the assessee since the data as to costs would be available to all agencies dealing with the assessee. It is, thus, essential that information relating to business affairs, which is considered to be confidential by an assessee must remain so, unless it is necessary in larger public interest to disclose the same. If the nature of information is such that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1)(d) of the Act it is necessary to first and

foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties.

15. Insofar as the applicability of Section 8(1)(e) of the Act is concerned, I am unable to accept the contention that a fiduciary relationship within the meaning of Section 8(1)(e) of the Act can be attributed to a relationship between an assessee and the income tax authority. The Supreme Court in the case of ***CBSE v. Aditya Bandopadhyay*: (2011) 8 SCC 497** had explained that the words "information available to a person in its fiduciary relationship" could not be construed in a wide sense but has to be considered in the normal and recognized sense. The relevant extract of the said decision is quoted below:-

> "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."

16. The information provided by an assessee in its income tax return is in compliance of the provisions of the Income Tax Act, 1961 and thus, could not be stated to be information provided in course of a fiduciary relationship.

17. Four of the petitioners (Dr Naresh Trehan, Escorts Heart Institute and Research Center, Delhi, Escorts Heard Institute and Research Center, Chandigarh and Escorts Heart Institute and Research Center Ltd.) had further contended that information sought by the respondent was exempt under Section 8(1)(j) of the Act. Section 8(1)(j) of the Act exempts information which relates to personal information. The said clause is quoted 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,—

xxxx 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:"

18. The question whether the information provided by an individual in his income tax returns is exempt from disclosure under Section 8(1)(j) of the Act is no longer *res integra* in view of the decision of the Supreme Court in ***Girish Ramchandra Deshpande v. Central Information Commr.*: (2013) 1 SCC 212.** The relevant extract of the said judgment is quoted below:

> "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 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 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."

19. The CIC rejected the aforesaid contention by holding that the expression "personal information" would necessarily only apply to an individual and could not be applicable in case of corporate entities.

20. It has been contended by the petitioners that the expression "personal information" must also extend to information relating to corporate entities. Inasmuch as they may also fall within the definition of expression "person" under the General Clauses Act, 1897 as well as under the Income Tax Act, 1961. However, I am unable to accept this contention for the reason that the expression "personal information" as used in clause (j) of Section 8(1) of the Act has to be read in the context of information relating to an individual. A plain reading of the aforesaid clause would indicate that the

expression "personal information" is linked with "invasion of privacy of the individual". The use of the word "the" before the word "individual" immediately links the same with the expression "personal information"

21. Black's law dictionary, sixth edition, *inter alia*, defines the word "personal" as under:-

> "The word "personal" means appertaining to the person; belonging to an individual; limited to the person; having the nature or partaking of the qualities of human beings, or of movable property."

22. A perusal of the above definition also indicates that the ordinary usage of the word "personal" is in the context of an individual human being and not a corporate entity. The U.S. Supreme Court has also interpreted the expression "personal" to be used in the context of an individual human being and not a corporate entity. In the case of ***Federal Communications Commission v. AT&T Inc*: 2011 US LEXIS 1899** the US Supreme Court considered the meaning of the expression "personal privacy" in the context of the Freedom of Information Act, which required Federal Agencies to make certain records and documents publically available on request. Such disclosure was exempt if the records *"could reasonably be expected to constitute an unwarranted invasion of personal privacy"*. The U.S. Supreme Court held that the expression "Personal" used in the aforesaid context could not be extended to corporations because the word "personal" ordinarily refers to individuals. The Court held that the expression "personal" must be given its ordinary meaning. The relevant extract of the said judgment is as under:

""Person" is a defined term in the statute; "personal" is not. When a statute does not define a term, we typically "give the phrase its ordinary meaning." Johnson v. United States, 559 U.S. ___, ___, 559 U.S. 133, 130 S. Ct. 1265, 176 L. Ed. 2d 1, 8 (2010). "Personal" ordinarily refers to individuals. We do not usually speak of personal characteristics, personal effects, personal correspondence, personal influence, or personal tragedy as referring to corporations or other artificial entities. This is not to say that corporations do not have correspondence, influence, or tragedies of their own, only that we do not use the word "personal" to describe them.

Certainly, if the chief executive officer of a corporation approached the chief financial officer and said, "I have something personal to tell you," we would not assume the CEO was about to discuss company business. Responding to a request for information, an individual might say, "that's personal." A company spokesman, when asked for information about the company, would not. In fact, we often use the word "personal" to mean precisely the opposite of business-related: We speak of personal expenses and business expenses, personal life and work life, personal opinion and a company's view.

Dictionaries also suggest that "personal" does not ordinarily relate to artificial "persons" such as corporations. See, e.g., 7 OED 726 (1933) ("[1] [o]f, pertaining to . . . the individual person or self," "individual; private; one's own," "[3] [o]f or pertaining to one's person, body, or figure," "[5] [o]f, pertaining to, or characteristic of a person or self-conscious being, as opposed to a thing or abstraction"); 11 OED at 599-600 (2d ed. 1989) (same); Webster's Third New International Dictionary 1686 (1976) ("[3] relating to the person or body"; "[4] relating to an individual, his character, conduct, motives, or private affairs"; "[5] relating to or characteristic of human beings as distinct from things"); ibid. (2002) (same)."

23. In my view, the aforesaid reasoning would also be applicable to the expression "personal" used in Section 8(1)(j) of the Act. The expression 'individual' must be construed in an expansive sense and would include a body of individuals. The said exemption would be available even to unincorporated entities as also private, closely held undertaking which are in substance alter egos of their shareholders. However, the expression individual cannot be used as a synonym for the expression 'person'. Under the General Clauses Act, 1897 a person is defined to "*include any company or association or body of individuals, whether incorporated or not*". Thus, whereas a person would include an individual as well as incorporated entities and artificial persons, the expression 'individual' cannot be interpreted to include such entities. The context in which, the expression "personal information" is used would also exclude it application to large widely held corporations. While, confidential information of a corporation is exempt from disclosure under Section 8(1)(d) of the Act, there is no scope to exclude other information relating to such corporations under Section 8(1)(j) of the Act as the concept of a personal information cannot in ordinary language be understood to mean information pertaining to a public corporation.

24. It would also be relevant to refer to the decision of a Division Bench of this Court in the case of ***Ashok Kumar Goel v. Public Information Officer Vat Ward No. 64 & Anr.*****: (2012) 188 DLT 597** whereby it was held that information of the returns made to the Sales Tax Commissioner in relation to a firm was exempt under Section 8(1) of the Act. The relevant portion of the said judgment is quoted as under:-

> "7. It is not in dispute that the information in the form of returns filed by the respondent No. 2's firm is in the nature of commercial confidence which is clearly inferable from Section 98 of the Act. Such information can be given only if larger public interest warrants the disclosure of this information. All the authorities below including the learned Single Judge has held and rightly so that no public interest is at all involved in seeking of this information by the appellant from the Sales Tax Commissioner. What to talk of public interest, the finding is that the information is sought with oblique motive to settle personal scores."

25. Indisputably, Section 8(1)(j) of the Act would be applicable to the information pertaining to Dr Naresh Trehan (petitioner in W.P.(C) 88/2010) and the information contained in the income tax returns would be personal information under Section 8(1)(j) of the Act. However, the CIC directed disclosure of information of Dr Trehan also by concluding that income tax returns and information provided for assessment was in relation to a "public activity." In my view, this is wholly erroneous and unmerited. The act of filing returns with the department cannot be construed as public activity. The expression "public activity" would mean activities of a public nature and not necessarily act done in compliance of a statute. The expression "public activity" would denote activity done for the public and/or in some manner available for participation by public or some section of public. There is no public activity involved in filing a return or an individual pursuing his assessment with the income tax authorities. In this view, the information relating to individual assesse could not be disclosed. Unless, the CIC held that the same was justified "in the larger public interest"

26. At this stage, it may be appropriate to consider the nature of information that is provided by an assesse to its Assessing Officer. In case of Income from business and profession, the income tax returns mainly disclose the final accounts (i.e. profit and loss account and balance sheets) This information is otherwise also liable to be disclosed by companies and is available in public domain since it is necessary for a company to file its annual accounts with the Registrar of Companies. Other incorporated entities are similarly required to also publically disclose their final accounts. However, an Assessing Officer may call for further information while determining the assessable income, which may include all books and papers maintained by an entity. Such information may also have information relating to other parties, the disclosure of which may be exempt under Section 8(1) of the Act. As a matter of illustration, the books of accounts would record transactions of commercial nature which may enjoin the parties to the transactions to keep the information confidential. Further, the books of accounts would also record salaries and other payments to other individuals. Disclosure of such information would affect not just the assessee but also other parties. In the circumstances, it would be necessary to examine the details of information that are sought from the public authority. In the present case, the respondent seems to have sought for an omnibus disclosure of all records and returns. In my view, the same could not be allowed without examining the nature of information contained therein.

27. The Supreme Court in the case of ***Thalappalam Ser. Coop. Bank Ltd. and others v. State of Kerala and others*****: Civil Appeal No. 9017 of 2013,**

decided on 07.10.2013. considered the question whether a society registered would fall within the definition of a public authority under Section 2(h) of the Act. The Court also clearly stated that the information supplied by a society to the Registrar of Societies could be disclosed except for the information that was exempt under Section 8(1) of the Act and that included accounts maintained by members of society. The relevant passage from the said judgment is quoted below:-

> **"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 Co-operative 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."

28. It is apparent that information submitted by an assessee in the course of assessment, may also include information relating to other persons. The exclusions available under Section 8(1) of the Act, would also be available in respect of that information.

29. Section 137 of the Income Tax Act, 1961 provided that the information furnished by an assessee was confidential and was not liable to be disclosed. Section 137 of the Income Tax Act, 1961 was deleted by the Finance Act, 1964 and simultaneously, Section 138 the Income Tax Act, 1961 was substituted. Section 138 of the Income Tax Act, 1961 is quoted below:-

> **"138. Disclosure of information respecting assessees.**- (1)(a) The Board or any other income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to-

(i) any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess, or to dealings in foreign exchange as defined in clause (n) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999); or

(ii) such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf,

any such information received or obtained by any income-tax authority in the performance of his functions under this Act, as may, in the opinion of the Board or other income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(b) Where a person makes an application to the Chief Commissioner or Commissioner in the prescribed form for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, the Chief Commissioner or Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in any court of law.

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessees or except to such authorities as may be specified in the order."

30. In the case of ***Hanuman Pershad*** *(supra),* this Court considered the question whether there was any bar on the Income Tax Department from disclosing records produced during the assessment proceedings. The said controversy was answered by the following words:-

> "It is undoubtedly open to the authorities to disclose information received by them from assessments or other proceedings under the Act. However, there are restrictions contained in Section 138 as now existing concerning the manner in which that information is to be disclosed. Leaving aside sub-clause (a) of sub-section (1) it seems that under sub-clause (b), the Commissioner can disclose information if he is satisfied that it is within the public interest to do so. Hence, if some other authority applies to the Commissioner to obtain information, the same may be disclosed in the discretion of the Commissioner. Under Sub-clause (a) there is also a power to furnish information to other authorities. As this matter has not been fully argued or discussed in the present case, it is sufficient to note that there is no power to disclose information to other authorities and officers outside the provisions of the Section. As far as the information already given is concerned, we have no power to give any direction concerning the same."

31. Although by virtue of Section 22 of the Act, the provisions of the Act have an overriding effect over any other inconsistent law, the said provisions of the Act insofar as they are not inconsistent with other statutes must be read harmoniously. Undoubtedly, the income tax returns and information provided to Income Tax Authorities by assessees is confidential and not required to be placed in public domain. Given the nature of the income tax returns and the information necessary to support the same, it would be exempt under Section 8(1)(j) of the Act in respect of individual and unincorporated assessees. The information as disclosed in

the income tax returns would qualify as personal information with regard to several private companies which are, essentially, alter egos of their promoters. However, in cases of widely held companies most information relating to their income and expenditure would be in public domain and the confidential information would be exempt from disclosure under Section 8(1)(d) of the Act. Further, even in cases of corporate entities, the income tax returns and other disclosure made to authorities would also include transactions with other parties and those parties can also claim the exception under Section 8(1) of the Act. One has to also bear in mind that an authority may not have any obligation to provide any information other than in the form in which it is available and the information provided by an assessee may not have been edited to remove references to other persons. Keeping all the aforesaid considerations in view, the parliament has enacted Section 138 of the Income Tax Act, 1961 to provide for disclosure only where it is necessary in public interest. Similar provisions are enacted under the Act and clauses (d), (e) and (j) of Section 8(1) of the Act that specify that information exempt from disclosure under those clauses, could be disclosed in larger public interest. Section 8(2) of the Act also provides for a non obstante clause which permits disclosure of information in larger public interest.

32. It would also be necessary to refer to Section 11 of the Act, which provides for a notice to a third party before any third party information is disclosed. The proviso to Section 11 of the Act also specifies that disclosure of trade or commercial secrets, which are protected by law

would not be allowed unless their disclosure is necessary in public interest. Section 11(1) of the Act reads as under:-

> **"11. Third party information.—**(1) Where a Central Public Information Officer or the 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."

33. In the above context where the nature of income tax returns and other information provided for assessment of income is confidential and its disclosure is protected under the Income Tax Act, 1961 it is not necessary to read any inconsistency between the Act and Income Tax Act, 1961. And, information furnished by an assesse can be disclosed only where it is necessary to do in public interest and where such interest outweighs in importance, any possible harm or injury to the assesse or any other third party. However, information furnished by corporate assessees that neither

relates to another party nor is exempt under Section 8(1)(d) of the Act, can be disclosed.

34. In view of the aforesaid, the principal question that is to be addressed is whether the CIC has misdirected itself in concluding that disclosure of income tax returns and other information relating to assessment of income of the petitioners was in public interest.

35. In order to address this controversy, it is important to understand the purpose of the respondent in seeking such information. The proceedings under the Income Tax Act, 1961 with respect to assessment of income are at different stages. It is stated that in some cases, assessment is complete and appeal proceedings are pending in other fora. In one case, it is contended that the Appellate Authorities have remanded the matter of assessment to the Assessing Officer. It is apparent that the assessment proceedings have thrown up contentious issues which are being agitated between the income tax authorities and the assessees. The respondent, essentially, wants to intervene in those proceedings by adding and providing his contentions or interpretation as to the information provided by the asseesees or otherwise available with the Income Tax Authorities.

36. In my view, the CIC has misdirected itself in concluding that this was in larger public interest. The CIC arrived at this conclusion by noting that disclosure of information was in larger public interest in increasing public revenue and reducing corruption. The assessment proceedings are not public proceedings where all and sundry are allowed to participate and add their opinion to the proceedings. Merely because a spirited citizen

wishes to assist in assessment proceedings, the same cannot be stated to be in larger public interest. On the contrary, larger public interest would require that assessment proceedings are completed expeditiously and by the authorities who are statutorily empowered to do so.

37. In the present case, there was no material to indicate that there was any corruption on the part of the income tax authorities which led to a justifiable apprehension that the said authorities were not performing their function diligently. In any event, the CIC has not found that the proceedings relating to assessment were not being conducted in accordance with law and/or required the intervention of the respondent. Assessment proceedings are quasi-judicial proceedings where assessee has to produce material to substantiate their return of income. Income tax has to be assessed by the income tax authorities strictly in accordance with the Income Tax Act, 1961 and based on the information sought by them. In the present case, the respondent wants to process the information to assist and support the role of an Assessing Officer. This has a propensity of interfering in the assessment proceedings and thus, cannot be considered to be in larger public interest. The CIC had proceeded on the basis that the income tax authorities should disclose information to informers of income tax departments to enable them to bring instances of tax evasion to the notice of income tax authorities. In my view, this reasoning is flawed as it would tend to subvert the assessment process rather than aid it. If this idea is carried to its logical end, it would enable several busy bodies to interfere in assessment proceedings and throw up their interpretation of law and facts as to how an assessment ought to be carried out. The propensity of this to

multiply litigation cannot be underestimated. Further, the proposition that unrelated parties could intervene in assessment proceedings is wholly alien to the Income Tax Act, 1961. The income tax returns and information are provided in aid of the proceedings that are conducted under that Act and there is no scope for enhancing or providing for an additional dimension to the assessment proceedings.

38. The Supreme Court in ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*****: (2012) 13 SCC 61** held that the statutory exemption provided under Section 8 of the Act is the rule and only in exceptional circumstances of larger public interest the information would be disclosed. It was also held that 'public purpose' needs to be interpreted in the strict sense and public interest has to be construed keeping in mind the balance between right to privacy and right to information. The relevant extract from the said judgment is quoted below:

> **"21.** ..... Another very significant provision of the Act is Section 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.

22. 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 recognition and protection; something in which the public as a whole has a stake [*Black's Law Dictionary* (8th Edn.)].

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."

39. Applying the aforesaid judgment to the facts of this case, it is apparent that disclosure of information as directed has no discernable element of larger public interest.

40. Accordingly, the petitions are allowed and the impugned order is set aside. The parties are left to bear their own costs.

VIBHU BAKHRU, J

NOVEMBER 24, 2014
RK

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16th July, 2012

\+ **LPA No.205/2012**

% **GENERAL MANAGER FINANCE**
AIR INDIA LTD & ANR ....Appellants
Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Mukesh Kumar.
Ms. Meenakshi Sood and Ms. Tanu Priya, Advs.

Versus

VIRENDER SINGH ..... Respondent
Through: Mr. Anshu Mahajan and Mr. Karan Arora, Advs.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J

1. This intra court appeal impugns the order dated 28th November, 2011 of the learned Single Judge allowing WP(C) No. 2143/2011 preferred by the respondent. The said writ petition was preferred impugning the order dated 9th March, 2010 of the Central Information Commission (CIC) upholding the order of the Information Officer and the First Appellate Authority of the appellant Air India refusing to furnish the information sought by the

respondent under the provision of the Right to Information Act, 2005 on the ground of the same being exempted under Section 8(1)(d) of the said Act.

2. The respondent had vide application dated 17th November, 2008 sought the following information:

"1. Were free complimentary air tickets, by whatever name called, issued by the erstwhile Air India Limited during the period 01.01.2006 to 31.12.2006.

2. In case answer to Question No.1 is affirmative, then the number of such tickets issued during the period 01.01.2006 to 31.12.2006 and who authorized/sanctioned these air tickets? What were the rules/regulations in this regard? Please also furnish a copy of relevant rules/regulations for the said period.

3. In case answer to Question No.1 is affirmative, then please furnish details of such free complimentary air tickets allowed during the period in the following format, therein date on which and station for which free air tickets were allowed and the names and addresses of the persons to whom air tickets were allowed.

Serial No.	Date	Station	Name and address of the persons to whom free tickets were allowed.

4. Were free complimentary air tickets, by whatever name called, allowed on recommendations made by officers/administration of the erstwhile Indian Airlines Ltd. during the period 01.01.2006 to 31.12.2006?

5. In case answer to Question No.1 is affirmative, then please furnish details of such free air tickets allowed during the above period in the following format, giving therein date on which and station for which air tickets were allowed, the names and addresses of the persons to whom air tickets were allowed and Names and Designation of the officers who made the recommendations.

Serial No.	Date	Station	Name and address of the person	Name and designation of the officer"

3. Upon the Information Officer of the appellant Air India in response thereto, referring the respondent to replies given to other similar queries, the respondent approached the First Appellate Authority. Under the direction of the First Appellate Authority, the Information Officer of the appellant Air India responded as under:

"1) Like all other airlines complimentary tickets are given by Air India for commercial Interest and to encourage and promote travel on our flights and to help in image building of the airline.

2) Approx. 1200 complimentary tickets were issued in 2006 by erstwhile Air India. The number of tickets allocated to the regions are authorized by the Commercial Director.

3) The disclosure of names of persons to whom such tickets were issued would be detrimental to the commercial interests of the company considering the fierce level of competition that is existing in the Aviation Industry. Also such information is exempted from disclosure under Section 8(1)(d) of RTI Act 2005 and the same is therefore being denied."

4. Aggrieved therefrom, the respondent preferred the appeal directly to the CIC. The CIC however was of the opinion that the commercial interest of the appellant Air India may be affected by the disclosure of the details of the complementary tickets and invoking Section 8(1) (d) of the RTI Act upheld the denial of information. It was however further observed that the rules/regulations regarding complimentary tickets were not exempted under the RTI Act and the appellant Air India was as such directed to provide copy of rules/ regulations for issuing complimentary tickets.

5. The respondent being still unsatisfied, filed the writ petition from which this appeal arises. The learned Single Judge observed that Section 8(1)(d) deals with information which is of commercial confidence or trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party; it was held that the information sought by the respondent did not pertain to a third party; rather it pertains to the public authority itself and identity of persons to whom complimentary

tickets are issued by the appellant Air India does not constitute information which can be said to be of commercial confidence or a trade secret and certainly does not constitute an intellectual property. While upholding the right of the appellant Air India to, in the course of its operations and for good reasons issue complementary tickets for promotion of its commercial interest, it was held that there is no reason to be secretive about the persons to whom such complementary tickets are issued. It was further held that the appellant had been unable to explain as to how the disclosure of the identity of these persons would harm the commercial interest of the appellant. Accordingly the writ petition was allowed and the appellant Air India directed to disclose the names of the persons to whom complementary tickets were issued in the year 2006.

6. Notice of this appeal was issued. Vide order dated 14th May, 2012, the appellant was directed to produce information in respect of question No.3 (supra) in a sealed cover. The counsel for the appellant has today handed over a sealed cover. Though it is the contention of the appellant that out of the approximately 44 lakhs tickets sold in the year 2006, only a miniscule number of 1200 complementary tickets were issued but the list which has been shown to us comprises of only 706 names. Further, the said

list only gives the name of the person to whom complementary ticket was issued and the station from which it was issued. The address or other particulars of the beneficiaries of the said complementary tickets or the date also are not mentioned. The senior counsel for the appellant states that the particulars of the remaining complementary tickets are now not available with the appellant Air India. We have heard the counsels.

7. The resistance by the appellant to the disclosure sought is on the ground of the same amounting to letting out the trade secrets and trade contacts of the appellant and of which the competitor Airlines may take advantage. It is argued that if particulars of the persons on whom the appellant has bestowed these freebies or favour by issuance of complementary tickets are disclosed, the said persons who are vital to the commercial interest of the appellant may be won over by the competitor Airlines.

8. Though the appellant has sought to invoke the clause (d) of Section 8(1) of the RTI Act, which exempts from disclosure 'information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party' but without any pedestal whatsoever. Though the CIC had directed the appellant to

furnish to the respondent the rules regarding issuances of such complementary tickets and the basis thereof but the appellant has not placed before us any such rules showing that such complementary tickets are to be given only to those who help the appellant in advancing its business interest. What we have thus before us is a bold plea without anything more to show that the information as to particulars of beneficiary of complementary tickets from the appellant is of commercial confidence to the appellant.

9. The RTI Act, as per its preamble was enacted to enable the 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. An informed citizenry and transparency of information have been spelled out as vital to democracy and to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The said legislation is undoubtedly one of the most significant enactments of independent India and a landmark in governance. The spirit of the legislation is further evident from various provisions thereof which require public authorities to:

A. Publish *inter alia:*

i) the procedure followed in the decision making process;

ii) the norms for the discharge of its functions;

iii) rules, regulations, instructions manuals and records used by its employees in discharging of its functions;

iv) the manner and execution of subsidy programmes including the amounts allocated and the details of beneficiaries of such programmes;

v) the particulars of recipients of concessions, permits or authorizations granted. [see Section 4(1) (b), (iii), (iv), (v); (xii) & (xiii)].

B. *Suo moto* provide to the public at regular intervals as much information as possible [see Section 4(2)].

10. The exemption from disclosure provided for in Section 8 has to be seen in the said light. Section 8 is an exception to the otherwise regime of transparency and disclosure brought about by the Act. Naturally, the exemption cannot be allowed merely on the ground thereof being raised. It is for the public authority claiming exemption to lay foundation, of the information falling in one of the exempted categories. We are afraid, the appellant has not laid any such foundation. Even in the list handed over to us, there is nothing to show that there is any confidentiality attached thereto. In fact, recognizing some of the names in the list we ourselves are curious to know the reasons for the appellant to have bestowed largesse of complimentary tickets on them. Even otherwise we find the plea raised by

the appellant, of Section 8(1) (d), to be a bogey. Though the appellant, for several decades enjoyed a monopoly as far as the Indian skies were concerned, but now undoubtedly has competition. Though earlier the appellant may not have felt the need to advertise to lure the customers but now the appellant as well as the other airlines are advertising to the public at large their fares and various schemes promoted by them from time to time to attract business. The senior counsel for the appellant during the argument has generally stated that the complimentary tickets may have been given by the appellant to its frequent flyers. The details of the said frequent flyers programmes of different airlines are also available on the internet at the click of a button. It is also a known fact that a large proportion of booking of airline tickets is either through agents or via internet; the information with respect to the patrons of the appellant is thus likely to be widely available. The appellant before us as aforesaid, has not laid any basis whatsoever of their being any confidentiality of its patrons**.**

11. Judicial notice can be taken of the huge influx from time to time of public funds, on the crutches whereof the appellant Air India is functioning. It is even otherwise not disputed that it is a public authority. The issuance of complementary tickets by the appellant is thus obviously at the expense of

the public exchequer. We are not impressed with the argument of, the said complementary tickets representing a miniscule proportion of the total number of tickets sold by the appellant. Even otherwise it is not disclosed as to what monetary value the said 1200 tickets represent. The question is not of whether the issuance of complementary tickets without any reason is of a small or of a large amount. The public funds even of a small amount cannot be allowed to be wasted and no public official, as the employees , officers of the appellant are, are authorized to meet/dole out personal favour at the cost of public funds.

12. We are therefore in agreement with the learned Single Judge that the information sought is not exempted under Section 8(1) (d) of the Act.

13. Though the appellant has also sought to aver that the names of the beneficiaries of such complementary tickets cannot be disclosed without their consent but we fail to see how. The third party procedure prescribed in Section 11 of the Act is applicable only qua the information supplied by the said third party. The beneficiary of a complementary ticket has not supplied any information and has rather availed of an advantage at public cost and which also as per the appellant is for commercial considerations.

14. The counsel for the appellant lastly contend that the direction to supply information be confined to the list of 706 complementary tickets issued only. The counsel for the respondent information seeker opposes. He states that the appellant as per the law is required to maintain the records for eight years and the information was sought within two years and since the proceedings were pending could not have been destroyed. It is further urged that the appellant has not even cared to state on affidavit that the remaining information is not available.

15. In the circumstances, while dismissing this appeal, we direct that subject to the appellant within one week filing an affidavit in this Court with advance copy to the respondent that the information qua the remaining complementary tickets issued in the year 2006 has been destroyed and is not available, the direction for supply of information of the said year shall be confined to 706 complementary tickets only. We refrain ourselves from imposing any cost on the appellant.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 16, 2012/'M'

Punjab-Haryana High Court

Rajan Verma vs Union Of India (Uoi), Ministry Of ... on 19 November, 2007

Equivalent citations: (2008) 149 PLR 253

Author: K Puri

Bench: S K Mittal, K Puri

JUDGMENT K.C. Puri, J.

1. Petitioner-Rajan Verma has directed this writ petition under Articles 226/227 of the Constitution of India for quashing the impugned orders dated 8.11.2007, 15.6.2007 and 4.8.2007, passed by respondents No. 3 to 5 and for directing the respondents to provide information to the petitioner under the Right to Information Act, 2005 (hereinafter to be referred to as 'the RTI Act') and for further directing respondents No. 1 and 2 to make an enquiry into the large scale embezzlement made by the respondent-Canara Bank in settling the Non Performing Assets (hereinafter to be referred as 'NPA').

2. It is pleaded that the firm M/s S.R. Rajan and Company has taken loan from respondent No. 5 and the petitioner stood as a guarantor for the repayment of the said loan and pledged his commercial property and that of his wife, in favour of the bank. The borrower account of M/s S.R. Rajan & Company became NPA and the petitioner wanted to settle the matter with the bank. The bank charged the interest @ 14.5% per annum instead of 9% per annum. Large scale embezzlement was being made by the Ca-nara Bank while settling the NPA of different parties and one Tarsem Bawa, Manager of the bank misappropriated an amount of Rs. 3,17,00,000/- by withdrawing the government dues from inter banking transactions. The petitioner moved an application dated 8.2.2007 to the Chief Manager, Canara Bank, Amritsar for providing information under the RTI Act with regard to the details of compromise made by the bank during the last five years with the' different parties of NPA, alongwith requisite Court fee, but the same was not supplied. The petitioner moved applications dated 27.4.2007 to the Director, RTI and dated 28.4.2007 under the RTI Act to the Chief Manager, Canara Bank, Amritsar for providing information, but no action has been taken. The petitioner moved an application dated 30.4.2007 to the Director, RTI, but no information was provided. The petitioner then moved an application dated 7.5.2007 alongwith requisite fee under the RTI Act to the Section Officer, Office of Director Banking Division, New Delhi and the said application was forwarded to the CPIO, Canara Bank for action. Inspite of issuance of direction by respondent No. 2, the CPIO, Canara Bankrespondent No. 4, did not provide any information to the petitioner. The petitioner moved an appeal dated 28.5.2007 to the Joint Secretary and Appellate Authority (under the RTI Act), Banking Division, Ministry of Finance, New Delhi for providing information, but the said appeal was rejected.

3. The petitioner approached this High Court by way of filing C.W.P. No. 9697 of 2007, in which the following order was passed:

Learned Counsel for the petitioner seeks permission to withdraw the present writ petition with liberty to the petitioner to pursue his remedy under the Right to Information Act, 2005. Permission is granted. Writ petition is dismissed as withdrawn.

4. Thereafter, the Public Information Officer on 15.6.2007 illegally and arbitrarily dismissed the application. The petitioner moved the Appellate Authority and the Appellate Authority dismissed the appeal on frivolous grounds vide order dated 4.8.2007. The petitioner approached the Chief Information Commissioner for providing information to the petitioner under the RTI Act, but that application was not decided. The petitioner approached the High Court by filing C.W.P. No. 14919 of 2007 for directing respondent No. 2 to decide the appeal of the petitioner and the Hon'ble Division Bench vide order dated 24.9.2007 directed the Central information Commission to consider and dispose of the appeal of the petitioner within a period of four weeks.

5. The petitioner received letter dated 26.10.2007 from respondent No. 3 directing the petitioner to appear before the Commission on 7.11.2007. The petitioner appeared before the Commission on that date but neither the Public Information Officer of the Chief Public Information Officer, Canara Bank appeared before the Central Information Commission on the date fixed. The Central Information Commission, however, rejected the appeal of the petitioner vide impugned order dated 8.11.2007. The petitioner has challenged the above said three orders and counsel for the petitioner has argued on the line of pleadings detailed above.

6. The Central Information Commission vide impugned order dated 8.11.2007 has reached the conclusion that the petitioners is seeking information in respect of details of customers and the same falls under the exempted category under Sections 8(1)(d), 8(1)(e) and 8(1)(i)) of the RTI Act. It has been further observed that information sought by the petitioner was not only from the Canara Bank but also from the Banking Division of the Government of India and from the department of Economic Affairs, Ministry of Finance. Both these authorities have transferred the RTJ application to the Canara Bank which is the appropriate Public Authority holding the information. It has been further observed that the petitioner is unnecessarily approaching multiple authorities for the same set of information knowing it fully well that the information requested is held by the Canara Bank and not by either the Banking Division or by the Department of Economic Affairs, Ministry of Finance. The competitive position of the third party including an information relating to commercial confidence, trade secrets or intellectual property cannot be sought as the same is barred under Section 8(1)(d) of the RTI Act. It has been further observed that personal information and the information between the person in fiduciary relationship, is exempted from disclosure under the RTI Act.

7. The petitioner was seeking the details of accounts of other private individuals and concerns and on that account, the same has been rightly declined. Instead of making the payment of the loan amount, for which he is legally bound, the petitioner has resorted to rush the hierarchy of the bank by filing application under the RTI Act in respect of information for which the bank is exempted under Section 8 of the RTI Act. It so seems that the petitioner has misused the provisions of RTI Act.

8. So, in these circumstances, the writ petition is without any merit and as such, the same stands dismissed.

Court No. - 32

Case :- WRIT - C No. - 24587 of 2015

Petitioner :- Anjan Mukherjee
Respondent :- The Central Information Commission & 2 Others
Counsel for Petitioner :- Mayank Agrawal
Counsel for Respondent :- A.S.G.I.,Ashok Singh,Atma Prakash Tripathi

Hon'ble Rakesh Tiwari,J.
Hon'ble Mukhtar Ahmad,J.

Heard learned counsel for the petitioner and learned Standing Counsel.

This writ petition has been filed by the petitioner for issuance of a writ, order or direction in the nature of certiorari quashing the impugned order dated 22.05.2014 passed by the Central Information Commission, New Delhi and the order dated 03.08.2012 passed by the respondent no.2. It is also prayed to issue a writ, order or direction in the nature of mandamus directing the respondents to furnish the information to the petitioner as requested vide application dated 07.05.2012 filed under Section 6(1) of the Right to Information Act, 2005 (hereinafter referred to as 'RTI Act').

Facts giving rise to this writ petition are that the petitioner moved an application dated 07.05.2012 under Section 6 (1) of the RTI Act requesting the Assistant Commissionerate (CPIO), Central Excise Commissioner at Ghaziabad to provide following informations:

"(1) Copies of Applications/ letters made/ written by Mr. J.K. Bansal to your office till date in respect of M/s Bhushan Steels & Strips Ltd. (Now known as Bhushan Steel Ltd.)

(2) Copy of reply/ information provided to Mr. J.K. Bansal by your office in respect of his applications/ letters.

(3) Copies of proceedings pending before the Commissionerate, Ghaziabad in this respect.

(4) Copies of information sought under RTI by Mr. J.K. Bansal in respect of M/s Bhushan Steels Ltd. & Strips Ltd. (Now known as Bhushan Steel Limited)."

The Deputy Commissioner (CPIO) vide his order dated 30.05.2012 decline to provide information sought for against which a First Appeal under Section 19(1) of the RTI Act was preferred before the Additional Commissioner, Customs, Central Excise & Service Tax. The aforesaid appeal was dismissed by judgment and order dated 03.08.2012. Thereafter Second Appeal was also preferred before the Central Information Commission, New Delhi but that too was also dismissed vide judgment and order dated 22.05.2014. Now assailing the judgment passed by Second Appellate Court, the instant writ petition has been preferred.

Learned counsel for the petitioner has submitted that the informations are refused to be provided on the ground that these are personal ones relates to third party and disclosure of which would call unwarranted invasion of the third party and the informations were denied in terms of Section 8 (1)(d)(e)(h) (j) of RTI Act, which is erroneous and the first appellate Court as well as second appellate Court also observed the same view and came to a wrong conclusion. It is vehemently argued that the second appellate Court too has not discussed any reason of uphelding the judgment passed by the lower Court and the impugned order was passed without application of mind. The information sought did not pertain to the personal information of third party as observed by the CPIO and appellate Court. It is also submitted that it has not

been disclosed that how the information if provided shall effect the interest of third party.On these grounds the impugned order deserves to be set aside in allowing this appeal.

Per contra, learned Standing Counsel has submitted that the information sought by the petitioner are personal to the third party i.e. Mr. J.K. Bansal in respect of M/s Bhushan Steel & Strips Ltd. (Now known as Bhushan Steel Ltd.) which comes within the ambit of transaction of commercial confidence and the disclosure of which would harm the relationship between Mr. J.K. Bansal and office of Assistant Commissioner. It has further been submitted that learned C.P.I.O and both the appellate Courts are rightly declined to provide the informations as per provisions enumerated under Section 8 of the RTI Act and there is no infirmity therein. On this ground the writ is prayed to be disregarded by its dismissal.

We have given thorough consideration to the submissions made by the rival parties.For appreciating the submissions and grounds of rejection of the application moved by the appellant seeking the information, it would be proper to reproduce relevant provisions of Section 8 of the RTI Act which are as under:

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

(a).....

(b)…….

(c)……..…

(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).....

(g)……..

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

(i).....

(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."

Admittedly the appellant is third party in respect of Mr. J.K. Bansal and the first information relates to the commercial dealing by applications or the letters made/ written by Mr. J.K. Bansal to the office of C.P.I.O. Second information is in respect of the reply/ information provided to the J.K. Bansal by the department, third information relates to the copies of proceedings pending and fourth information is in respect of information sought under RTI Act by Mr. J.K. Bansal in respect of M/S Bhushan Steel Ltd.All the informations required by petitioner are of commercial confidence, trade secrets and fiduciary relationship and disclosure of the same would harm the competitive position of a third party, Mr. J.K. Bansal. These information are also related to the personal

information and disclosure of the informations would cause unwarranted invasion of the privacy of Mr. J.K. Bansal. Learned CPIO and both the appellate Courts have arrived the right conclusion after detailed discussion and we are of the opinion that they were within their jurisdiction not to provide information to the petitioner and the impugned judgments do not suffer from any illegality.

In view of the aforesaid discussion the petition fails.

The writ petition is hereby dismissed accordingly.

Order Date :- 16.7.2015
Fhd.

* **THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 30.08.2012
% Judgment Delivered on: 09.11.2012

\+ WP(C) 499/2012 & CM 1059/2012

UNION OF INDIA & ORS. ..... Petitioners

Vs

COL. V.K. SHAD ..... Respondent

AND

\+ WP(C) 1138/2012 & CM 2462/2012

UNION OF INDIA & ANR. ..... Petitioners

Vs

COL. P.P. SINGH ..... Respondent

AND

\+ WP(C) 1144/2012 & CM 2486/2012

UNION OF INDIA & ORS. ..... Petitioners

Vs

BRIG. S. SABHARWAL ..... Respondent

Advocates who appeared in this case:
For the Petitioners: Mr Rajeeve Mehra, Additional Solicitor General with Mr Ankur Chibber, Ms Aakriti Jain & Mr Ashish Virmani, Advocates.
For the Respondents: Col. V.K. Shad, Respondent in person in WP(C) No. 499/2012.

CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The captioned writ petitions raises a common question of law, which is, whether the petitioners are obliged to furnish information to respondent which is retained with them in the record, in the form of file notings as also the opinion of the Judge Advocate General (in short JAG) found in records of the respondents, under the relevant provisions of the Right to Information Act, 2005 (in short the RTI Act).

1.1 In each of the matters, the Union of India (UOI) has been represented by Mr Rajeeve Mehra, ASG, while the respondents have appeared in person. Amongst the respondents, Col. V.K. Shad has appeared in person and made submission at each date, while the same cannot be said of the other two respondents, Col P.P. Singh and Brig. S. Sabharwal who have put in appearances occasionally. In particular, they were absent on the last two dates of hearing when matters were heard at length and the judgment was reserved in the matters. Nevertheless, it appears that, the said officers have adopted and are in sync, with the submissions made by Col. V.K. Shad.

1.2 The orders impugned in each of the captured writ petitions were those passed by the Central Information Commission (in short CIC). In WP(C) 499/2012, two orders are impugned. The principal order being order dated 15.06.2011, followed by a consequential order, dated 13.12.2011.

1.3 In WP(C) 1138/2012, there are, once again, two orders, which are impugned. The first order impugned is, the principal order, which is, dated 04.11.2011. This order follows the decision taken by the CIC in Col. V.K. Shad's case. The second order is dated 05.01.2012, which actually, only records, the fact that the matter had been concluded by the order dated

4.11.2011, and that the registry of the CIC had mistakenly relisted the matter. The order however, also goes on to record the fact that, a written representation was submitted on behalf of the petitioners herein that, they be given, thirty (30) days time to comply with the order of the CIC.

1.4 In the third and last writ petition being: WP(C) 1144/2012, the order impugned is dated 9.6.2011.

1.5 In each of these matters, the impugned orders have been passed by the same Chief Information Commissioner.

2. Though the question of law is common, for the sake of completeness, I propose to briefly touch upon the relevant facts involved in each of the matters, which led to institution of the instant writ petitions.

2.1 For the sake of convenience, however, each of the respondents in their respective writ petitions will be referred to by their name.

WP(C) NO. 499/2012

3. Col. V.K. Shad was posted to the Army Core Supply Battalion 5628 in September, 2008. Evidently, he fell out with his deputy, one, Lt. Col. B.S. Goraya. Col. V.K. Shad had issues with regard to Lt. Col. B.S. Goraya, which in his perception impacted the functioning in the unit. Lt. Col. B.S. Goraya, on his part made counter allegations against Col. V.K. Shad qua issues which he regarded as infractions of standard operating procedures governing the functioning of the personnel inducted into the army.

3.1 Consequently, in May, 2009, a Court of Inquiry was ordered by the Head Quarter, Western Command, to investigate, charges of alleged acts of indiscipline leveled by Col. V.K. Shad against Lt. Col. B.S. Goraya as also counter charges made by Lt. Col. B.S. Goraya against Col. V.K. Shad.

3.2 The inquiry against Col. V.K. Shad pertained to the following:

> "(i) Failure to follow laid down procedure with respect to sale of BPL watches, as a non CSD item between October,

2008 and March, 2009.

(ii) Accepting money in Regt Fund Acct amounting to Rs 27,133/- (Rupees twenty seven thousand one hundred and thirty three only) as sponsorship from CSD Liquor Vendors between January and February 2009.

(iii) Improperly passed instructions to JC-664710W Nb Sub AR Ghose of 5682 ASC Bn, JCO in-Charge AWWA Venture Shop, to not to charge the profit of 5% on the sale of fruits and vegetables to MG-IC-Adm. MG ASC and DDST of HQ Western Command."

3.3 As regards, Lt. Col. B.S. Goraya (later on promoted as colonel), what one was able to glean from the record is that, he was charged with making unwarranted allegations against his commanding officer Col. V.K. Shad, relating to counseling letters to officers; non-payment of mess bills; and purchase of pickle from officer's mess fund for personal use.

3.4 The Court Of Inquiry concluded its proceedings in August, 2009. The opinion of the Court Of Inquiry was as follows:

"....(a) No case of financial misappropriation or malafide intention on part of IC-48682N Co. VK Shad, CO 5682 ASC Bn has been ascertained by the court.

(b) Actions taken by Col VK Shad, CO 5682 ASC Bn in all the cases examined by the court, though at places not strictly as per laid down procedures, are on issues pertaining to routine day to day functioning of the unit and did not have any serious ramifications or resulted in any gross violation/ deviation from the accepted norms.

(c) IC-46873K Lt. Col BS Goraya, 2IC, 5682 ASC Bn has apparently got into a personality clash with the CO, Vol. V.K. Shad. In the bargain, the former has attempted to polarize the Unit and in effect adversely affected the day to day functioning of the unit in gen and the CO in particular.

(d) All issues which the court examined were of routine/ mundane nature and could have been resolved in the departmental channel itself.

2. The court recommends that:-

(a) IC 48682N Col V K Shad, CO 5682 Bn (MT) should be suitably counselled for lapses in laid down procedures

> with reference to the issues of "sale of BPL Watches", "acceptance of sponsorship money from CSD Liquor Vendors" and "Functioning of AWWA Venture Shop, Chandimandir".
>
> (b) IC-46873K Lt. Col B S Goraya, 2IC 5682 ASC Bn (MT) is recommended to be posted out of the Unit forthwith as the presence of the offr in the Bn as 2IC, is detrimental to the administrative and operational efficiency of the Bn.
>
> (c) Suitable Disciplinary/administrative action be initiated against IC-46873K Lt Col BS Goraya for leveling baseless allegations against Col VK Shad, CO on routine/ mundane issues and acting in a manner not befitting the Second in Command of the Bn by adversely affecting the functioning of the Bn....."

3.5 It appears that the reviewing authority, which in this case was the Commander P.H. & H.P(1) Sub Area, differed with the opinion of the Court Of Inquiry, and thus, recommended, initiation of administrative and disciplinary action against Col. V.K. Shad. In so far as Lt. Col. B.S. Goraya was concerned, in addition to initiating administrative action; a recommendation was also made that, he should be posted out of the unit forthwith as the presence of the said officer in the battalion as the second-in-command was detrimental to the administrative and operational efficiency of the Battalion.

3.6 The matter reached the next level of command which was the General Officer Commanding (GOC) Head Quarters 2 Corps (GOC-in-Chief).

3.7 The GOC-in-Chief, while partially agreeing with the findings and opinion of the Court Of Inquiry, noted that, it agreed with the recommendations of the Commander P.H. & H.P. (1) Sub Area. In conclusion the GOC-in-Chief, while recommending administrative action against both Col. V.K. Shad and Lt. Col. B.S. Goraya; and concurring with the view that Lt. Col. B.S. Goraya needed to be posted outside the battalion 5682 - proceeded to convey his severe displeasure (non-recordable) to Col.

V.K. Shad.

3.8 This direction was issued on 10.7.2010, though after a show cause notice was issued to Col. V.K. Shad on 8.4.2010, to which he was given an opportunity to file his defence/ reply.

4. It is in this background that Col. V.K. Shad vide an application dated 23.8.2010, took recourse to the RTI Act seeking information with regard to the following:

> "(a) Opinion and findings of the C of I convened by the convening order ref in para 1 above.
> (b) Recommendations on file of staff at various HQs.
> (c) Recommendations of Cdrs in chain of comd.
> (d) Directions of the GOC-in-C on the subject inquiry.
> (e) Copies of all letters written by Lt. Col. B.S. Goraya where he has leveled allegations against me to HQ Western Command including those written to HQ Corps and HQ PH & HP(1) Sub Area till date. I may also be info of action taken, if any, against Lt Col BS Goraya for his numerous acts of indiscipline."

5. The PIO, vide communication dated 29.9.2010, declined to give any information. The said communication, however, did indicate that under Army Rule 184 (Amended), the statement of exhibits of the Court Of Inquiry proceedings are made available to those persons whose character and military reputation is in issue in the proceedings before the Court Of Inquiry. The officer was advised by the said communication to apply accordingly.

6. Being aggrieved, Col. V.K. Shad, approached the first appellate authority. The first appellate authority agreed with the view taken by the PIO except, with regard to, the denial of access to letters written by Lt. Col. B.S. Goraya to the Head Quarters, Western Command including those written to Head Quarter 2 Corps and Head Quarters PH & HP (1) Sub Area. The rationale employed by the first appellate authority was that once investigation were over, copies of letters written by Lt. Goraya uptil March, 2010 could be

provided to Col. V.K. Shad. In addition to the above, a further direction was issued, which was, to inform Col. V.K. Shad as regards the action, if any, initiated, against Lt. Col. B.S. Goraya.

7. Not being satisfied, Col. V.K. Shad, approached the CIC. The CIC, vide order dated 15.06.2011, directed the petitioners to supply to Col. V.K. Shad, the entire information, to the extent not supplied, within a period of four weeks from the date of the order.

8. Since, there was a failure, on the part of the petitioners to comply with the directions of the CIC, within the time stipulated, a complaint was lodged by the Col. V.K. Shad, with the CIC, on 2.8.2011. Accordingly, a show cause notice was issued by the CIC, on 6.9.2011, to the PIO, Head Quarter Western Command. The notice was made returnable on 27.9.2011.

8.1 Vide communication dated 19.9.2011, the hearing before the CIC was rescheduled for 5.10.2011. By yet another notice dated 26.9.2011, the hearing was, once again, rescheduled for 12.10.2011.

8.2 At the hearing held on, 12.10.2011, the CIC extended the time for implementation of its order by a period of (40) days, at the request of the CPIO. The proceedings were posted for 1.12.2011.

8.3 By a notice dated 29.11.2011, the said proceedings, were rescheduled for 30.12.2011. On 30.12.2011, the CIC passed the second impugned order, in view of non-compliance of its earlier order dated 15.6.2011. By order dated 30.2.2011, the CIC issued a show cause notice to the then PIO, as to why, penalty of Rs 25000 should not be imposed on him under Section 20(1) of the RTI Act, for failure to implement its order. A show cause notice was also issued to the Secretary, Government of India, Ministry of Defence, as to why compensation to the tune of Rs 50,000/- should not be awarded to Col. V.K.Shad, under the provisions of Section 19(8)(b) of the RTI Act, for failure to supply information, in compliance, with its orders. The personal

appearance of the two named officers alongwith their written representation, was also directed. The matter was posted for further proceedings, on 7.2.2012.

8.4 It is in this background that writ petition 499/2012, was moved in this court, on 24.01.2012 when, the impugned orders in so far as it directed provision of the opinion of the JAG branch, was stayed.

WP(C) No. 1138/2012

9. In this case a Court Of Inquiry was ordered by the Head Quarter Central Command, to investigate circumstances in which, one (1) rifle 5.56 mm INSAS alongwith one (1) magazine and 40 (forty) cartridges, SAS 5.56 mm Ball INSAS, from 40 Company ASC (Sup) Type 'D', was lost on the night of 14/15 January, 2006 and thereafter, recovered on 18.01.2006.

9.1 On the conclusion of the Court Of Inquiry, the proceedings, the findings as also the recommendations as in the first case, were finally placed before the GOC-in-Chief, Central Command, who came to the conclusion that administrative action was imperative against Col. P.P. Singh, for his failure to supervise the duties which were required to be performed by his subordinates and, in ensuring, the safe custody of weapons, taken on charge, by his unit, contrary to the provisions of para 37(c) of the Regulations For The Army 1987 (Revised) and para 193 of the Military Security Instructions, 2001.

9.2 Based on the directions of the GOC-in-Chief, a show cause notice was issued to Col. P.P. Singh, on 28.10.2006. After perusing the reply of Col. P.P. Singh, and based on the record the GOC-in-Chief, Central Command directed that his severe displeasure (Recordable) be conveyed to Col. P.P. Singh.

9.3 It is in this background that Col. P.P. Singh also took recourse to the RTI Act, and sought, the following information vide his application dated

29.1.2011:

> "(a) Findings and opinion of the Court alongwith recommendations of the Cdrs in chain and dirn of the competent authority (GOC UB Area, GOC-in-C Central Command) on the Court Of Inquiry convened under Stn. SQs Cell, Meerut convening order no. 124901/4/G dt 21 Jan 2006.
> (b) Noting sheets relating to processing this case at HQ UB Area and HQ Central Command based on which GOC-in-C awarded me Severe Displeasure (Recordable). In this connection refer dirn issued HQ Central Command letter no. 190105/653/U/DV dt. 10 feb 2007.
> (c) Please provide copy of the authority under which this Court Of Inquiry was forwarded to HQ UB Area and further on to HQ Central Command whereas the convening authority of the Court Of Inquiry was St. HQ Cell Meerut."

9.4 By communication dated 21.2.2011, the PIO rejected the application of Col. P.P. Singh by taking recourse to the provisions of Section 8(1)(e) of the RTI Act.

9.5 Being aggrieved, Col. P.P. Singh preferred an appeal with the first appellate authority. Interestingly, the first appellate authority while agreeing with the conclusions of the PIO observed that the PIO had "correctly disposed" of Col. P.P. Singh application as it fell squarely under the exceptions provided in Section 8(1) (g) & (h) of the RTI Act. It may be pertinent to point out that the PIO had in fact taken recourse to provisions of Section 8(1)(e) of the RTI Act.

9.6 Col. P.P. Singh preferred an appeal with the CIC. The CIC, while taking note of the fact that no proceedings were pending against Col. P.P. Singh, directed the release of information sought by him based on the reasoning provided in its order passed in Col. V.K. Shad's case, though after redacting the names and designations of the officers, who had made notings in the files, in accordance with the provisions of Section 10(1) of the RTI Act. The petitioners were directed to furnish the information, as directed, within

four (4) weeks of the order.

9.7 As noticed above, though Col. P.P. Singh's appeal before the CIC was disposed on 4.5.2011, it got listed again on 5.1.2012, on which date thirty (30) days were sought on behalf of the petitioners, to comply with the order of the CIC.

WP(C) No. 1144/2012

10. On 5.12.2009, a Court Of Inquiry was ordered by the Head Quarters Western Command to investigate the alleged irregularities, in the procurement of shoes, as part of personal kit stores item for Indian troops, proceedings on a United Nation's assignment, during the period January, 2006 till the date of issuance of the convening order.

10.1 The Court Of Inquiry, evidently, found Brig. S. Sabharwal guilty of certain lapses alongwith four officers of the Ordinance Services Directorate, Integrated Head Quarters, Ministry of Defence. Brig. S. Sabharwal's conduct was found blameworthy, in so far as, he had omitted to obtain formal written sanction of the Major General of the Ordinance prior to issuing orders to carry out a major amendment vis-a-vis the scope and composition of the board of officers, who were involved in the short-listing of eligible firms; and for omitting to comply with instructions, which required him to nominate an officer of the rank of brigadier who belonged to a Branch other than the Ordinance Branch, for inclusion in the price negotiation committee. It appears that Brig. S. Sabharwal had, contrary to the stipulated norms, nominated instead an officer of the rank of Major General attached to the Ordinance Services Directorate.

10.2 Based on the findings of the Court Of Inquiry, a show cause notice was issued to Brig. S. Sabharwal, on 10.04.2010, by the Head Quarters Western Command. Brig. S. Sabharwal, replied to the show cause notice vide communication dated 20.05.2010. However, by a communication dated

14.6.2010, Brig. S. Sabharwal called upon the concerned authority to defer its decision on the show cause notice, till such time it had sought clarifications from officers named in the said communication with regard to his assertion that he had been issued verbal instructions with regard to the matter under consideration.

10.3 On 18.6.2010, Brig. S. Sabharwal wrote to the authority concerned that since, he was one of the last witnesses summoned for cross-examination by the Court Of Inquiry, he was not able to present his case effectively. In these circumstances, he requested the convening authority to accord permission to cross-examine the witnesses in his defence, so that he could bring out the facts of the case in their correct perspective.

10.4 Evidently, a day prior to the aforesaid request, i.e., on 17.6.2010, the GOC-in-Chief, after considering the recommendations of the Court Of Inquiry, the contents of the show cause notice and the reply of Brig. S. Sabharwal, directed that his severe displeasure (recordable), be conveyed to Brig. S. Sabharwal.

10.5 This resulted in Brig. S. Sabharwal approaching the PIO with an application under the RTI Act. The application was preferred with the PIO, on 3.12.2010. Brig. S. Sabharwal sought the following information:

> "(a) All notings and correspondence of case file No. 0337/UN/PERS KIT STORES/DV2 of HQ Western Command.
> (b) Action taken Notings initiated by HQ Western Comd (DV) on HQ 335 Msl Bde Sig No. A-0183 dt 14 Jun 10 (Copy encl)."

10.6 The PIO, however, vide communication dated 10.12.2010, denied the information by relying upon the provisions of Section 8(4)(e) and (h) [sic 8(1)(e) and (h)] of the RTI Act. It was the opinion of the PIO that, notings and correspondence on the subject including legal opinions generated in the

case could not be given to Brig. S. Sabharwal in view of a "***fiduciary relationship existing in the chain of command and staff processing the case***". It was also observed by the PIO that the notings and contents of the classified files were exempt from disclosure under the provisions of the Department of Personnel and Training (in short DoPT) letter no. 1/20/2009-IR dated 23.6.2009, and that, no public interest would be served in disclosing the information sought for other than the applicant's own interest.

10.7 Being aggrieved, Brig. S. Sabharwal filed an appeal with the first appellate authority, on 12.1.2011. The first appellate authority rejected the appeal, which was conveyed under the cover of the letter dated 11.2.2011. To be noted, that even though, the letter dated 11.2.2011 is on record, the order of the first appellate authority has not been placed on record by the petitioners herein.

11. Brig. S. Sabharwal, being dissatisfied with result, filed a second appeal with the CIC. The CIC, passed a similar order, as was passed in the other two cases, whereby it directed that copy of file notings be supplied to Brig. S. Sabharwal after redacting the names and designations of the officers, who made the notings, in accordance with, the provisions of Section 10(1) of the RTI Act.

SUBMISSIONS OF COUNSELS

12. In the background of the aforesaid facts, it has been argued by Mr Mehra, learned ASG, that the CIC in several cases, contrary to the decision in V.K. Shad's case, has taken the view that the file notings, which include legal opinions, need not be disclosed, as it may affect the outcome of the legal action instituted by the applicant/querist seeking the information. Before me, however, reference was made to the case of ***Col. A.B. Nargolkar vs Ministry of Defence passed in appeal no. CIC/LS/A/2009/000951 dated 22.9.2009***.

12.1 It was thus the submission of the learned ASG that, in the impugned

orders, a contrary view has been taken to that which was taken in ***Col. A.B. Nargolkar's*** case. This, he submitted was not permissible as it was a bench of co-equal strength. It was submitted that in case the CIC disagreed with the view taken earlier, it ought to have referred the matter to a larger Bench.

12.2 Apart from the above, Mr Mehra has submitted that, the petitioner's action of denying information, which pertains to file notings and opinion of the JAG branch is sustainable under Section 8(1)(e) of the RTI Act. It was contended that there was a fiduciary relationship between the officers in the chain of command, and those, who were placed in the higher echelons, of what was essentially a pyramidical structure. In arriving at a final decision, the GOC-in-Chief takes into account several inputs, which includes, the notings on file as well as the opinion of the JAG branch. It was submitted that since, the JAG branch has a duty to act and give advice on matters falling within the ambit of its mandate, the disclosure of information would result in a breach of a fiduciary relationship qua those who give the advice and the final decision making authority, which is the recipient of the advice.

12.3 Mr Mehra submitted that, in all three cases, the advice rendered by the JAG branch was taken into account both while initiating proceedings and also at the stage of imposition of punishment against the delinquent officers.

12.4 Though it was not argued, in the grounds, in one of the writ petitions, reliance is also placed on Army Rule, 184, to contend that only the copy of the statements and documents relied upon during the conduct of Court Of Inquiry are to be provided to the delinquent officers. It is contended that the directions contained in the impugned orders of the CIC, are contrary to the said Rule.

12.5 In order to buttress his submissions reliance was placed by Mr Mehra, on the observations of the Supreme Court, in the case of ***Central Board of Secondary Education & Ors. vs Aditya Bandopadhayay & Ors. (2011) 8***

SCC 497. A particular stress, was laid on the observations made in paragraphs 38, 39, 44, 45 and 63 of the said judgment.

13. On the other hand, the respondents in the captioned writ petitions, who were led by Col. V.K. Shad, contended to the contrary and relied upon the impugned orders of the CIC. Specific reliance was placed on the judgments of this court, in the case of, ***Maj. General Surender Kumar Sahni vs UOI & Ors in CW No. 415/2003 dated 09.04.2003*** and ***The CPIO, Supreme Court of India vs Subhash Chandra Agarwal & Anr. WP(C) 288/2009 pronounced on 02.09.2009;*** and the judgment of the Supreme Court in the case of ***CBSE vs Aditya Bandopadhayay***.

REASONS

14. I have heard the learned ASG and the respondents in the writ petitions. As indicated at the very outset, the issue has been narrowed down to whether or not the file notings and the opinion of the JAG branch fall within the provisions of Section 8(1)(e) of the RTI Act. I may only note, even though the authorities below have fleetingly adverted to the provisions of Section 8(1)(h) of the RTI Act, the said aspect was neither pressed nor argued before me, by the learned ASG. The emphasis was only qua the provisions of Section 8(1)(e) of the RTI Act. The defence qua non-disclosure of information set up by the petitioners is thus, based on, what is perceived by them as subsistence of a fiduciary relationship between officers who generate the notes and the opinions which, presumably were taken in account by the final decision making authority, in coming to the conclusion which it did, with regard to the guilt of the delinquent officers and the extent of punishment, which was accorded in each case.

15. In order to answer the issue in the present case, fortunately I am not required to, in a sense, re-invent the wheel. The Supreme Court in two recent judgments has dealt with the contours of what would constitute a fiduciary

relationship.

15.1 Out of the two cases, the first case, was cited before me, which is ***CBSE vs Aditya Bandopadhayay*** and the other being ***ICAI vs Suaunak H. Satya and Ors. (2011) 8 SCC 781***.

15.2 Before I proceed further, as has been often repeated in judgment after judgments the preamble of the RTI Act, sets forth the guideline for appreciating the scope and ambit of the provisions contained in the said Act. The preamble, thus envisages, a practical regime of right to information for citizens, so that they have access to information which is in control of public authorities with the object of promoting transparency and accountability in the working of every such public authority. This right of the citizenry is required to be balanced with other public interest including efficient operations of the government, optimum use of limited physical resources and the preservation of confidentiality of sensitive information. The idea being to weed out corruption, and to hold, the government and their instrumentalities accountable to the governed.

15.3 The RTI Act is, thus, divided into six chapters and two schedules. For our purpose, what is important, is to advert to, certain provisions in chapter I, II and VI of the RTI Act.

15.4 Keeping the above in mind, what is thus, required to be ascertained is: (i) whether the material with respect to which access is sought, is firstly, information within the meaning of the RTI Act? (ii) whether the information sought is from a public authority, which is amenable to the provisions of the RTI Act? (iii) whether the material to which access is sought (provided it is information within the meaning of the RTI Act and is in possession of an authority which comes within the meaning of the term public authority) falls within the exclusionary provisions contained in Section 8(1)(e) of the RTI Act?

15.5 In order to appreciate the width and scope of the aforementioned provision, one would also have to bear in mind the provisions of Sections 9, 10, 11 & 22 of the RTI Act.

16. In the present case, therefore, let me first examine whether file notings and opinion of the JAG branch would fall within the ambit of the provisions of the RTI Act.

16.1 Section 2(f), inter alia defines information to mean "***any***" "***material***" contained in any form including records, documents, memo, emails, ***opinions***, ***advises,*** press releases, circulars, orders, log books, 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. Section 2(i) defines record as one which includes - any document, manuscript and file; (ii) any microfilm and facsimile copy of a document; (iii) reproduction of image or images embodied in such microfilm; and (iv) any other material produced by a computer or any other device.

16.2 A conjoint reading of Section 2(f) and 2(i) leaves no doubt in my mind that it is an expansive definition even while it is inclusive which, brings within its ambit any material available in any form. There is an express reference to **"*opinions*"** and **"*advices*"**, in the definition of information under Section 2(f). While, the definition of record in Section 2(i) includes a "***file***".

16.3 Having regard to the above, there can be no doubt that file notings and opinions of the JAG branch are information, to which, a person taking recourse to the RTI Act can have access provided it is available with the concerned public authority.

16.4 Section 2(h) of the RTI Act defines a public authority to mean any authority or body or institution of Central Government established or constituted, inter alia, by or under, the Constitution or by or under a law made

by Parliament. There can be no doubt nor, can it be argued that the Indian Army is not a public authority within the meaning of the RTI Act; which has the Ministry of Defence of the Government of India as its administrative ministry

16.5 The scope and ambit of the right to the information to which access may be had from a public authority is defined in Section 2(j). Section 2(j), inter alia, gives the right to information, which is accessible under this Act and, is held by or, is in control of the public authority by seeking inspection of work, documents, records by taking notes, extracts of certified copy of documents on record, by taking certified copy of material and also obtaining information in the form of discs, floppy, tapes, video cassetes, which is, available in any other electronic mode, whether stored in the computer or any other device.

16.6 Therefore, information which is available in the records of the Indian Army and, records as indicated hereinabove includes files, is information to which the respondents are entitled to gain access. The question is: which is really the heart of the matter, as to whether the information sought, in the present case, falls in the exclusionary (1)(e) of Section 8 of the RTI Act.

16.7 It may be important to note that Section 3 of the RTI Act, is an omnibus provision, in a sense, it mandates that all citizens shall have right to information subject to the other provisions of the RTI Act. Therefore, unless the information is specifically excluded, it is required to be provided in the form in which it is available, unless: (i) it would disproportionately divert the resources of public authority or, (ii) would be detrimental to the safety and preservation of the record in question [See Section 7(9)] or, the provision of information sought would involve an infringement of copy right subsisting in a person other than the State (see Section 9).

16.8 One may also be faced with a situation where information sought is

dovetailed with information which though falls within the exclusionary provisions referred to above, is severable. In such a situation, recourse can be taken to Section 10 of the RTI Act, which provides for severing that part of the information which is exempt from disclosure under the RTI Act, provided it can be "reasonably" severed from that which is not exempt. In other words, information which is not exempted but is otherwise reasonably severable, can be given access to a person making a request for grant of access to the same.

16.9 Section 11 deals with a situation where information available with a public authority which relates to or has been supplied by a third party, and is treated as confidential by that third party. In such an eventuality the PIO of the public authority is required to give notice to such third party of the request received for disclosure of information, and thereby, invite the said third party to make a submission in writing or orally, whether the information should be disclosed or not. In coming to a conclusion either way, the submissions made by the third party, will have to be kept in mind while taking a decision with regard to disclosure of information.

17. The last Section, which is relevant for our purpose, is Section 22. The said Section conveys in no uncertain terms the width of the RTI Act. It is a non-obstante clause which proclaims that the RTI Act shall prevail notwithstanding anything inconsistent contained in the Official Secrets Act, 1923 or any other law for the time being in force or, in any instrument having effect by virtue of any law other than the RTI Act. In other words, it overrides every other act or instrument having the effect of law including the Official Secrets Act, 1923.

17.1 Thus, an over-view of the Act would show that it mandates a public authority, which holds or has control over any information to disclose the same to a citizen, when approached, without the citizen having to give any reasons for seeking a disclosure. And in pursuit of this goal, the seeker of

information, apart from giving his contact details for the purposes of dispatch of information, is exempted from disclosing his personal details [see Section 6(2)].

17.2 Therefore, the rule is that, if the public authority has access to any material, which is information, within the meaning of the RTI Act and the said information is in its possession and/or its control, the said information would have to be disseminated to the information seeker, i.e., the citizen of this country, without him having to give reasons or his personal details except to the extent relevant for transmitting the information.

17.3 As indicated above, notes on files and opinions, to my mind, fall within the ambit of the provisions of the RTI Act. The possessor of information being a public authority, i.e., the Indian Army it could only deny the information, to the seeker of information who are respondents in the present case, only if the information sought falls within the exceptions provided in Section 8 of the RTI Act; in the instant case protection is claimed under clause (1)(e) of Section 8. Therefore, the argument of the petitioners that the information can be denied under Army Rule, 184 or the DoPT instructions dated 23.06.2009 are completely untenable in view of the over-riding effect of the provisions of the RTI Act. Both the Rule and the DoPT instructions have to give way to the provisions of Section 22 of the RTI Act. The reason being that, they were in existence when the RTI Act was enacted by the Parliament and the legislature is presumed to have knowledge of existing legislation including subordinate legislation. The Rule and the instruction can, in this case, at best have the flavour of a subordinate legislation. The said subordinate legislation cannot be taken recourse to, in my opinion to nullify the provisions of the RTI Act.

17.4 Therefore, one would have to examine the provisions of Section 8(1)(e) of the RTI Act. The relevant parts of the said Section 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
> (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.
> xxxx
> xxxx
> Provided that the information, which cannot be denied to the Parliament or 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) x x x x x
> 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."

17.5 In ***CBSE vs Aditya Bandopadhyay*** case, the Supreme Court was called upon to decide the issue as to whether, an examinee was entitled to an inspection of his answer books, in view of the appellant before the Supreme Court, i.e., the CBSE, claiming exemption under Section 8(1)(e) of the RTI Act.

17.6 In this context, the court considered the issue: whether the examining body holds the evaluated answer books in a fiduciary relationship with the examiners.

17.7 The Supreme Court after noting various meanings ascribed to the term

"fiduciary" in various dictionaries and texts, summed up what the term fiduciary would mean, in the following paragraph of its judgment:

> "……39. 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…."

17.8 Examples of certain relationships, where both parties act in a fiduciary capacity, while treating the other as beneficiary, are set out in paragraph 40 and 41 of the judgment. In paragraph 41 onwards the Court examined what would be the true scope of the expression "information available to a person in his capacity as fiduciary relationship", as used in Section 8(1)(e) of the RTI Act. In that context several fiduciary relationships were referred to like the one between a trustee and a beneficiary of a trust; a guardian with reference to a minor or, a physically infirm or mentally incapacitated person; a parent with reference to a child; a lawyer or a chartered accountant with reference to a client etc. After considering the matter at length, the Supreme Court came to the conclusion that there was no fiduciary relationship between the examining body and the examiner with reference to evaluated answer books. The court also examined the issue that if one were to assume that there was a

fiduciary relationship between the examiner and the examining body, whether the exemption would operate vis-a-vis third parties. In paragraph 44 of the judgment, the court concluded that if there was a fiduciary relationship, the exemption would operate vis-a-vis a third party, however, there would be no question of withholding information relating to the beneficiary from the beneficiary himself.

17.9 In paragraphs 49 and 50, the court concluded that since the examiner is acting as an agent of the examining body, in principle, the examining body is not in the position of a fiduciary, with reference to the examiner. On the other hand, once the examiner hands over the custody of the evaluated answer books, whose contents he is barred from disclosing as he acts as a fiduciary, uptill that point of time, ceases to be in that relationship once the work of evaluation of answer books is concluded, and the evaluated answer sheets are handed over to the examining body. In other words, since the examiner does not have any copyright or proprietary right or a right of confidentiality, in the evaluated answer books, the examining body cannot be said to be holding the evaluated answer books in a fiduciary relationship qua the examiner.

18. A similar view was held by the same Bench of the Supreme Court in the case of ***ICAI vs Shaunak H. Satya.*** The Supreme Court, while dealing with the issue whether the instructions and solutions to questions are information available to examiner and moderators in their fiduciary capacity, and therefore, exempt under Section 8(1)(e) of the RTI Act, made the following observations in paragraph 22 of the judgment:

> "....22. 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...."

19. The court also made clear in paragraph 26 of the judgment that there were ten categories of information which were exempt from Section 8 of the RTI Act. Out of the ten categories, six categories enjoyed absolute exemption. These being: those information, which fell in clauses (a), (b), (c), (f), (g) & (h) of Section 8(1) of the RTI Act, while information enumerated in clauses (d), (e) & (j) of the very same Section enjoyed ***"conditional"*** exemption to the extent that the information was subject to over-riding power of the competent authority under the RTI Act in larger public interest, which could in a given case, direct disclosure of such information. Clause (i), the Supreme Court noted, was period specific in as much as under Sub-Section (3) such information could be provided if the event or matter in issue had occurred 20 years prior to the date of the request being made under Section 6 of the RTI Act. It inter alia concluded, that, information relating to fiduciary relationship under clause 8(1)(e) did not enjoy absolute exemption.

20. Before I proceed further, I may also note that the first proviso in Section 8 says that, information which cannot be denied to the Parliament or the State Legislature, shall not be denied to any person. Subsection (2) of

Section 8, states that notwithstanding anything contained in the Official Secret Acts, 1923, or any of the exemptions provided in Subsection (1), would not come in the way of a public authority in allowing access to information if, public interest in its disclosure outweighs the harm to the protected interest.

20.1 A Full Bench of this court in the case of ***Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal, 166 (2010) DLT 305***, in the context of provisions of Section 8(1)(j) also examined what would constitute a fiduciary relationship. The observations contained in paragraph 97 to 101, being apposite are extracted hereinbelow:

> ".....97. As Waker defines it: "A "fiduciary" is a person in a position of trust, or occupying a position of power and confidence with respect to another such that he is obliged by various rules of law to act solely in the interest of the other, whose rights he has to protect. He may not make any profit or advantage from the relationship without full disclosure. The category includes trustees, Company promoters and directors, guardians, solicitors and clients and other similarly placed." [Oxford Companion to Law, 1980 p.469]
>
> 98. "A fiduciary relationship", as observed by Anantnarayanan, J., "may arise in the context of a jural relationship. Where confidence is reposed by one in another and that leads to a transaction in which there is a conflict of interest and duty in the person in whom such confidence is reposed, fiduciary relationship immediately springs into existence." [see Mrs. Nellie Wapshare v. Pierce Lasha & Co. Ltd. AIR 1960 Mad 410]
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> 99. In Lyell v. Kennedy (1889) 14 AC 437, the Court explained that whenever two persons stand in such a situation that confidence is necessarily reposed by one in the other, there arises a presumption as to fiduciary relationship which grows naturally out of that

confidence. Such a confidential situation may arise from a contract or by some gratuitous undertaking, or it may be upon previous request or undertaken without any authority.

100. In Dale & Carrington Invt. (P) Ltd. v. P.K. Prathaphan: (2005) 1 SCC 212 and Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. (1981) 3 SCC 333, the Court held that the directors of the company owe fiduciary duty to its shareholders. In P.V. Sankara Kurup v. Leelavathy Nambier: (1994) 6 SCC 68, the Court held that an agent and power of attorney can be said to owe a fiduciary relationship to the principal.

101. Section 88 of the Indian Trusts Act requires a fiduciary not to gain an advantage of his position. Section 88 applies to a trustee, executor, partner, agent, director of a company, legal advisor or other persons bound in fiduciary capacity. Kinds of persons bound by fiduciary character are enumerated in Mr. M. Gandhi's book on "Equity, Trusts and Specific Relief" (2nd ed., Eastern Book Company)

(1) Trustee,
(2) Director of a company,
(3) Partner,
(4) Agent,
(5) Executor,
(6) Legal Adviser,
(7) Manager of a joint family,
(8) Parent and child,
(9) Religious, medical and other advisers,
(10) Guardian and Ward,
(11) Licensees appointed on remuneration to purchase stocks on behalf of government,
(12) Confidential Transactions wherein confidence is reposed, and which are indicated by (a) Undue influence, (b) Control over property, (c) Cases of unjust enrichment, (d) Confidential information, (e) Commitment of job,
(13) Tenant for life,

(14) Co-owner,
(15) Mortgagee,
(16) Other qualified owners of property,
(17) De facto guardian,
(18) Receiver,
(19) Insurance Company,
(20) Trustee de son tort,
(21) Co-heir,
(22) Benamidar.

20.2 The above would show that there are two kinds of relationships. One, where a fiducial relationship exists, which is applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, executors and beneficiaries of a testamentary succession; while the other springs from a confidential relationship which is pivoted on confidence. In other words confidence is reposed and exercised. Thus, the term fiduciary applies, it appears, to a person who enjoys peculiar confidence qua other persons. The relationship mandates fair dealing and good faith, not necessarily borne out of a legal obligation. It also permeates to transactions, which are informal in nature. [See words and phrases Permanent Edn. (Vol. 16-A, p. 41) and para 38.3 of the ***CBSE vs Aditya Bandopadhyay***]. As indicated above, the Supreme Court in the very same judgment in paragraph 39 has summed up as to what the term fiduciary would mean.

20.3 In the instant case, what is sought to be argued in sum and substance that, it is a fiducial relation of the latter kind, where the persons generating the note or opinion expects the fiduciary, i.e., the institution, which is the Army, to hold their trust and confidence and not disclose the information to the respondents herein, i.e., Messers V.K. Shad and Ors. If this argument were to be accepted, then the persons, who generate the notes in the file or the opinions, would have to be, in one sense, the beneficiaries of the said information. In an institutional set up, it can hardly be argued that notes on

file qua a personnel or an employee of an institution, such as the Army, whether vis-a-vis his performance or his conduct, in any manner, can benefit the person, who generates the note or renders an opinion. As a matter of fact, the person who generates the note or renders an opinion is presumed to be a person who is objective and not conflicted by virtue of his interest in the matter, on which, he is called upon to deliberate. If that position holds, then it can neither be argued nor can it be conceived that notes on file or opinions rendered in an institutional setup by one officer qua the working or conduct of another officer brings forth a fiduciary relationship. It is also not a relationship of the kind where both parties required the other to act in a fiduciary capacity by treating the other as a beneficiary. The examples of such situations are found say in a partnership firm where, each partner acts in fiduciary capacity qua the other partner(s).

20.4 If at all, a fiduciary relationship springs up in such like situation, it would be when a third party seeks information qua the performance or conduct of an employee. The institution, in such a case, which holds the information, would then have to determine as to whether such information ought to be revealed keeping in mind the competing public interest. If public interest so demands, information, even in such a situation, would have to be disclosed, though after taking into account the rights of the individual concerned to whom the information pertains. A denial of access to such information to the information seekers, i.e., the respondents herein, (Messers V.K. Shad & Co.) especially in the circumstances that the said information is used admittedly in coming to the conclusion that the delinquent officers were guilty, and in determining the punishment to be accorded to them, would involve a serious breach of principles of natural justice, as non-communication would entail civil consequences and would render such a decision vulnerable to challenge under Article 14 of the Constitution of India

provided information is sought and was not given. [See ***UOI vs R.S. Khan 173 (2010) DLT 680***].

21. It is trite law that the right to information is a constitutional right under Article 19(1)(a) of the Constitution of India which, with the enactment of the RTI Act has been given in addition a statutory flavour with the exceptions provided therein. But for the exceptions given in the RTI Act; the said statute recognizes the right of a citizen to seek access to any material which is held or is in possession of public authority.

22. This brings me to the first proviso of Section 8(1), which categorically states that no information will be denied to any person, which cannot be denied to the Parliament or the State Legislature. Similarly, sub-section (2) of Section 8, empowers the public authority to over-ride the Official Secrets Act, 1923 and, the exemptions contained in sub-section (1) of Section 8, of the RTI Act, if public interest in the disclosure of information outweighs the harm to the protected interest. As indicated hereinabove, the Supreme Court in ***CBSE vs Aditya Bandopadhayay*** case has clearly observed that exemption under Section 8(1)(e) is conditional and not an absolute exemption.

23 I may only add a note of caution here: which is, that protection afforded to a client vis-à-vis his legal advises under the provisions of Section 126 to 129 of the Evidence Act, 1872 is not to be confused with the present situation. The protection under the said provisions is accorded to a client with respect to his communication with his legal advisor made in confidence in the course of and for the purpose of his employment unless the client consents to its disclosure or, it is a communication made in furtherance of any illegal purpose. The institution i.e The Indian Army in the present case cannot by any stretch of imagination be categorized as a client. The legal professional privilege extends only to a barrister, pleader, attorney or Vakil. The persons who have generated opinions and/or the notings on the file in the present case

do not fall in any of these categories.

23.1 Having regard to the above, I am of the view that the contentions of the petitioners that the information sought by the respondents (Messers V.K. Shad & Co.) under Section 8(1)(e) of the Act is exempt from disclosure, is a contention, which is misconceived and untenable. For instance, can the information in issue in the present case, denied to the Parliament and State Legislature. In my view it cannot be denied, therefore, the necessary consequences of providing information to Messers V.K. Shad should follow.

24. The argument of the learned ASG that, the CIC had taken a diametrically opposite view in the other cases and hence the CIC ought to have referred the matter to a larger bench, does have weight. This objection ordinarily may have weighed with me but for the following reasons :-

24.1 First, the judgment of the CIC cited for this purpose i.e., Col. A.B. Nargolkar case, dealt with the situation where an order of remand was passed directing the PIO to apply the ratio of the judgment of a Single Judge of this court in the case of the ***CPIO, Supreme Court of India Vs. Subhash Chandra Agarwal and Anr., WP (C) 288/2009, pronounced on 02.09.2009.*** The CIC by itself did render a definite view.

24.2 Second, keeping in mind the fact that the information commissioners administering the RTI Act are neither persons who are necessarily instructed in law, i.e., are not trained lawyers, and nor did they have the benefit of such guidance at the stage of argument, I do not think it would be appropriate to set aside the impugned judgment on this ground and remand the matter for a fresh consideration by a larger bench of the CIC. This view, I am inclined to hold also, on account of the fact that, since then there have been several rulings of various High Courts including that of the Supreme Court, to which I have made a reference above, and that, remanding the matter to the CIC would only delay the cause of the parties before me.

24.3 These are cases which affect the interest of both parties, especially the petitioners in a large number of cases, and therefore, the need for a ruling of a superior court one way or the other, on the issue. It is in this context that I had proceeded to decide the matter on merits, and not take the route of remand in this particular case. The CIC is, however, advised in future to have regard to the discipline of referring the matters to a larger bench where a bench of co-ordinate strength takes a view which is not consistent with the view of the other.

25. For the foregoing reasons, the writ petitions are dismissed. The impugned orders passed by the CIC are sustained. The information sought by Messers V.K. Shad and Ors will be supplied within two weeks from today, in terms of the orders passed by the CIC. However, having regard to the peculiar facts and circumstances of the case, parties are directed to bear their own costs save and except to the extent that the sum of Rs 5000/- each, deposited pursuant to the two orders of my predecessor of even date, passed on 27.02.2012, in WP(C) Nos. 1144/2012 and 1138/2012, shall be released, on a pro rata basis, to the three respondents, towards incidental expenses.

RAJIV SHAKDHER, J

NOVEMBER 09, 2012
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IN THE HIGH COURT OF DELHI AT NEW DELHI

#37

W.P. (C) 747 of 2011 & CM APPL 1568/2011

INDIAN INSTITUTE OF TECHNOLOGY, DELHI ..... Petitioner
Through: Mr. Arjun Mitra, Advocate

versus

NAVIN TALWAR ..... Respondent
Through: None.

And

#39

W.P. (C) 751 of 2011 & CM APPL 1598/2011

INDIAN INSTITUTE OF TECHNOLOGY, DELHI ..... Petitioner
Through: Mr. Arjun Mitra, Advocate

versus

SUSHIL KOHLI ..... Respondent
Through: None.

CORAM: JUSTICE S.MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

O R D E R
07.02.2011

1. The Petitioner Indian Institute of Technology ('IIT'), Delhi is aggrieved by orders dated 23rd November 2010 and 23rd December 2010 passed by the Central Information Commission ('CIC') in the complaints of Mr. Navin Talwar [the Respondent in Writ Petition (Civil) No. 747 of 2011) and Mr. Sushil Kohli [the Respondent in Writ Petition (Civil) No. 751 of 2011),

respectively.

2. The issue involved in both these petitions is more or less similar. Mr. Navin Talwar sat for the Joint Entrance Examination 2010 ('JEE 2010'). Mr. Sushil Kohli's daughter, Ms. Sakshi Kohli, sat for the Graduate Aptitude Test in Engineering 2010 ('GATE 2010'). The scheme of the examination is that the candidates are given two question papers, containing multiple choices for the correct answers, the correct answers are to be darkened by a pencil in the Optical Response Sheet ('ORS') which is supplied to the candidates. The candidate has to darken the bubbles corresponding to the correct answer in an ORS against the relevant question number.

3. The JEE 2010 was conducted on 11th April 2010 in 1026 centres across India and 4.72 lakh candidates appeared. The answer key was placed on the internet website of the IIT on 3rd June 2010 while the individual marks of the candidates were posted on 5th June 2010. Counseling of the successful candidates took place from 9th to 12th June 2010. The GATE 2010 was conducted on 14th February 2010 and the results were announced on 15th March 2010.

4. In the information brochure, for the JEE, one of the terms and conditions reads as under:

> **"X. Results of JEE-2010**
>
> **1. Performance in JEE-2010**
>
> The answer paper of JEE-2010 is a machine-gradable Optical Response Sheet (ORS). These sheets are scrutinized and graded

with extreme care after the examination. There is no provision for re-grading and re-totalling. No photocopies of the machine-gradable sheets will be made available. No correspondence in this regard will be entertained.

Candidates will get to know their All India Ranks ('AIR')/Category ranks through our website/SMS/VRS on May 26, 2010.

Candidates can view their performance in JEE-2010 from JEE websites from June 3, 2010."

A similar clause is contained in Clause 3.5.1 (d) of the brochure for GATE.

5. It is stated that despite the above condition, Mr. Navin Talwar [the Respondent in W.P. (Civil) No. 747 of 2011] and Mr. Sushil Kohli (father) [the Respondent in W.P. (Civil) No. 751 of 2011] filed applications under the Right to Information Act, 2005 ('RTI Act') with the Public Information Officer ('PIO'), IIT seeking the photocopies of the respective ORSs and for the subject-wise marks of each of the candidates.

6. The PIO of IIT responded by stating that the marks obtained by the candidates were available on the internet and there was no provision for providing a photocopy of the ORS. Thereafter, the Respondents filed appeals before the CIC. After perusing the response of the PIO, IIT, the CIC passed the following order in the appeal filed by Mr. Navin Talwar:

"3. Upon perusal of the documents of the case, the Commission finds that the response of the Public Authority is not found acceptable by the Complainant. Hence, despite the information provided by the letter dated 15th June 2010, the Complainant approached this Commission. The Commission

> suggests the Complainant to seek inspection of the relevant records and directs Indian Institute of Technology, Delhi to cooperate with the Complainant in the inspection of the file/s. It is also directed that the Respondent shall submit a duly notarised affidavit on a Non-judicial stamp paper stating the inability to furnish the copy of ORS. The Complainant is at liberty to approach the appropriate Grievance Redressal Forum or seek legal remedy."

7. As regards the case of Mr. Sushil Kohli the Commission found that the defence of the IIT was that "the information sought is exempted under Section 8 (1) (e) since GATE Committee shares fiduciary relationship with its evaluators and maintains confidentiality of both the manner and method of evaluation." It was further contended before the CIC that "the evaluation of the ORS is carried out by a computerized process using scanning machines." The decision rendered on 23rd December 2010 in the appeal filed by Mr. Sushil Kohli reads as under:

> "2. During the hearing, the Respondent stated that they have to inform the NCB, MHRD before handing over the marks to the Appellant and that the process would take more than a month. The Commission in consultation with the Appellant agreed to give additional time to the PIO for providing the information and accordingly directs the PIO to provide the marks sheet to the Appellant within 45 days from the date of hearing to the Appellant."

8. This Court has heard the submissions of Mr. Arjun Mitra, learned counsel appearing for the Petitioner IIT. It is first submitted that as regards Mr. Navin Talwar's case, severe prejudice has been caused to the Petitioner because the decision of the CIC has been rendered without affording the IIT an opportunity of being heard.

9. This Court is not impressed with the above submission. The defence the Petitioner may have had, if a notice had been issued to it by the CIC, has been considered by this Court in the present proceedings. This Court finds, for the reasons explained hereinafter, that there is no legal justification for the Petitioner's refusal to provide each of the Respondents a photocopy of the concerned ORS.

10. It is next submitted that under Section 8 (1) (e) of the RTI Act, there is a fiduciary relationship that the Petitioner shares with the evaluators and therefore a photocopy of the ORS cannot be disclosed. Reliance is placed on the decision by the Full Bench of the CIC rendered on 23rd April 2007 in ***Rakesh Kumar Singh v. Harish Chander.***

11. In the first place given the fact that admittedly the evaluation of the ORS is carried out through a computerized process and not manually, the question of there being a fiduciary relationship between the IIT and the evaluators does not arise. Secondly, a perusal of the decision of the CIC in ***Rakesh Kumar Singh v. Harish Chander*** shows that a distinction was drawn by the CIC between the OMR sheets and conventional answer sheets. The evaluation of the ORS is done by a computerized process. The non-ORS answer sheets are evaluated by physical marking. It was observed in para 41 that where OMR (or ORS) sheets are used, as in the present cases, the disclosure of evaluated answer sheets was "unlikely to render the system unworkable and as such the evaluated answer sheets in such cases will be disclosed and made available under the Right to Information Act unless the

providing of such answer sheets would involve an infringement of copyright as provided for under Section 9 of the Right to Information Act."

12. Irrespective of the decision dated 23rd April 2007 of the CIC in ***Rakesh Kumar Singh v. Harish Chander,*** which in any event is not binding on this Court, it is obvious that the evaluation of the ORS/ORM sheets is through a computerized process and no prejudice can be caused to the IIT by providing a candidate a photocopy of the concerned ORS. This is not information being sought by a third party but by the candidate himself or herself. The disclosure of such photocopy of the ORS will not compromise the identity of the evaluator, since the evaluation is done through a computerized process. There is no question of defence under Section 8 (1) (e) of the RTI Act being invoked by the IIT to deny copy of such OMR sheets/ORS to the candidate.

13. It is then urged by Mr. Mitra that if the impugned orders of the CIC are sustained it would open a "floodgate" of such applications by other candidates as a result of which the entire JEE and GATE system would "collapse". The above apprehension is exaggerated. If IIT is confident that both the JEE and GATE are fool proof, it should have no difficulty providing a candidate a copy of his or her ORS. It enhances transparency. It appears unlikely that the each and every candidate would want photocopies of the ORS.

14. It is then submitted that evaluation done of the ORS by the Petitioner is final and no request can be entertained for re-evaluation of marks. Reliance is placed on the order dated 2nd July 2010 passed by the learned Single Judge

of this Court in Writ Petition (Civil) No. 3807 of 2010 ***[Adha Srujana v. Union of India]***. This Court finds that the question as far as the present case is concerned is not about the request of the Respondents for re-evaluation or re-totalling of the marks obtained by them in the JEE 2010 or GATE 2010. Notwithstanding the disclosure of the ORS to the Respondent, IIT would be within its rights to decline a request from either of them for re-evaluation or re-totalling in terms of the conditions already set out in the information brochure. The decision dated 2nd July 2010 by this Court in W.P. (C) No. 3807 of 2010 has no application to the present case.

15. The right of a candidate, sitting for JEE or GATE, to obtain information under the RTI Act is a statutory one. It cannot be said to have been waived by such candidate only because of a clause in the information brochure for the JEE or GATE. In other words, a candidate does not lose his or her right under the RTI Act only because he or she has agreed to sit for JEE or GATE. The condition in the brochure that no photocopy of the ORS sheet will be provided, is subject to the RTI Act. It cannot override the RTI Act.

16. For the above reasons, this Court finds no reason to interfere with the impugned orders dated 23rd November 2010 and 23rd December 2010 passed by the CIC.

17. The writ petitions and the pending applications are dismissed.

S. MURALIDHAR, J

FEBRUARY 07, 2011
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 11.07.2012**

+ **W.P.(C) No.13090 of 2006**

Union of India ... Petitioner

versus

Central Information Commission & Anr. ... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr.Amarjeet Singh Chandhihok Additional Solicitor General with Mr. Sumeet Pushkarna Advocate, Mr. Ritesh Kumar and Mr. Gaurav Verma Advocate

For Respondents : Mr. Prashant Bhushan Advocate with Mr. Ramesh K.Mishra Advocate for Respondent no.2

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

ANIL KUMAR, J.

1. This writ petition has been filed by the petitioner, Union of India, seeking the quashing of the order/judgment dated 8th August, 2006 passed by respondent no.1, Central Information Commission, directing the production of the document/correspondences, disclosure of which was sought by respondent no.2, Shri C. Ramesh, under the provisions of the Right to Information Act, 2005.

2. The brief facts of the case are that the respondent no.2, Shri C. Ramesh, by way of an application under Section 6 of the Right to Information Act, 2005 sought the disclosure from the Central Public Information Officer (hereinafter referred to as 'CPIO') of all the letters sent by the former President of India, Shri K.R. Narayanan, to the then Prime Minister, Shri A.B. Vajpayee, between 28th February, 2002 to 15th March, 2002 relating to '*Gujarat riots*'.

3. The CPIO by a communication dated 28th November, 2005 denied the request of respondent no.2 on the following grounds:-

> "(1) .....that Justice Nanavati/Justice Shah commission of enquiry had also asked for the correspondence between the President, late Shri K.R.Narayanan and the former Prime minister on Gujarat riots and the privilege under section 123 & 124 of the Indian Evidence Act, 1872 and Article 74(2) read with Article 78 and 361 of the Constitution of India has been claimed by the Government, for production of those documents;
>
> (2) .....that in terms of Section 8(1) (a) of the Right to Information Act, 2005, the information asked for by you, the disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State etc."

4. The respondent no.2, thereafter, filed an appeal under Section 19(1) of the Right to Information Act, 2005 before the Additional Secretary (S & V), Department of Personnel and Training, who is the designated first appellate authority under the Act, against the order of the CPIO on the ground that the Right to Information Act, 2005 has an

overriding effect over the Indian Evidence Act, 1872 and that the document disclosure of which was sought by him are not protected under Section 8 of the Right to Information Act, 2005 or Articles 74(2), 78 and 361 of the Constitution of India, which appeal was also dismissed by an order dated 2nd January, 2006. The respondent no.2 aggrieved by the order of the first appellate authority preferred a second appeal under Section 19(3) of the Act before the Commission, Respondent no.1. The Commission after hearing the appeal by an order dated 7th July, 2006 referred the same to the full bench of the Commission, respondent no.1, for re-hearing.

5. After hearing the appeal, the full bench of the Commission, upholding the contentions of respondent no.2 passed an order/judgment dated 8th August, 2006, calling for the correspondences, disclosure of which was sought by the respondent no.2 under the provisions of the Right to Information Act, so that it can examine as to whether the disclosure of the same would serve or harm the public interest, after which, appropriate direction to the public authority would be issued. This order dated 8th August, 2006 is under challenge. The direction issued by respondent no.1 is as under:-

> "The Commission, after careful consideration has, therefore, decided to call for the correspondence in question and it will examine as to whether its disclosure will serve of harm the public interest. After examining the documents, the Commission will first consider whether it would be in

public interest to order disclosure or not, and only then it will issue appropriate directions to the public authority."

6. The order dated 8th August, 2006 passed by the Central Information Commission, respondent no.1, has been challenged by the petitioner on the ground that the provisions of the Right to Information Act, 2005 should be construed in the light of the provisions of the Constitution of India; that by virtue of Article 74(2) of the Constitution of India, the advise tendered by the Council of Ministers to the President is beyond the judicial inquiry and that the bar as contained in Article 74(2) of the Constitution of India would be applicable to the correspondence exchanged between the President and the Prime Minister. Thus, it is urged that the consultative process between the then President and the then Prime Minister, enjoys immunity. Further it was contended that since the correspondences exchanged cannot be enquired into by any Court under Article 74(2) consequently respondent no.1 cannot look into the same. The petitioner further contended that even if the documents form a part of the preparation of the documents leading to the formation of the advice tendered to the President, the same are also 'privileged'. According to the petitioner since the correspondences are privileged, therefore, it enjoys the immunity from disclosure, even in proceedings initiated under the Right to Information Act, 2005.

7. The petitioner further contended that by virtue of Article 361 of the Constitution of India the deliberations between the Prime Minister and the President enjoy complete immunity as the documents are 'classified documents' and thus it enjoys immunity from disclosure not because of their contents but because of the class to which they belong and therefore the disclosure of the same is protected in public interest and also that the protection of the documents from scrutiny under Article 74(2) of the Constitution of India is distinct from the protection available under Sections 123 and 124 of the Indian Evidence Act, 1872. Further it was contended that the documents which are not covered under Article 74(2) of the Constitution, privilege in respect to those documents could be claimed under section 123 and 124 of the Evidence Act.

8. The petitioner stated that the freedom of speech and expression as provided under Article 19(1)(a) of the Constitution of India, which includes the right to information, is subject to Article 19(2) of the Constitution of India wherein restrictions can be imposed on the fundamental rights of freedom of speech and expression. Therefore, it was contended that the right to information cannot have a overriding effect over and above the provisions of Article 19(2) of the Constitution of India and since the Right to Information, Act originates from the

Constitution of India the same is secondary and is subject to the provisions of the Constitution. The petitioner contended that the observation of respondent no.1 that the Right to Information Act, 2005 erodes the immunity and the privilege afforded to the cabinet and the State under Articles 74(2), 78 and 361 of the Constitution of India is patently erroneous as the Constitution of India is supreme over all the laws, statutes, regulations and other subordinate legislations both of the Centre, as well as, of the State. The petitioner has sought the quashing of the impugned judgment on the ground that the disclosure of the information which has been sought by respondent no.2 relates to Gujarat Riots and any disclosure of the same would prejudicially affect the national security, sovereignty and integrity of India, which information is covered under Sections 8(1)(a) and 8(1)(i) of the RTI Act. It was also pointed out by the petitioner that in case of conflict between two competing dimensions of the public interest, namely, right of citizens to obtain disclosure of information vis-à-vis right of State to protect the information relating to the crucial state of affairs in larger public interest, the later must be given preference.

9. Respondent no.2 has filed a counter affidavit refuting the averments made by the petitioner. In the affidavit, respondent no.2 relying on section 18(3) & (4) of the Right to Information Act, 2005 has contended that the Commission, which is the appellate authority under

the RTI Act, has absolute power to call for any document or record from any public authority, disclosure of which documents, before the Commission cannot be denied on any ground in any other Act. Further the impugned order is only an interim order passed by the Commission by way of which the information in respect of which disclosure was been sought has only been summoned in a sealed envelope for perusal or inspection by the commission after which the factum of disclosure of the same to the public would be decided and that the petitioner by challenging this order is misinterpreting the intent of the provisions of the Act and is questioning the authority of the Commission established under the Act. It was also asserted by respondent no.2 that the Commission in exercise of its jurisdiction in an appeal can decide as to whether the exemption stipulated in Section 8(1)(a) of the RTI Act is applicable in a particular case, for which reason the impugned order was passed by the Commission, and thus by prohibiting the disclosure of information to the Commission, the petitioner is obstructing the Commission from fulfilling its statutory duties. Also it is urged that the Right to Information Act, 2005 incorporates all the restrictions on the basis of which the disclosure of information by a public authority could be prohibited and that while taking recourse to section 8 of the Right to Information Act for denying information one cannot go beyond the parameters set forth by the said section. The respondent while admitting that the Right to Information Act cannot override the

constitutional provisions, has contended that Articles 74(2), 78 and 361 of the Constitution do not entitle public authorities to claim privilege from disclosure. Also it is submitted that the veil of confidentiality and secrecy in respect of cabinet papers has been lifted by the first proviso to section 8(1)(i) of the Right to Information Act, which is only a manifestation of the fundamental right of the people to know, which in the scheme of Constitution overrides Articles 74(2), 78 and 361 of the Constitution. Respondent no.2 contended that the information, disclosure of which has been sought, only constitutes the documents on the basis of which advice was formed/decision was made and the same is open to judicial scrutiny as under Article 74(2) the Courts are only precluded from looking into the 'advice' which was tendered to the President. Thus in terms of Article 74(2) there is no bar on production of all the material on which the ministerial advice was based. The respondent also contended that in terms of Articles 78 and 361 of the constitution which provides for participatory governance, the Government cannot seek any privilege against its citizens and under the Right to Information Act what cannot be denied to the Parliament cannot be denied to a citizen. Relying on Section 22 of the Right to Information Act the respondent has contended that the Right to Information Act overrides not only the Official Secrets Act but also all other acts which ipso facto includes Indian Evidence Act, 1872, by virtue of which no public authority can claim to deny any information

on the ground that it happens to be a 'privileged' document under the Indian Evidence Act, 1872. The respondent has sought the disclosure of the information as same would be in larger public interest, as well as, it would ensure the effective functioning of a secular and democratic country and would also check non performance of public duty by people holding responsible positions in the future.

10. This Court has heard the learned counsel for the parties and has carefully perused the writ petition, counter affidavit, rejoinder affidavit and the important documents filed therein. The question which needs determination by this Court, which has been agreed by all the parties, is whether the Central Information Commission can peruse the correspondence/letters exchanged between the former President of India and the then Prime Minster of India for the relevant period from 28th February, 2002 till 1st March, 2002 in relation to 'Gujarat riots' in order to decide as to whether the disclosure of the same would be in public interest or not and whether the bar under Article 74(2) will be applicable to such correspondence which may have the advice of Council of Minister or Prime Minister.

11. The Central Information Commission dealt with the following issues while considering the request of respondent No. 2:

> (1) Whether the Public Authority's claim of privilege under the Law of Evidence is justifiable under the RTI Act 2005?

(2) Whether the CPIO or Public Authority can claim immunity from disclosure under Article 74(2) of the Constitution?

(3) Whether the denial of information to the appellant can be justified in this case under section 8(1) (a) or under Section 8(1) (e) of the Right to Information Act 2005?

(4) Whether there is any infirmity in the order passed by the CPIO or by the Appellate Authority denying the requested information to the Appellant?

While dealing with the first issue the Central Information Commission observed that on perusing Section 22 of the Right to Information Act, 2005, it was clear that it not only over-rides the Official Secrets Act, but also all other laws and that ipso facto it includes the Indian Evidence Act as well. Therefore, it was held that no public authority could claim to deny any information on the ground that it happens to be a "privileged" one under the Indian Evidence Act. It was also observed that Section 2 of the Right to Information Act cast an obligation on all public authorities to provide the information so demanded and that the right thus conferred is only subject to the other provisions of the Act and to no other law. The CIC also relied on the following cases:

(1) S.R. Bommai vs. Union of India: AIR 1994 SC 1918, wherein it was held that Article 74(2) is no bar to the production of all the material on which the ministerial advice was based.

(2) Rameshwar Prasad and Ors. vs. Union of India and Anr. AIR 2006 SC 980 wherein the above ratio was further clarified.

(3) SP Gupta vs. Union of India, 1981 SCC Supp. 87 case, wherein it was held that what is protected from disclosure under clause (2) of the Article 74 is only the advice tendered by the Council of Ministers. The reasons that have weighed with the Council of Ministers in giving the advice would certainly form part of the advice. But the material on which the reasoning of the Council of Ministers is based and advice given cannot be said to form part of the advice. It was also held that disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest.

(4) R.K. Jain vs. Union of India & Ors. AIR 1993 SC 1769 wherein the SC refused to grant a general immunity so as to cover that no document in any particular class or one of the categories of Cabinet papers or decisions or contents thereof should be ordered to be produced.

Based on the decisions of the SC in the above cases, the CIC had also inferred that Article 74(2), 78 and 361 of the Constitution of India do not per se entitle the public authorities to claim privilege from disclosure.

12. However, instead of determining whether the correspondence in question comes under the special class of documents exempted from disclosure on account of bar under Article 74 (2) of the Constitution of India, the CIC has called for it in order to examine the same. The petitioners have contended that the CIC does not have the power to call for documents that have been expressly excluded under Article 74(2),

read with Article 78 and Article 361 of the Indian Constitution, as well as the provisions of the Right to Information Act, 2005 under which the CIC is established and which is also the source of all its power. As per the learned counsel for the petitioner, the exemption from the disclosure is validated by Section 8(1)(a) and Section 8(1)(i) of the Right to Information Act, 2005 as well. The respondents, however, have contended that the correspondence is not expressly barred from disclosure under either the Constitution or the Provisions of the Right to Information Act, 2005. Therefore, the relevant question to be determined by this Court is whether or not the correspondence remains exempted from disclosure under Article 74(2) of the Constitution of India or under any provision of the Right to information Act, 2005. If the answer to this query is in the affirmative then undoubtedly what stands exempted under the Constitution cannot be called for production by the CIC as well. Article 74 (2) of the Constitution of India is as under:

> **74. Council of Ministers to aid and advise President.—**
>
> (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:
>
> [Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

13. Clearly Article 74(2) bars the disclosure of the advice rendered by the Council of Ministers to the President. What constitutes this advice is another query that needs to be determined. As per the learned counsel for the petitioner, the word "advice" cannot constitute a single instance or opinion and is instead a collaboration of many discussions and to and fro correspondences that give result to the ultimate opinion formed on the matter. Hence the correspondence sought for is an intrinsic part of the "advice" rendered by the Council of Ministers and the correspondence is not the material on which contents of correspondence, which is the advise, has been arrived at and therefore, it is barred from any form of judicial scrutiny.

14. The respondents have on the other hand have relied on the judgments of S.R. Bommai vs. Union of India: AIR 1994 SC 1918; Rameshwar Prasad and Ors. vs. Union of India and Anr. AIR 2006 SC 980 and SP Gupta vs. Union of India, 1981 SCC Supp. 87, with a view to justify that Article 74(2) only bars disclosure of the final "advice" and not the material on which the "advice" is based.

15. However, on examining these case laws, it is clear that the factual scenario which were under consideration in these matters, where wholly different from the circumstances in the present matter. Even the slightest difference in the facts could render the ratio of a particular case otiose when applied to a different matter.

16. A decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in facts or additional facts may make a lot of difference in the precedent value of a decision. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.,(2003) 2 SCC 111*, at page 130, the Supreme Court had held in para 59 relying on various other decision as under:

> "59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See *Ram Rakhi* v. *Union of India* AIR 2002 Del 458 (db), *Delhi Admn. (NCT of Delhi)* v. *Manohar Lal* (2002) 7 SCC 222, *Haryana Financial Corpn.* v. *Jagdamba Oil Mills* (2002) 3 SCC 496 and *Nalini Mahajan (Dr)* v. *Director of Income Tax (Investigation)* (2002) 257 ITR 123 (Del).]"

17. In Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr. (AIR 2004 SC 778), the Supreme Court had held that a decision cannot be relied on without considering the factual situation. In the said judgment the Supreme Court had observed:-

> " Court 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.

18. In the case of S.R. Bommai (supra) Article 74(2) and its scope was examined while evaluating if the President's functions were within the constitutional limits of Article 356, in the matter of his satisfaction. The extent of judicial scrutiny allowed in such an evaluation was also ascertained. The matter dealt with the validity of the dissolution of the Legislative Assembly of States of Karnataka, Meghalaya, Nagaland, Madhya Pradesh, Himachal Pradesh and Rajasthan, by the President under Article 356, which was challenged.

19. Similarly in Rameshwar Prasad (supra) since no political party was able to form a Government, President's rule was imposed under Article 356 of the Constitution over the State of Bihar and consequently the Assembly was kept in suspended animation. Thereafter, the assembly was dissolved on the ground that attempts are being made to cobble a majority by illegal means as various political parties/groups

are trying to allure elected MLAs and that if these attempts continue it would amount to tampering of the constitutional provisions. The issue under consideration was whether the proclamation dissolving the assembly of Bihar was illegal and unconstitutional. In this case as well reliance was placed on the judgment of S.R. Bommai (supra). However it is imperative to note that only the decision of the President, taken within the realm of Article 356 was judicially scrutinized by the Supreme Court. Since the decision of the President was undoubtedly based on the advice of the Council of Ministers, which in turn was based on certain materials, the evaluation of such material while determining the justifiability of the President's Proclamation was held to be valid.

20. Even in the case of S.P Gupta (supra) privilege was claimed against the disclosure of correspondences exchanged between the Chief Justice of the Delhi High Court, Chief Justice of India and the Law Minister of the Union concerning extension of the term of appointment of Addl. Judges of the Delhi High Court. The Supreme Court had called for disclosure of the said documents on the ground that the non disclosure of the same would cause greater injury to public interest than what may be caused by their disclosure, as the advice was tendered by the Council of Ministers after consultation with the Chief Justice of Delhi High Court and the Chief Justice of India and thus it

was held that the views expressed by the Chief justices could not be said to be an advice and therefore there is no bar on its disclosure.

21. It will be appropriate to consider other precedents also relied on by the parties at this stage. In State of U.P. vs. Raj Narain, AIR 1975 SC 865 the document in respect of which exclusion from production was claimed was the Blue Book containing the rules and instructions for the protection of the Prime Minister, when he/she is on tour or travelling. The High Court rejected the claim of privilege under section 123 of the Evidence Act on the ground that no privilege was claimed in the first instance and that the blue book is not an unpublished document within the meaning of section 123 of Indian Evidence Act, as a portion of it had been published, which order had been challenged. The Supreme Court while remanding the matter back to the High Court held that if, on the basis of the averments in the affidavits, the court is satisfied that the Blue Book belongs to a class of documents, like the minutes of the proceedings of the cabinet, which is per se entitled to protection, then in such case, *no question of inspection of that document by the court would arise*. If, however, the court is not satisfied that the Blue Book belongs to that class of privileged documents, on the basis of the averments in the affidavits and the evidence adduced, which are not sufficient to enable the Court to make up its mind that its disclosure will injure public interest, then it will be open to the court to inspect the

said documents for deciding the question of whether it relates to affairs of the state and whether its disclosure will injure public interest.

22. In R.K.Jain vs. Union Of India, AIR 1993 SC 1769 the dispute was that no Judge was appointed as President in the Customs Central Excise and Gold (Control) Appellate Tribunal, since 1985 and therefore a complaint was made. Notice was issued and the ASG reported that the appointment of the President has been made, however, the order making the appointment was not placed on record. In the meantime another writ petition was filed challenging the legality and validity of the appointment of respondent no.3 as president and thus quashing of the said appointment order was sought. The relevant file on which the decision regarding appointment was made was produced in a sealed cover by the respondent and objection was raised regarding the inspection of the same, as privilege of the said documents was claimed. Thereafter, an application claiming privilege under sections 123, 124 of Indian Evidence Act and Article 74(2) of the Constitution was filed. The Government in this case had no objection to the Court perusing the file and the claim of privilege was restricted to disclosure of its contents to the petitioner. The issue before the Court was whether the Court would interfere with the appointment of Shri Harish Chander as President following the existing rules. Considering the circumstances, it was held that it is the duty of the Minister to file an affidavit stating the grounds

or the reasons in support of the claim of immunity from disclosure in view of public interest. It was held that the CEGAT is a creature of the statute, yet it intended to have all the flavors of judicial dispensation by independent members and President, therefore the Court ultimately decided to set aside the appointment of Harish Chandra as President.

23. In People's Union For Civil Liberties & Anr. vs. Union of India (UOI) and Ors. AIR 2004 SC 1442, the appellants had sought the disclosure of information from the respondents relating to purported safety violations and defects in various nuclear installations and power plants across the country including those situated at Trombay and Tarapur. The respondents claimed privilege under Section 18 (1) of the Atomic Energy Act, 1962 on the ground that the same are classified as 'Secrets' as it relates to nuclear installations in the country which includes several sensitive facilities carried out therein involving activities of classified nature and that publication of the same would cause irreparable injury to the interest of the state and would be prejudicial to the national security. The Court while deciding the controversy had observed that the functions of nuclear power plants are sensitive in nature and that the information relating thereto can pose danger not only to the security of the state but to the public at large if it goes into wrong hands. It was further held that a reasonable restriction on the exercise of the right is always permissible in the interest of the

security of the state and that the functioning and the operation of a nuclear plant is information that is sensitive in nature. If a reasonable restriction is imposed in the interest of the State by reason of a valid piece of legislation the Court normally would respect the legislative policy behind the same. It was further held that that normally the court will not exercise power of judicial review in such matters unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonesty or corrupt practices. For a claim of immunity under Section 123 of the IEA, the final decision with regard to the validity of the objection is with the Court by virtue of section 162 of IEA. The balancing between the two competing public interests (i.e. public interest in withholding the evidence be weighed against public interest in administration of justice) has to be performed by the Court even where an objection to the disclosure of the document is taken on the ground that it belongs to a class of documents which are protected irrespective of their contents, as there is no absolute immunity for documents belonging to such class. The Court further held that there is no legal infirmity in the claim of privilege by the Government under Section 18 of the Atomic Energy Act and also that perusal of the report by the Court is not required in view of the object and the purport for which the disclosure of the report of the Board was withheld.

24. In Dinesh Trivedi vs. Union of India (1997) 4 SCC 306, the petitioner had sought making public the complete Vohra Committee Report on criminalization of politics including the supporting material which formed the basis of the report as the same was essential for the maintenance of democracy and ensuring that the transparency in government was secured and preserved. The petitioners sought the disclosure of all the annexures, memorials and written evidence that were placed before the committee on the basis of which the report was prepared. The issue before the Court was whether the supporting material (comprising of reports, notes and letters furnished by other members) placed before the Vohra Committee can be disclosed for the benefit of the general public. The Court had observed that Right to know also has recognized limitations and thus by no means it is absolute. The Court while perusing the report held that the Vohra Committee Report presented in the parliament and the report which was placed before the Court are the same and that there is no ground for doubting the genuineness of the same. It was held that in these circumstances the disclosure of the supporting material to the public at large was denied by the court, as instead of aiding the public it would be detrimentally overriding the interests of public security and secrecy.

25. In State of Punjab vs. Sodhi Sukhdev Singh, AIR 1961 SC 493, on the representation of the District and Sessions Judge who was removed

from the services, an order was passed by the Council of Ministers for his re-employment to any suitable post. Thereafter, the respondent filed a suit for declaration and during the course of the proceedings he also filed an application under Order 14, Rule 4 as well as Order 11, Rule 14 of the Civil Procedure Code for the production of documents mentioned in the list annexed to the application. Notice for the production of the documents was issued to the appellant who claimed privilege under section 123 of the IEA in respect of certain documents. The Trial Court had upheld the claim of privilege. However, the High Court reversed the order of the Trial Court in respect of four documents. The issue before the Supreme Court was whether having regard to the true scope and effect of the provisions of Sections 123 and 162 of the Act, the High Court was in error in refusing to uphold the claim of privilege raised by the appellant in respect of the documents in question. The contention of the petitioner was that under Sections 123 and 162 when a privilege is claimed by the State in the matter of production of State documents, the total question with regard to the said claims falls within the discretion of the head of the department concerned, and he has to decide in his discretion whether the document belongs to the privileged class and whether or not its production would cause injury to public interest. The Supreme Court had ultimately held that the documents were 'privilege documents' and that the disclosure of the same cannot

be asked by the appellant through the Court till the department does not give permission for their production.

26. In S.P. Gupta (supra)the Supreme Court had observed that a seven Judges' bench had already held that the Court would allow the objection to disclosure, if it finds that the document relates to affairs of State and its disclosure would be injurious to public interest, but on the other hand, if it reaches the conclusion that the document does not relate to affairs of the State or that the public interest does not compel its non-disclosure or that the public interest in the administration of justice in the particular case before it overrides all other aspects of public interest, it will overrule the objection and order disclosure of the document. It was further observed that 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 the democratic rights given to them and make the democracy a really effective and 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. Therefore, disclosure of information with regard to the functioning of the Govt. must be the rule and secrecy can be exceptionally justified only where strict requirement of public

information is assumed. It was further observed that 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, at all times that the disclosure also serves an important aspect of public interest. In that the said case, the correspondence between the constitutional functionaries was inspected by the Court and disclosed to the opposite parties to formulate their contentions.

27. It was further held that under Section 123 when immunity is claimed from disclosure of certain documents, a preliminary enquiry is to be held in order to determine the validity of the objections to production which necessarily involves an enquiry in the question as to whether the evidence relates to an affairs of State under Section 123 or not. In this enquiry the court has to determine the character or class of the document. If it comes to the conclusion that the document does not relate to affairs of State then it should reject the claim for privilege and direct its production. If it comes to the conclusion that the document relates to the affairs of the State, it should leave it to the head of the department to decide whether he should permit its production or not. 'Class Immunity' under Section 123 contemplated two kinds of public interest which may clash. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of

justice shall not be frustrated by the withholding of documents; which must be produced if justice is to be done. It is for the Court to decide the claim for immunity against disclosure made under Section 123 by weighing the competing aspects of public interest and deciding which, in the particular case before the court, predominates. It would thus seem clear that in the weighing process, which the court has to perform in order to decide which of the two aspects of public interest should be given predominance, the character of the proceeding, the issues arising in it and the likely effect of the documents on the determination of the issues must form vital considerations, for they would affect the relative weight to be given to each of the respective aspects of public interest when placed in the scales.

28. In these circumstance the Court had called for the disclosure of documents on the ground that the non disclosure of the same would cause greater injury to public interest than what may be caused by their disclosure as the advice was tendered by the Council of Ministers after consultation with the Chief Justice of High Court and Chief Justice of India and the views expressed by the Chief Justices could not be said to be an advice and therefore it was held that there is no bar to its disclosure. Bar of judicial review is on the factum of advice but not on the reasons i.e. material on which the advice was founded.

29. These are the cases where for proper adjudication of the issues involved, the court was called upon to decide as to under what situations the documents in respect of which privilege has been claimed can be looked into by the Court.

30. The CIC, respondent No.1 has observed that Article 74(2), 78 and 361 of the Constitution of India do not per se entitle the public authorities to claim privilege from disclosure. The respondent No.1 had observed that since the Right to information Act has come into force, whatever immunity from disclosure could have been claimed by the State under the law, stands virtually extinguished, except on the ground explicitly mentioned under Section 8 and in some cases under Section 11 of the RTI Act. Thus, CIC has held that the bar under Section 74(2) is not absolute and the bar is subject to the provisions of the RTI Act and the only exception for not disclosing the information is as provided under Sections 8 & 11 of the RTI Act. The proposition of the respondent No.1 is not logical and cannot be sustained in the facts and circumstances. The Right to Information Act cannot have overriding effect over the Constitution of India nor can it amend, modify or abrogate the provisions of the Constitution of India in any manner. Even the CIC cannot equate himself with the Constitutional authorities,

the Judges of the Supreme Court of India and all High Courts in the States.

31. The respondent No.1 has also tried to create an exception to Article 74(2) on the ground that the bar within Article 74(2) will not be applicable where correspondence involves a sensitive matter of public interest. The CIC has held as under:-

> ".....Prima facie the correspondence involves a sensitive matter of public interest. The sensitivity of the matter and involvement of larger public interest has also been admitted by all concerned including the appellant. .....in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make final decision depending upon the particular facts involved in each individual case.....therefore we consider it appropriate that before taking a final decision on this appeal, we should personally examine the documents to decide whether larger public interest would require disclosure of the documents in question or not..."

32. The above observation of respondent No.1 is legally not tenable. Right to Information Act, 2005 which was enacted by the Legislature under the powers given under the Constitution of India cannot abrogate, amend, modify or change the bar under Article 74(2) as has been contended by the respondent No.1. Even if the RTI Act overrides Official Secrets Act, the Indian Evidence Act, however, this cannot be construed in such a manner to hold that the Right to Information Act will override the provisions of the Constitution of India. The learned

counsel for the respondent No.2 is unable to satisfy this Court as to how on the basis of the provisions of the RTI Act the mandate of the Constitution of India can be amended or modified. Amendment of any of the provisions of the Constitution can be possible only as per the procedure provided in the Constitution, which is Article 368 and the same cannot be deemed to be amended or obliterated merely on passing of subsequent Statutes. There can be no doubt about the proposition that the Constitution is supreme and that all the authorities function under the Supreme Law of land. For this Golak Nath v. State of Punjab, AIR 1967 SC 1643 can be relied on. In these circumstances, the plea of the respondents that since the Right to Information Act, 2005 has come into force, whatever bar has been created under Article 74(2) stands virtually extinguished is not tenable. The plea is not legally sustainable and cannot be accepted.

33. A bench of this Court in Union of India v. CIC, 165 (2009) DLT 559 had observed as under:-

> "…when Article 74 (2) of the Constitution applies and bars disclosure, information cannot be furnished. RTI Act cannot and does not have the ability and mandate to negate the constitutional protection under Article 74 (2). The said Article refers to inquiry by Courts but will equally apply to CIC."

Further it has been observed in para 34 as under:-

> " ….Possibly the only class of documents which are granted immunity from disclosure is those mentioned under Article 74 (2) of the Constitution. These are documents or

> information which are granted immunity from disclosure not because of their contents but because of the class to which they belong."

34. In the circumstances, the bar under Article 74(2) cannot be diluted and whittled down in any manner because of the class of documents it relates to. The respondent No.1 is not an authority to decide whether the bar under Article 74(2) will apply or not. If it is construed in such a manner then the provision of Article 74(2) will become sub serving to the provisions of the RTI Act which was not the intention of the Legislature and even if it is to be assumed that this is the intention of the Legislature, such an intension, without the amendment to the Constitution cannot be sustained.

35. The judgments relied on by the CIC have been discussed hereinbefore. It is apparent that under Article 74(2) of the Constitution of India there is no bar to production of all the material on which the advice rendered by the Council of Ministers or the Prime Minister to the President is based.

36. The correspondence between the President and the Prime Minister will be the advice rendered by the President to the Council of Ministers or the Prime Minister and vice versa and cannot be held that the information in question is a material on which the advice is based.

In any case the respondent No.2 has sought copies of the letters that may have been sent by the former President of India to the Prime Minster between the period 28th February, 2002 to 15th March, 2002 relating to the Gujarat riots. No exception to Article 74(2) of the Constitution of India can be carved out by the respondents on the ground that disclosure of the truth to the public about the stand taken by the Government during the Gujarat carnage is in public interest. Article 74(2) contemplates a complete bar in respect of the advice tendered, and no such exception can be inserted on the basis of the alleged interpretation of the provisions of the Right to Information Act, 2005.

37. The learned counsel for the respondents are unable to satisfy this Court that the documents sought by the respondent No.2 will only be a material and not the advice tendered by the President to the Prime Minister and vice versa. In case the correspondence exchanged between the President of India and the Prime Minister during the period 28th February, 2002 to 15th March, 2002 incorporates the advice once it is disclosed to the respondent No.1, the bar which is created under Article 74(2) cannot be undone.

38. In the case of S.R.Bommai v. Union of India, (1994) 3 SCC 1 at page 242, Para 323 the Supreme Court had held as under:-

" But, Article 74(2) does not and cannot mean that the Government of India need not justify the action taken by the President in the exercise of his functions because of the provision contained therein. No such immunity was intended — or is provided — by the clause. If the act or order of the President is questioned in a court of law, it is for the Council of Ministers to justify it by disclosing the material which formed the basis of the act/order..... The court will not ask whether such material formed part of the advice tendered to the President or whether that material was placed before the President. **The court will not also ask what advice was tendered to the President, what deliberations or discussions took place between the President and his Ministers and how was the ultimate decision arrived at**..... The court will only see what was the material on the basis of which the requisite satisfaction is formed and whether it is relevant to the action under Article 356(1). The court will not go into the correctness of the material or its adequacy.

The Supreme Court in para 324 had held as under:-

24. In our respectful opinion, the above obligation cannot be evaded by seeking refuge under Article 74(2). The argument that the advice tendered to the President comprises material as well and, therefore, calling upon the Union of India to disclose the material would amount to compelling the disclosure of the advice is, if we can say so respectfully, to indulge in sophistry. The material placed before the President by the Minister/Council of Ministers does not thereby become part of advice. Advice is what is based upon the said material. Material is not advice. The material may be placed before the President to acquaint him — and if need be to satisfy him — that the advice being tendered to him is the proper one. But it cannot mean that such material, by dint of being placed before the President in support of the advice, becomes advice itself. **One can understand if the advice is tendered in writing; in such a case that writing is the advice and is covered by the protection provided by Article 74(2).** But it is difficult to appreciate how does the supporting material become part of advice. The respondents cannot say that whatever the President sees — or whatever is placed before the President becomes prohibited material and cannot be seen or summoned by the court.

39. The plea of the respondents that the correspondence may not contain the advice but it will be a material on which the advice is rendered is based on their own assumption. On such assumption the CIC will not be entitled to get the correspondences and peruse the same and negate the bar under said Article of the Constitution of India. As already held the CIC cannot claim parity with the Judges of Supreme Court and the High Courts. The Judges of Supreme Court and the High Courts may peruse the material in exercise of their power under Article 32 and 226 of the Constitution of India, however the CIC will not have such power.

40. In the case of S.P.Gupta (supra) the Supreme Court had held that what is protected against disclosure under clause (2) of Article 74 is the advice tendered by the Council of Ministers and the reason which weighed with the Council of Ministers in giving the advice would certainly form part of the advice.

41. In case of Doypack Systems Pvt Ltd v. Union of India, (1988) 2 SCC 299 at para 44 the Supreme Court after examining S.P.Gupta (supra) had held as under:-

> "44. Shri Nariman however, submitted on the authority of the decision of this Court in S.P. Gupta v. Union of India that the documents sought for herein were not privileged.

> The context and the nature of the documents sought for in S.P. Gupta case were entirely different. **In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitution which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired into in any court. This Court is precluded from asking for production of these documents...**.....
>
> **....It is well to remember that it is the duty of this Court to prevent disclosure where Article 74(2) is applicable."**

42. The learned counsel for the respondents had laid lot of emphasis on S.P.Gupta (supra) however, the said case was not about what advice was tendered to the President on the appointment of Judges but the dispute was whether there was the factum of effective consultation. Consequently the propositions raised on behalf of the respondents on the basis of the ratio of S.P.Gupta will not be applicable in the facts and circumstances and the pleas and contentions of the respondents are to be repelled.

43. The Commission under the Right to Information Act, 2005 has no such constitutional power which is with the High Court and the Supreme Court under Article 226 & 32 of the Constitution of India, therefore, the interim order passed by the CIC for perusal of the record in respect of which there is bar under Article 74(2) of the Constitution of

India is wholly illegal and unconstitutional. In Doypack Systems (supra) at page 328 the Supreme Court had held as under:-

> **"**43. The next question for consideration is that by assuming that these documents are relevant, whether the Union of India is liable to disclose these documents. Privilege in respect of these documents has been sought for under Article 74(2) of the Constitution on behalf of the Government by learned Attorney General.
>
> 44. Shri Nariman however, submitted on the authority of the decision of this Court in *S.P. Gupta* v. *Union of India* that the documents sought for herein were not privileged. The context and the nature of the documents sought for in *S.P. Gupta case* were entirely different. In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitution which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired into in any court. **This Court is precluded from asking for production of these documents.** In *S.P. Gupta case* the question was not actually what advice was tendered to the President on the appointment of judges. The question was whether there was the factum of effective consultation between the relevant constitutional authorities. In our opinion that is not the problem here. We are conscious that there is no sacrosanct rule about the immunity from production of documents and the privilege should not be allowed in respect of each and every document. We reiterate that the claim of immunity and privilege has to be based on public interest. Learned Attorney-General relied on the decision of this Court in the case of *State of U.P.* v. *Raj Narain*. The principle or ratio of the same is applicable here. We may however, reiterate that the real damage with which we are concerned would be caused by the publication of the actual documents of the Cabinet for consideration and the minutes recorded in its discussions and its conclusions. It is well settled that the privilege cannot be waived. In this connection, learned Attorney General drew our attention to an unreported decision in *Elphistone Spinning and Weaving Mills Co. Ltd.* v. *Union of India*. This resulted ultimately in *Sitaram Mills case.*. The Bombay High Court held that the Task Force Report was withheld deliberately as it would

support the petitioner's case. It is well to remember that in *Sitaram Mills case* this Court reversed the judgment of the Bombay High Court and upheld the take over. Learned Attorney General submitted that the documents there were not tendered voluntarily. **It is well to remember that it is the duty of this Court to prevent disclosure where Article 74(2) is applicable. We are convinced that the notings of the officials which lead to the Cabinet note leading to the Cabinet decision formed part of the advice tendered to the President as the Act was preceded by an ordinance promulgated by the President.**

45. We respectfully follow the observations in *S.P. Gupta* v. *Union of India* at pages 607, 608 and 609. We may refer to the following observations at page 608 of the report: (SCC pp. 280-81, para 70)

"It is settled law and it was so clearly recognised in *Raj Narain case* that there may be classes of documents which public interest requires should not be disclosed, no matter what the individual documents in those classes may contain or in other words, the law recognizes that there may be classes of documents which in the public interest should be immune from disclosure. There is one such class of documents which for years has been recognised by the law as entitled in the public interest to be protected against disclosure and that class consists of documents which it is really necessary for the proper functioning of the public service to withhold from disclosure. The documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong. This class includes cabinet minutes, minutes of discussions between heads of departments, high level inter-departmental communications and dispatches from ambassadors abroad (vide *Conway* v. *Rimmer*) and *Reg* v. *Lewes Justices, ex parte Home Secretary*, papers brought into existence for the purpose of preparing a submission to cabinet (vide: *Lanyon Property Ltd.* v. *Commonwealth 129 Commonwealth Law Reports 650*) and indeed any documents which relate to the framing of Government policy at a high level (vide: *Re Grosvenor Hotel, London* 1964 (3) All E.R. 354 (CA).

46. Cabinet papers are, therefore, protected from disclosure not by reason of their contents but because of the class to

which they belong. It appears to us that Cabinet papers also include papers brought into existence for the purpose of preparing submission to the Cabinet. See Geoffrey Wilson — *Cases and Materials on Constitutional and Administrative Law,* 2nd edn., pages 462 to 464. At page 463 para 187, it was observed:

"The real damage with which we are concerned would be caused by the publication of the actual documents of the Cabinet for consideration and the minutes recording its discussions and its conclusions. Criminal sanctions should apply to the unauthorized communication of these papers."

44. Even in R.K.Jain (supra) at page 149 the Supreme Court had ruled as under:-

'34. Equally every member is entitled to insist that whatever his own contribution was to the making of the decision, whether favorable or unfavorable, every other member will keep it secret. Maintenance of secrecy of an individual's contribution to discussion, or vote in the Cabinet guarantees the most favorable and conducive atmosphere to express views formally. To reveal the view, or vote, of a member of the Cabinet, expressed or given in Cabinet, is not only to disappoint an expectation on which that member was entitled to rely, but also to reduce the security of the continuing guarantee, and above all, to undermine the principle of collective responsibility. Joint responsibility supersedes individual responsibility; in accepting responsibility for joint decision, each member is entitled to an assurance that he will be held responsible not only for his own, but also as member of the whole Cabinet which made it; that he will be held responsible for maintaining secrecy of any different view which the others may have expressed. The obvious and basic fact is that as part of the machinery of the government. **Cabinet secrecy is an essential part of the structure of the government.** 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 affectivity 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.

45. Consequently for the foregoing reason there is a complete bar under Article 74(2) of the Constitution of India as to the advice tendered by the Ministers to the President and, therefore, the respondent No.1 CIC cannot look into the advice tendered by the President to the Prime Minster and consequently by the President to the Prime Minister or council of Ministers. The learned counsel for the respondents also made an illogical proposition that the advice tendered by the Council of Ministers and the Prime Minster to the President is barred under Article 74(2) of the Constitution of India but the advice tendered by the President to the Prime Minister in continuation of the advice tendered by the Prime Minster or the Council of Ministers to the President of India is not barred. The proposition is not legally tenable and cannot be accepted. The learned counsel for the respondent No.2, Mr. Mishra also contended that even if there is a bar under Article 74(2) of the Constitution of India, the respondent No.2 has a right under Article 19(1) (a) to claim such information. The learned counsel is unable to show any such precedent of the Supreme Court or any High Court in support of his contention and, therefore, it cannot be accepted. The

freedom of speech and expression as provided under Article 19(1)(a) of the Constitution of India, which includes the right to information, is subject to Article 19(2) of the Constitution of India wherein restrictions can be imposed on the fundamental rights of freedom of speech and expression. The right to information cannot have a overriding effect over and above the provisions of Article 19(2) of the Constitution of India and since the Right to Information, Act originates from the Constitution of India the same is secondary and is subject to the provisions of the Constitution.

46. The documents in question are deliberations between the President and the Prime Minister within the performance of powers of the President of India or his office. As submitted by the learned counsel for the petitioner such documents by virtue of Article 361 would enjoy immunity and the immunity for the same cannot be asked nor can such documents be perused by the CIC. Thus the CIC has no authority to call for the information in question which is barred under Article 74(2) of the Constitution of India. Even on the basis of the interpretation to various provisions of the Right to Information Act, 2005 the scope and ambit of Article 74(2) cannot be whittled down or restricted. The plea of the respondents that dissemination of such information will be in public interest is based on their own assumption by the respondents. Disclosure of such an advice tendered by the Prime Minster to the

President and the President to the Prime Minister, may not be in public interest and whether it is in public interest or not, is not to be adjudicated as an appellate authority by respondent No.1. The provisions of the Right to Information Act, 2005 cannot be held to be superior to the provisions of the Constitution of India and it cannot be incorporated so as to negate the bar which flows under Article 74(2) of the Constitution of India. Merely assuming that disclosure of the correspondence between the President and the Prime Minster and vice versa which contains the advice may not harm the nation at large, is based on the assumptions of the respondents and should not be and cannot be accepted in the facts and circumstances. In the circumstances the findings of the respondent No.1 that bar under Article 74(2), 78 & 361 of the Constitution of India stands extinguished by virtue of RTI Act is without any legal basis and cannot be accepted. The respondent No.1 has no authority to call for the correspondent in the facts and circumstances.

47. The learned junior counsel for the respondent no.2, Mr. Mishra who also appeared and argued has made some submissions which are legally and prima facie not acceptable. His contention that the bar under Article 74(2) of the Constitution will only be applicable in the case of the High Courts and Supreme Court while exercising the power of judicial review and not before the CIC as the CIC does not exercise

the power of judicial review is illogical and cannot be accepted. The plea that bar under Article 74(2) is not applicable in the present case is also without any basis. The learned counsel has also contended that the correspondence between the President and the Prime Minster cannot be termed as advice is based on his own presumptions and assumptions which have no legal or factual basis. As has been contended by the learned Additional Solicitor General, the bar under Article 74(2) is applicable to all Courts including the CIC. In the case of S.R.Bommai v. Union of India, (1994) 3 SCC 1 at page 241 it was observed as under:-

> **"**321**.** Clause (2) of Article 74, understood in its proper perspective, is thus confined to a limited aspect**. It protects and preserves the secrecy of the deliberations between the President and his Council of Ministers.**"

48. Consequently the bar of Article 74(2) is applicable in the facts and circumstances and the CIC cannot contend that it has such power under the Right to Information Act that it will decide whether such bar can be claimed under Article 74 (2) of the Constitution of India.. In case of UPSC v. Shiv Shambhu, 2008 IX AD (Delhi) 289 at para 2 a bench of this Court had held as under:-

> " At the outset this Court directs the deletion of the CIC which has been arrayed as Respondent No.1 to this appeal, consequent upon it being arrayed as such in the writ petition. This Court has repeatedly issued practice directions stressing that a judicial or quasi-judicial body or Tribunal whose order is challenged in a writ petition ought not to itself be impleaded as a party respondent. The only exception would be if mala fides are alleged against any

> individual member of such authority or Tribunal in which case again it would be such member, and not the authority/Tribunal who may be impleaded as a respondent."

49. The respondent No.2 has sought copies of the letters that may have been sent by the President of India to the Prime Minister during the period 28th February, 2002 to 15th March, 2002 relating to Gujarat riots. In the application submitted by respondent No.2 for obtaining the said information, respondent No.2 had stated as under:-

> "I personally feel that the contents of the letters, stated to have been sent by the former President of India to the then Prime Minister are of importance for foreclosure of truth to the public on the stand taken by the Government during the Gujarat carnage. I am therefore interested to know the contents of the letters"

50. Considering the pleas and the averments made by the respondents it cannot be construed in any manner that the correspondence sought by the respondent No.2 is not the advice rendered, and is just the material on which the advice is based. What is the basis for such an assumption has not been explained by the counsel for the respondent No.2. The impugned order by the respondent No.1 is thus contrary to provision of Article 74(2) and therefore it cannot be enforced and the petitioner cannot be directed to produce the letters exchanged between the President and the Prime Minister or the

Council of Ministers as it would be the advice rendered by the President in respect of which there is a complete bar under Article 74(2).

51. In the case of S.R.Bommai (supra) at page 241 the Supreme Court had observed as under:-

> "321. Clause (2) of Article 74, understood in its proper perspective, is thus confined to a limited aspect. It protects and preserves the secrecy of the deliberations between the President and his Council of Ministers."

The Supreme Court at para 324 had also observed as under:-

> "..... **One can understand if the advice is tendered in writing; in such a case that writing is the advice and is covered by the protection provided by Article 74(2).** But it is difficult to appreciate how does the supporting material become part of advice. The respondents cannot say that whatever the President sees — or whatever is placed before the President becomes prohibited material and cannot be seen or summoned by the court.

52. Thus there is an apparent and conspicuous distinction between the advice and the material on the basis of which advice is rendered. In case of Doypack (supra) the Supreme Court had held as under:-

> "44. Shri Nariman however, submitted on the authority of the decision of this Court in S.P. Gupta v. Union of India that the documents sought for herein were not privileged. The context and the nature of the documents sought for in S.P. Gupta case were entirely different. In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitution which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired

> into in any court. This Court is precluded from asking for production of these documents…….
>
> ….It is well to remember that it is the duty of this Court to prevent disclosure where Article 74(2) is applicable."

53. The learned counsel for the respondents also tried to contend that even if Article 74(2) protects the disclosure of advice from the Council of Ministers/Prime Minister to President it does not bar disclosure of communication from President to the Prime Minister. In case of PIO vs. Manohar Parikar, Writ Petition No. 478 of 2008, the Bombay High Court at Goa Bench had held that the protection under Article 361 will not be available for the Governor if any information is sought under RTI Act. However, the reliance on the said precedent cannot be made, as the same judgment has been stayed by the Supreme Court in SLP (C) No.33124/2011 and is therefore sub judice and consequently the respondents are not entitled for any direction to produce the correspondence which contains the advice rendered by the President to the Prime Minister for the perusal by the CIC. The plea of the respondents that the CIC can call the documents under Section 18 of RTI Act, therefore, cannot be sustained. If the bar under Article 74(2) is absolute so far as it pertains to advices, even under Section 18 such bar cannot be whittled down or diluted nor can the respondents contend that the CIC is entitled to see that correspondence and consequently the respondent No.2 is entitled for the same. For the foregoing reasons

and in the facts and circumstances the order of the CIC dated 8th August, 2006 is liable to be set aside and the CIC cannot direct the petitioner to produce the correspondence between the President and the Prime Minister, and since the CIC is not entitled to peruse the correspondence between the President and the Prime Minister, as it is be barred under Article 74(2) of the Constitution of India, the application of the petitioner seeking such an information will also be not maintainable.

54. Consequently, the writ petition is allowed and the order dated 8th August, 2006 passed by Central Information Commission in Appeal No.CIC/MA/A/2006/00121 being 'C.Ramesh v. Minister of Personnel & Grievance & Pension' is set aside. The application of the respondent No.2 under Section 6 of the Right to Information Act, 2005 dated 7th November, 2005 is also dismissed, holding that the respondent No.2 is not entitled for the correspondence sought by him which was exchanged between the President and the Prime Minster relating to the Gujarat riots. Considering the facts and circumstances the parties are, however, left to bear their own cost.

July 11, 2012 **ANIL KUMAR, J.**

'k/vk'

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 9355/2009 & CM No. 7144/2009

UNION OF INDIA ..... Petitioners
Through: Ms. Maneesha Dhir with
Ms. Preeti Dalal, Advocate.

versus

R.S. KHAN ..... Respondents
Through: Mr. Nandan K. Jha, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1.	Whether Reporters of local papers may be allowed to see the order?	No
2.	To be referred to the Reporter or not?	Yes
3.	Whether the order should be reported in Digest?	Yes

O R D E R
07.10.2010

1. This petition is directed against the order dated 8th May 2009 of the Central Information Commission ('CIC') allowing the appeal of the Respondent and directing the Central Public Information Officer ('CPIO') in the office of the Controller General of Defence Accounts ('CGDA') to provide to the Respondent within 10 working days the information sought by her.

2. On 5th December 2008, the Petitioner applied to the CPIO in the CGDA seeking information in respect of 8 matters arising from the disciplinary proceedings conducted against her for a major penalty, which had recently been concluded. The Respondent had been awarded the penalty of 'censure' in those disciplinary proceedings. By an order dated 7th January 2009, the CGDA rejected the request stating that the information cannot be provided as it attracted Sections 8(i)(e), 8(i)(g)

and 8(i)(j) of the Right to Information Act, 2005 ('RTI' Act, 2005). *Inter alia,* it was observed as under:

> "Notings in case of a disciplinary proceeding contain the views and opinions of the various authorities which are fiduciary in nature and the views and opinions, if made open, might antagonize the charged officer. It may also lead to the danger of the lift of the officials who have made those remarks. Further the disciplinary proceedings are conducted in an objective and fair manner with the involvement of lot of agencies which include CGDA, Ministry of Defence (Finance), and DoPT. Further disclosing entire set of notings which includes the personal information/opinion of the officials at various stages does not have any relationship with any public activity or interest."

3. The Appellate Authority concurred with the view of the CPIO and dismissed the Respondent's appeal on 4th March 2009. Thereafter, the Respondent preferred an appeal to the CIC.

4. The CIC observed that the expression 'fiduciary relationship' in Section 8(1)(e) of the RTI Act, 2005 could not apply to the relationship between a government and its own employees. It did not cover notings in a public document. Likewise, the reference to Section 8(1)(g) of the RTI Act was also held to be misplaced. It was held that notings made on files as part of discharge of official functions was a public activity. The CIC disagreed with the view expressed by the CPIO and the Appellate Authority that the conduct of disciplinary proceedings against the Petitioner that the notings and the files during the disciplinary proceedings did not have any relationship with public activity or public

interest.

5. Ms. Maneesha Dhir, learned counsel for the Petitioner reiterated the submissions made before the CIC and supported the order of the CPIO and the Appellate Authority. She again referred to Section 8(1)(e), 8(1)(g) and 8(1)(j) of the RTI Act, 2005 and submitted that the information sought was covered under each of these provisions and was therefore exempt from disclosure. It was submitted that notings on files do not fall within the definition of information under Section 2(f) RTI Act, 2005. Reliance is placed on the decisions of the Supreme Court in ***State of Bihar v. Kripalu Shankar (1987) 3 SCC 34, Sethi Auto Service Station v. Delhi Development Authority 2009 (1) SCC 180***, ***Khanapuram Gandaiah v. Administrative Officer (2010) 2 SCC 1 and Union of India v. Central Information Commission 2009 (165) DLT 559***.

6. As regards the first point urged, this Court is unable to accept the submission made on behalf of the Union of India that file notings, which are in the form of the views and comments expressed by the various officials dealing with the files, are not included within the definition of 'information' under Section 2(f) of the RTI Act, 2005. Section 2(f) reads as under:

> "(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;"

7. It is clear that legislative intent is to give a wide interpretation to the term 'information' under Section 2(f) of the RTI Act, 2005. This is evident from the inclusion of "records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders" within the broad definition of "information".

8. The submission made by learned counsel for the Petitioner also stands contradicted by an office memorandum dated 28th June 2009 issued by the Department of Personnel & Training ('DoPT') to the following effect:

"**OFFICE MEMORANDUM**

Subject : Disclosure of 'file noting' under the Right to Information Act, 2005.

***

The undersigned is directed to say that various Ministries/Departments etc. have been seeking clarification about disclosure of file noting under the Right to Information Act, 2005. It is hereby clarified that file noting can be disclosed except file noting containing information exempt from disclosure under section 8 of the Act.

2. It may be brought to the notice of all concerned."

9. Unless file notings are specifically excluded from the definition of Section 2(f), there is no warrant for proposition that the word 'information' under Section 2(f) does not include file notings.

10. The next submission to be dealt with is that information contained in the files in the form of file notings made by the different officials dealing with the files during the course of disciplinary proceedings against the Petitioner were available to the Union of India in a 'fiduciary relationship' within the meaning of Section 8(1)(e) of the RTI Act. This Court concurs with the view expressed by the CIC that in the context of a government servant performing official functions and making notes on a file about the performance or conduct of another officer, such noting cannot be said to be given to the government pursuant to a `fiduciary relationship' with the government within the meaning of Section 8(1)(e) of the RTI Act, 2005. Section 8(1)(e) is, at best, a ground to deny information to a third party on the ground that the information sought concerns a government servant, which information is available with the government pursuant to a fiduciary relationship, that such person, has with the government, as an employee.

11. To illustrate, it will be no ground for the Union of India to deny to an employee, against whom the disciplinary proceedings are held, to withhold the information available in the Government files about such employee on the ground that such information has been given to it by some other government official who made the noting in a fiduciary relationship. This can be a ground only to deny disclosure to a third party who may be seeking information about the Petitioner in relation to the disciplinary proceedings held against her. The Union of India, can possibly argue that in view of the fiduciary relationship between the

Petitioner and the Union of India it is not obligatory for the Union of India to disclose the information about her to a third party. This again is not a blanket immunity against disclosure. In terms of Section 8(1)(e) RTI Act, the Union of India will have to demonstrate that there is no larger public interest which warrants disclosure of such information. The need for the official facing disciplinary inquiry to have to be provided with all the material against such official has been explained in the judgment of the Division Bench of this Court in ***Union of India v. L.K. Puri 151 DLT 2008***, as under:

> "The principle of law, on the conjoint reading of the two judgments, as aforesaid, would be that in case there is such material, whether in the form of comments/findings/ advise of UPSC/CVC or other material on which the disciplinary authority acts upon, it is necessary to supply the same to the charge sheeted officer before relying thereupon any imposing the punishment, major or minor, in as much as **cardinal principle of law is that one cannot cat on material which is neither supplied nor shown to the delinquent official.** Otherwise, such advice of UPSC can be furnished to the Government servant along with the copy of the penalty order as well as per Rule 32 of the CCS(CCA) Rules."

12. In ***Dev Dutt v. Union of India (2008) 8 SCC 725***, the Supreme Court mandated communication of not only all entries in ACR but even whether the entry of a grade in an ACR, in comparison to the previous years' entry resulted in the lowering of the grade. A reference may be made to paras 39 and 45 of the said judgment which read as under:

> "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."
>
> .....
>
> 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."

13. The decision in ***State of Bihar v. Kripalu Shankar*** was rendered at a time when no RTI Act existed. The understanding of `privileged' information in 1987 will have to give way to the legislative intent manifest in the RTI Act, enacted eighteen years later. The decision in ***Sethi Auto Services*** was again not in the context of the RTI Act. It concerned the termination of a petrol pump dealership. In ***Khanapuram Gandaiah***, the Petitioner was seeking to know from a Judicial Officer as to why he decided an appeal "dishonestly". The said decision is plainly distinguishable on facts.

14. In the considered view of this Court, the Union of India cannot rely upon Section 8(1)(e) of the RTI Act, 2005 to deny information to the Petitioner in the present case.

15. It may be further added that the Respondent has already retired on 31st October 2009. Further, even the censure awarded to the Petitioner has been quashed by this Court by an order dated 9th August 2010 in Writ Petition (Civil) No. 12462 of 2009. The Respondent has also placed on record a copy of the order passed by the CGDA treating the suspension period as duty period, and directing the release of full pay and allowances to the Respondent for the said period.

16. In light of the above developments, this Court finds no merits in any of the apprehensions expressed by the CPIO in the order rejecting the Respondent's application with reference to either Section 8(1)(g) of the RTI Act 2005.The disclosure of information sought by the Petitioner can hardly endanger the life or physical safety of any person. There must be some basis to invoke these provisions. It cannot be a mere apprehension.

17. As regards Section 8(1)(j), there is no question that notings made in the files by government servants in discharge of their official functions is definitely a public activity and concerns the larger public interest. In the present case, Section 8(1)(j) was wrongly invoked by the CPIO and by the Appellate Authority to deny information to the Respondent.

18. This Court finds that no error has been committed by the CIC in passing the impugned order. Consequently, the writ petition is dismissed with costs of ₹5,000/-, which will be paid by the Petitioner to the Respondent, within a period of four weeks. Interim order dated 27th May 2009 stands vacated. Application also stands dismissed

S. MURALIDHAR, J.

OCTOBER 07, 2010
ak

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: .07.10.2013
Date of Decision: .10.10.2013

\+ W.P.(C) 4079/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

G.S. SANDHU ..... Respondent
Through: Mr Subhiksh Vasudev, Adv.

\+ W.P.(C) 2/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
Versus

SHATMANYU SHARMA ..... Respondent

Through: Counsel for the respondent.

\+ W.P.(C) 8/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

SH. SAHADEVA SINGH ..... Respondent
Through: Mr Praveen Singh, Adv with respondent in person.

\+ W.P.(C) 5630/2013

UNION PUBLIC SERVICE COMMISSION..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

K.L. MANHAS ..... Respondent
Through: Counsel for the respondent.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The issue involved in these petitions as to whether the copies of office notings recorded on the file of UPSC and the correspondence exchanged between UPSC and the Department seeking its advice can be accessed, by the person to whom such advice relates, in RTI Act or not.

The respondent in W.P(C) No.4079/2013 sought information from the CPIO of the petitioner – Union Public Service Commission (hereinafter referred to as "UPSC"), with respect to the advice given by the petitioner – UPSC to the Government of Maharashtra in respect of departmental proceedings against him. The CPIO having declined the information sought by the respondent, an appeal was preferred by him before the First Appellate Authority. Since the appeal filed by him was dismissed, the respondent approached the Central Information Commission (hereinafter referred to as "the Commission") by way of a second appeal. Vide impugned order dated 1.5.2013, the Commission rejected the contention of the petitioner – UPSC that the said information was exempt from disclosure under Section 8(1) (e), (g) & (j) of the Right to Information Act (the Act) and directed the petitioner to disclose the file notings relating to the matter in hand to the respondent, with liberty to the petitioner –UPSC to obliterate the name and designation of the officer who made the said notings. Being aggrieved, the petitioner – UPSC is before this Court by way of this writ petition.

2. The respondent in W.P(C) No.2/2013 sought the information from the petitioner – UPSC with respect to the advice given by it in respect of the disciplinary proceedings initiated against the said respondent. The said information having been denied by the CPIO as well as the First Appellate Authority, the respondent approached the Commission by way of a second appeal. The Commission vide the impugned order dated 26.9.2012 directed the petitioner to provide, to the respondent, the photocopies of the relevant file after masking the signatures of the officers including other identity marks. Being aggrieved, the petitioner – UPSC is before this Court seeking quashing of the aforesaid order passed by the Commission.

3. In W.P(C) No. 5603/2013, the respondent before this Court sought information with respect to the advice given by UPSC to the State of Haryana with respect to the disciplinary proceedings instituted against him. The said information having been refused by the CPIO and the First Appellate Authority, he also approached the Commission by way of a second appeal. The Commission rejected the objections raised by the petitioner and directed disclosure of the file notings and the correspondence relating to the charge-sheet against the respondent. The petitioner being aggrieved from the said order is before this Court by way of this petition.

4. In W.P(C) No.8/2013, the respondent before this Court sought information with respect to the advice given by UPSC in a case of disciplinary proceedings instituted against him. The said information, however, was denied by the CPIO of UPSC. Feeling aggrieved, the respondent preferred an appeal before the First Appellate Authority. The

appeal, however, came to be dismissed. The respondent thereupon approached the Commission by way of a second appeal. The Commission vide the impugned order dated 26.9.2012 directed disclosure of the information to the respondent. The petitioner – UPSC is aggrieved from the aforesaid order passed by the Commission.

5. The learned counsel for the petitioner – UPSC Mr. Naresh Kaushik has assailed the order passed by the Commission on the following grounds (i) there is a fiduciary relationship between UPSC and the department which seeks its advice and the information provided by the Department is held by UPSC in trust for it. The said information, therefore, is exempted from disclosure under Section 8(1)(e) of the Act (ii) the file notings and the correspondences exchanged between UPSC and the department seeking its advice may contain information relating not only to the information seeker but also to other persons and departments and institutions, which, being personal information, is exempt from disclosure under Section 8(1)(j) of the Act (iii) the officers who record the notings on the file of UPSC are mainly drawn on deputation from various departments. If their identity is disclosed, they may be subjected to violence, intimidation and harassment by the persons against whom an adverse note is recorded and if the said officer of UPSC, on repatriation to his parent department, happens to be posted under the person against whom an adverse noting was recorded by him, such an officer may be targeted and harassed by the person against whom the note was recorded. Such an information, therefore, is exempt from disclosure under Section 8(1)(g) of the Act and (iv) the notings recorded by UPSC officer on the file are only inputs given to the Commission to enable it to render an appropriate advice to the

concerned department and are not binding upon the Commission. Therefore, such information is not really necessary for the employee who is facing departmental inquiry, since he is concerned only with the advice ultimately rendered by UPSC to his department and not that the noting meant for consideration of the Commission.

6. Section 8(1) (e)(g) and (j) of the Act reads as under:

> **"Section 8(1)(e) in The Right To Information Act, 2005**
>
> Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
>
> xxx
>
> (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;
> xxx
>
> (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;;
>
> 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."

7. Fiduciary Relationship:

The question which arises for consideration is as to whether UPSC is placed in a fiduciary relationship vis-à-vis the department which seeks its advice and the information provided by the department is held by UPSC in trust for the said department or not. The expression 'fiduciary relationship' came to be considered by the Hon'ble Supreme Court in *Central Board of Secondary Education and Another* versus *Aditya Bandopadhyay & Ors.* [Civil Appeal No.6454 of 2011] and the following view was taken:

> 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 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. ...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. .."

The aforesaid expression also came up for consideration of the Apex Court in *Bihar Public Service Commission* versus *Saiyed Hussain Abbas Rizwi & Anr.* [Civil Appeal No.9052 of 2012] and the following view was taken by the Apex Court:

> "22....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).
> xxx
> 24...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..."

8. The advice from UPSC is taken by the Disciplinary Authority, as a statutory requirement under the service rules applicable to an employee and wherever the Disciplinary Authority takes such an advice into consideration while recording its findings in the matter. The concerned employee is entitled to supply of such advice to him, as a matter of right. There is no relationship of master and agent or a client and advocate between the UPSC and the department which seeks its advice. The information which the department provides to UPSC for the purpose of obtaining its advice normally would be the information pertaining to the employee against whom disciplinary proceedings have been initiated. Ordinarily such information would already be available

with the concerned employee having been supplied to him while seeking his explanation, along with the charge-sheet or during the course of the inquiry. The UPSC, while giving its advice, cannot take into consideration any material, which is not available or is not to be made available to the concerned employee. Therefore, the notings of the officials of UPSC, would contain nothing, except the information which is already made available or is required to be made available to the concerned employee. Sometimes, such information can be a third party information, which qualifies to be personal information, within the meaning of clause (j), but, such information, can always be excluded, while responding to an application made to UPSC, under RTI Act. Therefore, when such information is sought by none other than the employee against whom disciplinary proceedings are sought to be initiated or are held, it would be difficult to accept the contention that there is a fiduciary relationship between UPSC and the department seeking its advice or that the information pertaining to such an employee is held by UPSC in trust. Such a plea, in my view, can be taken only when the information is sought by someone other than the employee to whom the information pertains.

9. The learned counsel for the petitioner has referred to the decision of this Court in *Ravinder Kumar* versus *CIC* [LPA No.418/2008 3.5.2011. The aforesaid LPA arose out of a decision of the learned Single Judge of this Court in W.P(C) No.2269/2011 decided on 5.4.2011, upholding the directions of the Commission to UPSC to provide photocopies of the relevant file notings concerning of two disciplinary cases involving the respondent to him, after deleting the name and other reference to the individual officer/ authority. As noted

by a learned Single Judge of this Court in *UPSC* versus *R.K. Jain* [W.P(C) No.1243/2011 dated 13.7.2012, the order passed by the Division Bench was an order dismissing the application for restoration of the LPA and was not an order on merit and, therefore, it was not a decision on any legal proposition rendered by the Court on merit. It was further held that mere prima facie observation of the Division Bench does not constitute a binding precedent. Therefore, reliance upon the aforesaid order in LPA No.418/2010 is wholly misplaced.

10. As regards the applicability of clause (g), it would be seen that the said clause exempts information of two kinds from disclosure – the first being the information disclosure of which would endanger the life or physical safety of any person and second being the information which would identify the source of information or assistance given in confidence for law enforcement or security purposes. The two parts of the clause are independent of each other – meaning thereby that exemption from disclosure on account of danger to the life or physical safety of any person can be ground of exemption irrespective of who had given the information, who was the person, to whom the information was given, what was the purpose of giving information and what were the terms – expressed or implied subject to which the information was provided. The aforesaid clause came up for consideration before the Hon'ble Supreme Court in *Bihar Public Service Commission*(supra) and the following view was taken:

> "28...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."

11. In my view, the apprehension of the petitioner that if the identity of the author of the file notings is revealed by his name, designation or in any other manner, there is a possibility of such an employee being targeted, harassed and even intimidated by the persons against whom an

adverse noting is recorded by him on the file of UPSC, is fully justified. Though, ultimately it is for the members of the UPSC who are to accept or reject such notings, this can hardly be disputed that the notings do play a vital role in the advice which UPSC ultimately renders to the concerned department. Therefore, the person against whom an adverse advice is given may hold the employee of UPSC recording a note adverse to him on the file, responsible for an adverse advice given by UPSC against him and may, therefore, harass and sometime even harm such an employee/officer of UPSC, directly or indirectly. To this extent, the officers of UPSC need to be protected. However, the purpose can be fully achieved by blocking the name, designation or any other indication which would disclose or tend to disclose the identity of the author of the noting. Denying the notings altogether would not be justified when the intended objective can be fully achieved by adopting such safeguards.

12. Personal Information

As regards clause (j), it would be difficult to dispute that the exemption cannot be claimed when the information is sought by none other than the person to whom the personal information relates. It is only when the information is sought by a third party that such an exemption can be claimed by UPSC. If, the notings recorded on the file and/or the correspondence exchanged between UPSC and the concerned department do contain any such information which pertains to a person other than the information seeker and constitutes personal information within the meaning of section 8(1)(j), the UPSC was certainly be entitled to refuse such information on the ground that it is exempted from disclosure under clause 8(1)(j) of the Act.

13. As regards the contention that the notings recorded by the employees of UPSC are not necessary for the information seeker since he is concerned with the ultimate opinion rendered by UPSC to his department and not with various notings which are recorded by the officer of the Commission, I find the same to be devoid of any merit. While seeking information under the Right to Information Act, the application is not required to disclose the purpose for which the information is sought nor is it necessary for him to satisfy the CPIO that the information sought by him was necessary for his personal purposes or for public purpose. Therefore, the question whether information seeker really needs the information is not relevant in the Scheme of the Act. The learned counsel for the petitioner drew my attention to the following observations made by the Apex Court in *Central Board of Secondary Education and Another* versus *Aditya Bandopadhyay & Ors.* (supra):

> "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."

However, when the file noting is sought by a person in respect of whom advice is rendered by UPSC cannot be said to be indiscriminate or all and sundry information, which would affect the functioning of UPSC. Such notings are available in the file in which advice is recorded by UPSC and, therefore, it would not at all be difficult to provide the same to the information seeker.

For the reasons stated hereinabove, the writ petitions are disposed of with the following directions:-

(i) the copies of office notings recorded in the file of UPSC as well as the copies of the correspondence exchanged between UPSC and the Department by which its advice was sought, to the extent it was sought, shall be provided to the respondent after removing from the notings and correspondence, (a) the date of the noting and the letter, as the case may be; (b) the name and designation of the person recording the noting and writing the letter and; (c) any other indication in the noting and/or correspondence which may reveal or tend to reveal the identity of author of the noting/letter, as the case may be;

(ii) if the notings and/or correspondence referred in (i) above contains personal information relating to a third party, such information will be excluded while providing the information sought by the respondent;

(iii) the information in terms of this order shall be provided within four weeks from today.

No order as to costs.

OCTOBER 10, 2013 V.K. JAIN, J.

RD/BG

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 29.10.2013

\+ WP(C) No.6508 of 2010

UPSC ..... Petitioner
Through: Mr. Naresh Kaushik, Adv.

versus

MAJOR SINGH ..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The respondent before this Court sought the following information from the petitioner:

> "a. Particulars (name, qualification & experience) of (eligible) applicants for appointment to 7 post of Principal (Female) reserved for SC in response to UPSC special advertisement No. 52/2006.
>
> b. Criteria adopted for shot listing the candidates summoned for interview by UPSC to the 7 posts at (a) above.
>
> c. List of candidates summoned for interview by UPSC for (a) above.
>
> d. Criteria adopted by UPSC for shot listing the SC candidates summoned for interview for 1 post of Principal (Directorate of Education), Delhi reserved for SC (female) candidate in August, 2006."

The CPIO provided the information at serial Nos.2 & 4 but the information at serial Nos.1 & 3 was declined on the ground that the same was exempt from disclosure under Section 8 (1) (e) of the Right to Information Act, 2005 (for short 'RTI Act').

2. Aggrieved from the non-supply of information, the respondent preferred an appeal before the first appellate authority which disposed of the appeal with the following order:

> "The personal details of the candidates are held by the Commission in a fiduciary capacity and constitute third party information and disclosure of the same is exempted under section 8 (1) (e) and (j) of the RTI Act. The CPIO has rightly declined to share the personal details of eligible candidates'. As regards item (C), in my opinion, the list of names of candidates' summoned for interview could have been provided to the appellant, which may be provided."

3. Being still aggrieved the respondent preferred a second appeal before the Central Information Commission, which vide impugned order dated 11.6.2010 *inter alia* directed as under:

> "From the above it will be clear that the relationship of a candidate for an examination with the examining authority is not a fiduciary relationship, although that of a pupil and teacher might be. Besides section 8 (1) (j) is specific in that it exempts from disclosure any information 'which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual'. In this case what is sought is information provided to a public organisation for appearance in a public examination. The public organisation itself goes by the name of the Union Public Service Commission. Under the circumstance this information can on account be treated as personal or held in confidence, which would warrant invasion of section 11 (1). For these reasons the appeal is allowed.

> CPIO, Shri P. P. Haldar, Dy. Secretary (R.V) will now provide the information sought at point (a) to the RTI application of 27.8.2008 to appellant Shri Major Singh within fifteen working days of the date of receipt of this decision notice. We notice, however, that the CPIO has been punctilious in giving timely information to the appellant Shri Major Singh in matters that he considered accessible. There will, therefore be no cost."

4. The information at serial No.3 was supplied pursuant to the order of the first appellate authority and there is no dispute with respect to the said information. As regards information at serial No.1, the learned counsel for the petitioner states that the name of the qualified candidates were duly supplied to the respondent as would be seen from Annexure I to the communication dated 17.11.2008 which contains the roll numbers and names of all such candidates. Therefore, the only issue which needs adjudication is with respect to the qualification and experience of the eligible applicants:

5. A similar issue came up for consideration before the Hon'ble Supreme Court in Union Public Service Commission Vs. Gourhari Kamila 2013 (10) SCALE 656. In the aforesaid case, the respondent before the Apex Court had sought *inter alia* the following information:

> "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."

The Central Information Commission directed the petitioner-UPSC to supply the aforesaid information. Being aggrieved from the direction given by the Commission, the petitioner filed WP (C) No.3365/2011 which came to be dismissed by a learned Single Judge of this Court. The appeal filed by the UPSC also came to be dismissed by a Division Bench of this Court. Being still aggrieved, the petitioner filed the aforesaid appeal by way of Special Leave. Allowing the appeal filed by the UPSC, the Apex Court *inter alia* held as under, relying upon its earlier decision in Bihar School Examination Board Vs. Suresh Prasad Sinha (2009) 8 SCC 483:

> "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."

The Apex Court held that the Commission committed a serious illegality by directing the UPSC to disclose the information at points 4 & 5 and the High Court also committed an error by approving the said order. It was noted that neither the CIC nor the High Court recorded a finding that disclosure of the aforesaid information relating to other candidates was necessary to larger public interest and, therefore, the case was not covered by the exception carved out in Section 8 (1) (e) of the RTI Act.

6. In the case before this Court no finding has been recorded by the Commission that it was in the larger public interest to disclose the information with respect to the qualification and experience of other shortlisted candidates. In the absence of recording such a finding the Commission could not have directed disclosure of the aforesaid information to the respondent.

7. For the reasons stated hereinabove, the impugned order passed by the Central Information Commission is set aside. The writ petition stands disposed of. No orders as to costs.

OCTOBER 29, 2013 V.K. JAIN, J.
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 903/2013

THDC INDIA LTD ..... Petitioner
Through: Mr. Neeraj Malhotra with Mr. Prithu Garg, Advs.

versus

R.K.RATURI ..... Respondent
Through: Mr. R.K. Saini, Adv.

% Date of Decision : 08th July, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present writ petition has been filed challenging the order dated 04th January, 2013 passed by the Central Information Commission (for short 'CIC') whereby the petitioner has been directed to provide photocopies of the DPC proceedings including the comparative grading statement pertaining to the recommended candidates as well as ACRs of the appellant himself for the period mentioned by him in his RTI application.

2. The relevant portion of the impugned order is reproduced hereinbelow:-

> *"4. We have carefully considered the contents of the RTI application and the response of the CPIO. The objective of the Right to Information (RTI) Act is to bring about*

transparency in the functioning of the public authorities. All decision making in the government and all its undertakings must be objective and transparent. It is only by placing the details of all decision making in the public domain that such objectivity and transparency can be ensured. Therefore, we do not see any reason why the DPC proceedings, specially, the comparative gradings of those recommended for promotion should not be disclosed. It is not at all correct to claim that such information is held in a fiduciary capacity. After all, the DPC operates as a part of the administrative decision making process in any organisation. The material that it considers is also generated within the organisation. Therefore, it is not correct to say that the DPC proceedings including the recommendations made by it can be said to be held by the public authority in a fiduciary capacity. About the ACRs of the Appellant, the Supreme Court of India has already held that the civilian employees must be allowed access to their confidential rolls, specially when these are held out against them in the matter of their career promotion. Following the Supreme Court order, the Department of Personnel and Training, we understand, has already issued a circular for disclosure of ACR."

3. Mr. Neeraj Malhotra, learned counsel for the petitioner submits that the impact of the impugned order passed by CIC is that the petitioner would be required to give information pertaining to DPC proceedings including the comparative grading statement pertaining to the recommended candidates, which information is excluded under the provisions of Sections 8(1)(e) and 8(1)(j) of the RTI Act. He emphasizes that the information directed to be released pertaining to other employees of the petitioner is being held by the petitioner in fiduciary capacity and would amount to disclosure of personal information.

4. Sections 8(1)(e) and 8(1)(j) of the RTI Act are reproduced hereinbelow:-

> *"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*
>
> *(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;*
>
> *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."*

5. Mr. Malhotra also submits that as some of the information sought for pertains to third party, provisions of Sections 11(1) and 19(4) of the RTI Act would be applicable. Sections 11(1) and 19(4) of the RTI Act are reproduced hereinbelow:-

> *"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.

xxx xxx xxx

19. Appeal.-

xxx xxx xxx

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party."

6. On the other hand, Mr. Saini, learned counsel for the respondent submits that it is difficult to comprehend that any public interest would be served by denying information to the respondent with regard to DPC proceedings including the comparative grading statements pertaining to the

recommended candidates as also photocopy of respondent's ACR containing the remarks of the reporting and the reviewing officers as well as accepting authority.

7. Mr. Saini points out that the respondent himself is a Government servant working in the same corporation and was considered by the selection committee for promotion in the said DPC proceedings. Hence, according to him, the respondent has a right to seek information regarding DPC proceedings including the comparative grading statements pertaining to the recommended candidates.

8. In support of his submission, Mr. Saini relies upon a judgment of the Supreme Court in ***Dev Dutt v. Union of India and Others (2008) 8 SCC 725*** wherein it has been held as under:-

> *"36. 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."*

9. Mr. Saini lastly submits that there is no question of compliance of pre-condition and pre-requisite of Section 11(1) read with Section 19(4) of

the RTI Act.

10. Having heard learned counsel for the parties, this Court finds that in the case of ***Arvind Kejriwal v. Central Public Information Officer AIR 2010 Delhi 216***, a Coordinate Bench of this Court has held that service record of a Government employee contained in the DPC minutes/ACR is "personal" to such officer and that such information can be provided to a third party only after giving a finding as regards the larger pubic interest involved. It was also held in the said judgement that thereafter third party procedure mentioned in Section 11(1) of the RTI Act would have to be followed. The relevant portion of the judgment in ***Arvind Kejriwal*** is reproduced hereinbelow:-

> *"21. This Court has considered the above submissions. It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would be a defense available to a person about whom information is being sought. Such defence could be taken by a third party in a proceeding under Section 11(1) when upon being issued notice such third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there cannot be a disclosure of information pertaining to or which „relates to" such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a given case.*

xxx xxx xxx

> *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."*

11. This Court is also of the opinion that the finding of public interest warranting disclosure of the said information under Sections 8(1)(e) and 8(1)(j) of the RTI Act and the procedure contemplated under Sections 11(1) and 19(4) of the RTI Act are mandatory in nature and cannot be waived. In the present case, CIC has directed the petitioner to provide DPC minutes to the respondent without considering the defence of the petitioner under Section 8(1)(e) of the RTI Act and without following the procedure specified under Sections 11(1) and 19(4) of the RTI Act. It is pertinent to mention that Sections 11(1) and 19(4) of the RTI Act incorporate the principles of natural justice. Further, in the present case no finding has been given by CIC as to whether public interest warranted such a disclosure.

12. However, this Court is of the view that the respondent is entitled to the contents of his own ACR after redaction of the names of the reviewing, reporting and accepting officers. In fact, another coordinate Bench of this Court in ***THDC India Ltd. v. T. Chandra Biswas 199(2013) DLT 284*** has held as under:-

> *"9. While the learned counsel for the respondent has contended before me that the respondent ought to have been supplied with the ACRs for the period 2004 to 2007, the respondent has not assailed that part of the order of the CIC. In my view, while the contention of the respondent has merit, which is that she cannot be denied information with regard to her own ACRs and that information cannot fall in the realm of any of the exclusionary provisions cited before me by the learned counsel for the petitioner i.e. Section 8(1)(d), (e) and (j), there is a procedural impediment, in as much as, there is no petition filed to assail that part of the order passed by the CIC.*
>
> *9.1. In my view, the right to obtain her own ACRs inheres in the respondent which cannot be denied to the respondent under the provisions of Section 8(1)(d), (e) and (j) of the RTI Act. The ACRs are meant to inform an employee as to the manner in which he has performed in the given period and the areas which require his attention, so that he may improve his performance qua his work.*
>
> *9.2 That every entry in the ACR of an employee requires to be disclosed whether or not an executive instruction is issued in that behalf – is based on the premise that disclosure of the contents of ACR results in fairness in action and transparency in public administration. See Dev Dutt vs Union of India (2008) 8 SCC 725 at page 732, paragraph 13; page 733, paragraph 17; and at page 737, paragraphs 36, 37 and 38.*

9.3 Mr Malhotra sought to argue that, in Dev Dutt's case, the emphasis was in providing information with regard to gradings and not the narrative. Thus a submission cannot be accepted for more than one reason.

9.4 First, providing to an employee gradings without the narrative is like giving a conclusion in judicial/quasi-judicial or even an administrative order without providing the reasons which led to the conclusion. If the purpose of providing ACRs is to enable the employee to assess his performance and to judge for himself whether the person writing his ACR has made an objective assessment of his work, the access to the narrative which led to the grading is a must. [See State of U.P. Vs. Yamuna Shankar Misra and Anr., (1997) 4 SCC 7]. The narrative would fashion the decision of the employee as to whether he ought to challenge the grading set out in the ACR.

9.5 Second, the fact that provision of ACRs is a necessary concomitant of a transparent, fair and efficient administration is now recognized by the DOPT in its OM dated 14.05.2009. The fact that the OM is prospective would not, in my view, impinge upon the underlying principle the OM seeks to establish. The only caveat one would have to enter, is that, while providing the contents of the ACR the names of the Reviewing, Reporting and the Accepting Officer will have to be redacted."

13. Consequently, this Court is of the view that ACR grading/ratings as also the marks given to the candidates based on the said ACR grading/ratings and their interview marks contained in the DPC proceedings can be disclosed only to the concerned employee and not to any other employee as that would constitute third party information. This Court is also of the opinion that third party information can only be disclosed if a

finding of a larger public interest being involved is given by CIC and further if third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act is followed.

14. Accordingly, the present writ petition is allowed and the matter is remanded back to CIC for consideration of petitioner's defences under Sections 8(1)(e) and Section 8(1)(j) of the RTI Act and if the CIC is of the view that larger public interest is involved, it shall thereafter follow the third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act.

15. With the aforesaid observations and directions, the present writ petition is disposed of.

MANMOHAN,J

JULY 08, 2014
NG

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 27.08.2014

+ W.P.(C) 5478/2014

REKHA CHOPRA ..... Petitioner

versus

STATE BANK OF BIKANER & JAIPUR ..... Respondent

Advocates who appeared in this case:
For the Petitioner : Mr Rajesh Yadav and Mr Ruchira.
For the Respondent : Mr Rajiv Aggarwal and Mr S. Sethi.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

CM No.10876/2014

Allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 5478/2014

1. The present petition has been filed by the petitioner impugning an order dated 13.06.2014 passed by the Central Information Commissioner (hereinafter referred to as 'CIC'), whereby the appeal preferred by the petitioner against an order dated 03.04.2013 passed by the First Appellate Authority had been rejected. The order dated 03.04.2013 had in turn rejected the petitioner's appeal against an order dated 11.02.2013 passed by respondent bank's Central Public Information Officer (hereinafter referred as 'CPIO'). By the said order, the CPIO of respondent bank refused to

provide the information sought by the petitioner in respect of its customer *inter alia* on the ground that the same was held by the bank in a fiduciary capacity and was exempted under Section 8 of the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act').

2. Briefly stated, the facts are that on 18.01.2013, the petitioner applied under the RTI Act to the CPIO of the respondent bank seeking the following information with respect to Manraj Charitable Trust - a society registered under the Societies Registration Act, 1860:-

> "a) Entire record pertaining to opening of the Bank Account by MCT including the a/c opening form.
>
> b) All subsequent documents, resolutions, authority letters, submitted with the Bank.
>
> c) The actual date of submission/receipt of letter dated 14/8/99 in and by the bank."

3. Thereafter, the petitioner sent another application on 22.01.2013 seeking further information. By its order dated 11.02.2013, the CPIO of the respondent bank declined to provide the said information on the ground that information pertaining to its customers was exempt from the provisions of the RTI Act by virtue of clauses (d), (e) and (j) of Section 8(1) of the RTI Act. Aggrieved by the denial of the said information, the petitioner preferred an appeal before the First Appellate Authority, which was also dismissed by an order dated 03.04.2013. The decision of the First Appellate Authority was carried in appeal before the CIC.

4. By the impugned order, the CIC accepted the submissions of the respondent bank that the information in respect of its customers was

exempt form the RTI Act as the same was held by the bank in a fiduciary capacity and, accordingly, rejected the appeal of the petitioner.

5. The learned counsel for the petitioner contended that the petitioner was the secretary of Manraj Charitable Trust and as an office bearer was entitled to information relating to the said Trust. It was further submitted that Manraj Charitable Trust was a charitable institution and, therefore, larger public interest would warrant disclosure of information by the respondent bank. The learned counsel for the petitioner relied on the decision of the Supreme Court in ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*: (2012) 13 SCC 61** to contend that even information held in fiduciary capacity can be disclosed by a Competent Authority if a larger public interest so warrants.

6. The respondent bank claimed that as per its records, the petitioner was neither reflected as a Secretary of the Trust nor was authorised to operate the bank accounts. It was further stated that there were disputes pending between the petitioner and her relatives. And, the information sought by the petitioner was not for any larger public interest but, apparently, to assist her in the litigation pending between the petitioner and her family members.

7. The controversy raised in the present petition is whether a bank is obliged to disclose information pertaining to its customers in response to an application made under the RTI Act.

8. The Bank, while dealing with its customers, acts in various capacities. Undisputedly, the relationship between a customer and a banker requires trust, good faith, honesty and confidence. Black's law dictionary

defines fiduciary relationship as "one founded on trust or confidence reposed by one person in the integrity and fidelity of another." Fiduciary relationship in law is ordinarily a confidential relationship; one which is founded on the trust and confidence. In this view, a banker would undoubtedly, stand in a fiduciary capacity in respect of transactions and information provided by its customers.

9. The Supreme Court in ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*****: (2012) 13 SCC** 61 examined the term "fiduciary relationship" in context of Section 8 of the RTI Act and held as under:-

> "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. 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."

10. The records of the bank do not indicate the petitioner to be a secretary of the said Trust or its authorized officer. Thus, the bank has treated the petitioner as a stranger, and in my view, rightly so. The respondent bank is thus not obliged to provide any information to the petitioner in respect of the account of the said trust.

11. Admittedly, the petitioner has certain pending disputes with regard to the affairs of Manraj Charitable Trust and a suit (being CS(OS) No.3203/2012) is stated to have been filed by the petitioner in this Court in her capacity as Secretary of the Trust in question. In this view, the submission of the petitioner that the respondent bank is liable to disclose the information sought in larger public interest, also cannot be accepted.

12. The present petition is, accordingly, without merit and is dismissed.

VIBHU BAKHRU, J

AUGUST 27, 2014
MK

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.11.2014

\+ **W.P.(C) 85/2010 & CM Nos.156/2010 & 5560/2011**

NARESH TREHAN ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 251/2010 & CM No.526/2010**

AAA PORTFOLIO PVT LTD AND ANR. ..... Petitioners

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 206/2010 & CM No.392/2010**

ESCORTS LTD ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 214/2010 & CM No.445/2010**

CPIO CUM ASSISTANT COMMISSIONER
OF INCOME TAX ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 202/2010 & 389/2010**

ESCORTS HEART INSTITUTE AND
RESEARCH CENTRE ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

AND

\+ **W.P.(C) 207/2010 & CM No.394/2010**

RAJAN NANDA ..... Petitioner

versus

RAKESH KUMAR GUPTA ..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Rajiv Nayar, Sr. Advocate with Ms Shyel Trehan and Ms Manjira Dasgupta in W.P.(C) 85/2010.
Mr Sandeep Sethi, Sr. Advocate with Mr Simran Mehta and Mr Prabhat Kalia in W.P.(C) Nos. 251/2010, 206/2010 & 207/2010.
Mr Rohit Puri in W.P.(C) 202/2010.

For the Respondent : In person.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. These petitions are filed *inter alia* impugning a common order dated 14.12.2009 passed by the Central Information Commission (hereafter 'CIC') directing the Public Information Officers, Commissioner of Income-tax (hereafter 'PIO') to provide inspection of the records and also other information sought for by the respondent relating to the income tax returns filed by the petitioners (other than the petitioner in W.P.(C) No.214 of 2010).

2. Brief facts which are relevant for examining the controversy in the present petitions are that on 13.01.2009, Rakesh Kumar Gupta – respondent, who is stated to be an informer to the income tax department, filed an application under the Right to Information Act, 2005 (hereafter the 'Act') with the PIO *inter alia* seeking information and all the records available with the Income tax department in respect of nine assessees (out of the said assesses one assessee was deleted due to repetition) for various assessment years. The respondent had also sought:-

> "1. Inspection of all records in above respect.
>
> 2. Kindly provide the copies of the documents mentioned at the time of inspection.
>
> 3. Kindly provide the officers (from assessing officers to CCIT), who are the officers to take action on "Tax Evasion Petition" given by me from 1/8/2003 till date.
>
> Request
>
> 4 If you want to treat the above information as third party information and want to send the notice to so called third parties inviting their objection, then kindly send the complete request to them including all the annexure e.g. citing public interest by me due to which information should be given to me."

3. The details sought by the respondent of the eight assessees (hereinafter collectively referred to as 'assessees') including the details of the assessment years are as under:-

i) Dr. Naresh Trehan - petitioner in W.P.(C) No.85/2010 pertaining to Assessment Year 1998-99 to 2005-06

ii) Mr. Rajan Nanda - petitioner in W.P.(C) No.207/2010 pertaining to Assessment Year 1998-99 to 2005-06

iii) AAA Portfolio Pvt. Ltd. – petitioner in W.P.(C) No.251/2010 pertaining to Assessment Year 1998-99 to 2005-2006

iv) Big Apple Clothing Pvt. Ltd. – petitioner in W.P.(C) No.251/2010 pertaining to Assessment Year 1998-99 to 2005-06

v) Escorts Ltd. - petitioner in W.P.(C) No.206/2010 pertaining to Assessment Year 1998-99 to 2005-06.

vi) Escorts Heart Institute & Research Centre Ltd. (Delhi) - petitioner in W.P.(C) No.202/2010 pertaining to Assessment Year 1998-99 to 2001-02.

vii) Escorts Heart Institute & Research Centre Chandigarh (Society) pertaining to Assessment Year (2001-2002)

viii) Escorts Heart Institute & Research Centre Limited, Chandigarh pertaining to Assessment Year 2000-01 to 2005-06.

4. Since the information sought by the respondent is third party information, the Deputy Commissioner of Income-tax issued separate notices dated 04.02.2009 under Section 11(2) of the Act to the assessees. The assessees submitted their separate objections and objected to the inspection and furnishing of the information. PIO considered the objections of the assessees and rejected the RTI application of the respondent, by its common order dated 16.02.2009, on the ground that the respondent has failed to substantiate the public interest involved in disclosing the

information relating to third parties. PIO, however, held that the Tax Evasion Petition is under compilation and would be provided in due course.

5. The respondent preferred separate appeals before the First Appellate Authority - Addl. Commissioner of Income-tax (hereafter the 'FAA') against the order of PIO. By a common order dated 08.05.2009, FAA rejected the appeal of the respondent. Aggrieved by the order dated 08.05.2009 of FAA, the respondent preferred an appeal before the CIC. By the impugned order dated 14.12.2009, the CIC allowed the appeal and directed PIO to provide inspection of the records and also other information sought for by the respondent.

6. The learned counsel for the petitioner contended:-

6.1 that the information sought for by the respondent such as income tax returns are personal information and are exempt from disclosure under Section 8(1)(j) of the Act. Reliance was placed on decision of Supreme Court in ***Girish Ramchandra Deshpande v. Central Information Commr.*: (2013) 1 SCC 212,** decision of Full Bench of this Court in ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal & Anr.*: 166 (2010) DLT 305** and decision of Full Bench of the CIC in ***G R Rawal v. Director General of Income Tax (Investigation)*: Appeal No. CIC/AT/A/2007/00490, decided on 05.03.2008.**

6.2 that the disclosure of the income tax returns is prohibited under Section 138 of the Income Tax Act, 1961 and can be made only if the Commissioner is satisfied that the disclosure is in public interest, which in the present case was rejected by the Commissioner. Reference was made to

***Hanuman Pershadganeriwala v. The Director of Inspection, Income Tax, New Delhi*: (1974) 10 DLT 96.**

6.3 that the disclosure of information is also exempted under Section 8(1)(e) of the Act as the income tax department is holding the information of the assessees in fiduciary capacity.

6.4 that the respondent has failed to disclose the public interest which is a mandatory requirement under Section 11 of the Act for disclosure of confidential and personal third party information.

6.5 that the disclosure of the information sought for would be violative of the right to privacy, which has been read into Article 21 of the Constitution of India. Reference was made to paragraph 110 to 112 of the decision of this court in ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal & Anr.*: 166 (2010) DLT 305.**

6.6 that the disclosure of income tax returns is expressly forbidden to be published by a tribunal, in the present case and the CIC therefore, exempted under Section 8(1)(b) of the Act.

7. The respondent contended:-

7.1 that he is an informer with the income tax department and sought the information in public interest in order to recover the tax evaded by the petitioners, to recover the properties mis-appropriated by the petitioners and to curb corruption and therefore, the exemptions provided under Section 8(1)(e) and (j) of the Act are not applicable.

7.2 that the bank details and tax details should be given to public, where *prima facie* wrong doing is detected by the government. Reliance was placed on ***Ram Jethmalani & Ors. v. Union of India*****: (2011) 8 SCC 1.**

7.3 that the activities performed by the income tax department are public in nature and the income tax records are public documents. Reliance was placed on ***Bhagat Singh v. Chief Information Commissioner and Ors.*****: 146 (2008) DLT 385**.

7.4 that the disclosure of information under Section 3 of the Act is the rule and exemption under Section 8 of the Act is the exception.

8. The controversy that needs to be addressed is whether income tax returns and the information provided to the income tax authorities during the course of assessment and proceedings thereafter, are exempt under the provision Section 8(1) of the Act and further whether in the given circumstances of this case, the CIC was correct in holding that such information was required to be disclosed in public interest.

9. By virtue of Section 3 of the Act all citizens have a right to information subject to provisions of the Act. The expression "information" is defined under Section 2(f) of the Act as under:-

> "2(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;"

(emphasis provided)

10. It is also relevant to note that by virtue of Section 22 of the Act, the provisions of the Act have an overriding effect over any other inconsistent law or instrument.

11. The petitioners have contended that the income tax returns and other information provided by the assessees during the course of assessment would be exempt from disclosure by virtue of section 8(1)(d), Section 8(1)(e) and 8(1)(j) of the Act. It is thus necessary to examine the applicability of each of the above provisions with respect to the information sought by the respondent.

12. Section 8(1)(d) of the Act expressly provides an exemption in respect of such information. At this stage, it is necessary to refer to Section 8(1)(d) of the Act which reads 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 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;

13. Certain petitioners had specifically pleaded that information provided in the income tax returns could not be disclosed as the information was provided in confidence. The CIC rejected the same by holding that the parties had failed to explain as to how that ground could apply or how

disclosure of information relating to commercial confidence would harm their competitive interest.

14. The income tax returns filed by an assessee and further information that is provided during the assessment proceedings may also include confidential information relating to the business or the affairs of an assessee. An assessee is expected to truly and fairly disclose particulars relevant for the purposes of assessment of income tax. The nature of the disclosure required is not limited only to information that has been placed by an assessee in public domain but would also include information which an assessee may consider confidential. As a matter of illustration, one may consider a case of a manufacturer who manufactures and deals in multiple products for supplies to different agencies. In the normal course, an Assessing Officer would require an assessee to disclose profit margins on sales of such products. Such information would clearly disclose the pricing policy of the assessee and public disclosure of this information may clearly jeopardise the bargaining power available to the assessee since the data as to costs would be available to all agencies dealing with the assessee. It is, thus, essential that information relating to business affairs, which is considered to be confidential by an assessee must remain so, unless it is necessary in larger public interest to disclose the same. If the nature of information is such that disclosure of which may have the propensity of harming one's competitive interests, it would not be necessary to specifically show as to how disclosure of such information would, in fact, harm the competitive interest of a third party. In order to test the applicability of Section 8(1)(d) of the Act it is necessary to first and

foremost determine the nature of information and if the nature of information is confidential information relating to the affairs of a private entity that is not obliged to be placed in public domain, then it is necessary to consider whether its disclosure can possibly have an adverse effect on third parties.

15. Insofar as the applicability of Section 8(1)(e) of the Act is concerned, I am unable to accept the contention that a fiduciary relationship within the meaning of Section 8(1)(e) of the Act can be attributed to a relationship between an assessee and the income tax authority. The Supreme Court in the case of ***CBSE v. Aditya Bandopadhyay*: (2011) 8 SCC 497** had explained that the words "information available to a person in its fiduciary relationship" could not be construed in a wide sense but has to be considered in the normal and recognized sense. The relevant extract of the said decision is quoted below:-

> "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."

16. The information provided by an assessee in its income tax return is in compliance of the provisions of the Income Tax Act, 1961 and thus, could not be stated to be information provided in course of a fiduciary relationship.

17. Four of the petitioners (Dr Naresh Trehan, Escorts Heart Institute and Research Center, Delhi, Escorts Heard Institute and Research Center, Chandigarh and Escorts Heart Institute and Research Center Ltd.) had further contended that information sought by the respondent was exempt under Section 8(1)(j) of the Act. Section 8(1)(j) of the Act exempts information which relates to personal information. The said clause is quoted 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,—

xxxx 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:"

18. The question whether the information provided by an individual in his income tax returns is exempt from disclosure under Section 8(1)(j) of the Act is no longer *res integra* in view of the decision of the Supreme Court in ***Girish Ramchandra Deshpande v. Central Information Commr.*: (2013) 1 SCC 212.** The relevant extract of the said judgment is quoted below:

> "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 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 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."

19. The CIC rejected the aforesaid contention by holding that the expression "personal information" would necessarily only apply to an individual and could not be applicable in case of corporate entities.

20. It has been contended by the petitioners that the expression "personal information" must also extend to information relating to corporate entities. Inasmuch as they may also fall within the definition of expression "person" under the General Clauses Act, 1897 as well as under the Income Tax Act, 1961. However, I am unable to accept this contention for the reason that the expression "personal information" as used in clause (j) of Section 8(1) of the Act has to be read in the context of information relating to an individual. A plain reading of the aforesaid clause would indicate that the

expression "personal information" is linked with "invasion of privacy of the individual". The use of the word "the" before the word "individual" immediately links the same with the expression "personal information"

21. Black's law dictionary, sixth edition, *inter alia*, defines the word "personal" as under:-

> "The word "personal" means appertaining to the person; belonging to an individual; limited to the person; having the nature or partaking of the qualities of human beings, or of movable property."

22. A perusal of the above definition also indicates that the ordinary usage of the word "personal" is in the context of an individual human being and not a corporate entity. The U.S. Supreme Court has also interpreted the expression "personal" to be used in the context of an individual human being and not a corporate entity. In the case of ***Federal Communications Commission v. AT&T Inc*: 2011 US LEXIS 1899** the US Supreme Court considered the meaning of the expression "personal privacy" in the context of the Freedom of Information Act, which required Federal Agencies to make certain records and documents publically available on request. Such disclosure was exempt if the records *"could reasonably be expected to constitute an unwarranted invasion of personal privacy"*. The U.S. Supreme Court held that the expression "Personal" used in the aforesaid context could not be extended to corporations because the word "personal" ordinarily refers to individuals. The Court held that the expression "personal" must be given its ordinary meaning. The relevant extract of the said judgment is as under:

""Person" is a defined term in the statute; "personal" is not. When a statute does not define a term, we typically "give the phrase its ordinary meaning." Johnson v. United States, 559 U.S. ___, ___, 559 U.S. 133, 130 S. Ct. 1265, 176 L. Ed. 2d 1, 8 (2010). "Personal" ordinarily refers to individuals. We do not usually speak of personal characteristics, personal effects, personal correspondence, personal influence, or personal tragedy as referring to corporations or other artificial entities. This is not to say that corporations do not have correspondence, influence, or tragedies of their own, only that we do not use the word "personal" to describe them.

Certainly, if the chief executive officer of a corporation approached the chief financial officer and said, "I have something personal to tell you," we would not assume the CEO was about to discuss company business. Responding to a request for information, an individual might say, "that's personal." A company spokesman, when asked for information about the company, would not. In fact, we often use the word "personal" to mean precisely the opposite of business-related: We speak of personal expenses and business expenses, personal life and work life, personal opinion and a company's view.

Dictionaries also suggest that "personal" does not ordinarily relate to artificial "persons" such as corporations. See, e.g., 7 OED 726 (1933) ("[1] [o]f, pertaining to . . . the individual person or self," "individual; private; one's own," "[3] [o]f or pertaining to one's person, body, or figure," "[5] [o]f, pertaining to, or characteristic of a person or self-conscious being, as opposed to a thing or abstraction"); 11 OED at 599-600 (2d ed. 1989) (same); Webster's Third New International Dictionary 1686 (1976) ("[3] relating to the person or body"; "[4] relating to an individual, his character, conduct, motives, or private affairs"; "[5] relating to or characteristic of human beings as distinct from things"); ibid. (2002) (same)."

23. In my view, the aforesaid reasoning would also be applicable to the expression "personal" used in Section 8(1)(j) of the Act. The expression 'individual' must be construed in an expansive sense and would include a body of individuals. The said exemption would be available even to unincorporated entities as also private, closely held undertaking which are in substance alter egos of their shareholders. However, the expression individual cannot be used as a synonym for the expression 'person'. Under the General Clauses Act, 1897 a person is defined to "*include any company or association or body of individuals, whether incorporated or not*". Thus, whereas a person would include an individual as well as incorporated entities and artificial persons, the expression 'individual' cannot be interpreted to include such entities. The context in which, the expression "personal information" is used would also exclude it application to large widely held corporations. While, confidential information of a corporation is exempt from disclosure under Section 8(1)(d) of the Act, there is no scope to exclude other information relating to such corporations under Section 8(1)(j) of the Act as the concept of a personal information cannot in ordinary language be understood to mean information pertaining to a public corporation.

24. It would also be relevant to refer to the decision of a Division Bench of this Court in the case of ***Ashok Kumar Goel v. Public Information Officer Vat Ward No. 64 & Anr.*****: (2012) 188 DLT 597** whereby it was held that information of the returns made to the Sales Tax Commissioner in relation to a firm was exempt under Section 8(1) of the Act. The relevant portion of the said judgment is quoted as under:-

> "7. It is not in dispute that the information in the form of returns filed by the respondent No. 2's firm is in the nature of commercial confidence which is clearly inferable from Section 98 of the Act. Such information can be given only if larger public interest warrants the disclosure of this information. All the authorities below including the learned Single Judge has held and rightly so that no public interest is at all involved in seeking of this information by the appellant from the Sales Tax Commissioner. What to talk of public interest, the finding is that the information is sought with oblique motive to settle personal scores."

25. Indisputably, Section 8(1)(j) of the Act would be applicable to the information pertaining to Dr Naresh Trehan (petitioner in W.P.(C) 88/2010) and the information contained in the income tax returns would be personal information under Section 8(1)(j) of the Act. However, the CIC directed disclosure of information of Dr Trehan also by concluding that income tax returns and information provided for assessment was in relation to a "public activity." In my view, this is wholly erroneous and unmerited. The act of filing returns with the department cannot be construed as public activity. The expression "public activity" would mean activities of a public nature and not necessarily act done in compliance of a statute. The expression "public activity" would denote activity done for the public and/or in some manner available for participation by public or some section of public. There is no public activity involved in filing a return or an individual pursuing his assessment with the income tax authorities. In this view, the information relating to individual assesse could not be disclosed. Unless, the CIC held that the same was justified "in the larger public interest"

26. At this stage, it may be appropriate to consider the nature of information that is provided by an assesse to its Assessing Officer. In case of Income from business and profession, the income tax returns mainly disclose the final accounts (i.e. profit and loss account and balance sheets) This information is otherwise also liable to be disclosed by companies and is available in public domain since it is necessary for a company to file its annual accounts with the Registrar of Companies. Other incorporated entities are similarly required to also publically disclose their final accounts. However, an Assessing Officer may call for further information while determining the assessable income, which may include all books and papers maintained by an entity. Such information may also have information relating to other parties, the disclosure of which may be exempt under Section 8(1) of the Act. As a matter of illustration, the books of accounts would record transactions of commercial nature which may enjoin the parties to the transactions to keep the information confidential. Further, the books of accounts would also record salaries and other payments to other individuals. Disclosure of such information would affect not just the assessee but also other parties. In the circumstances, it would be necessary to examine the details of information that are sought from the public authority. In the present case, the respondent seems to have sought for an omnibus disclosure of all records and returns. In my view, the same could not be allowed without examining the nature of information contained therein.

27. The Supreme Court in the case of ***Thalappalam Ser. Coop. Bank Ltd. and others v. State of Kerala and others*****: Civil Appeal No. 9017 of 2013,**

decided on 07.10.2013. considered the question whether a society registered would fall within the definition of a public authority under Section 2(h) of the Act. The Court also clearly stated that the information supplied by a society to the Registrar of Societies could be disclosed except for the information that was exempt under Section 8(1) of the Act and that included accounts maintained by members of society. The relevant passage from the said judgment is quoted below:-

> **"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 Co-operative 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."

28. It is apparent that information submitted by an assessee in the course of assessment, may also include information relating to other persons. The exclusions available under Section 8(1) of the Act, would also be available in respect of that information.

29. Section 137 of the Income Tax Act, 1961 provided that the information furnished by an assessee was confidential and was not liable to be disclosed. Section 137 of the Income Tax Act, 1961 was deleted by the Finance Act, 1964 and simultaneously, Section 138 the Income Tax Act, 1961 was substituted. Section 138 of the Income Tax Act, 1961 is quoted below:-

> **"138. Disclosure of information respecting assessees.**- (1)(a) The Board or any other income-tax authority specified by it by a general or special order in this behalf may furnish or cause to be furnished to-

(i) any officer, authority or body performing any functions under any law relating to the imposition of any tax, duty or cess, or to dealings in foreign exchange as defined in clause (n) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999); or

(ii) such officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify by notification in the Official Gazette in this behalf,

any such information received or obtained by any income-tax authority in the performance of his functions under this Act, as may, in the opinion of the Board or other income-tax authority, be necessary for the purpose of enabling the officer, authority or body to perform his or its functions under that law.

(b) Where a person makes an application to the Chief Commissioner or Commissioner in the prescribed form for any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, the Chief Commissioner or Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for and his decision in this behalf shall be final and shall not be called in question in any court of law.

(2) Notwithstanding anything contained in sub-section (1) or any other law for the time being in force, the Central Government may, having regard to the practices and usages customary or any other relevant factors, by order notified in the Official Gazette, direct that no information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessees or except to such authorities as may be specified in the order."

30. In the case of ***Hanuman Pershad*** *(supra),* this Court considered the question whether there was any bar on the Income Tax Department from disclosing records produced during the assessment proceedings. The said controversy was answered by the following words:-

> "It is undoubtedly open to the authorities to disclose information received by them from assessments or other proceedings under the Act. However, there are restrictions contained in Section 138 as now existing concerning the manner in which that information is to be disclosed. Leaving aside sub-clause (a) of sub-section (1) it seems that under sub-clause (b), the Commissioner can disclose information if he is satisfied that it is within the public interest to do so. Hence, if some other authority applies to the Commissioner to obtain information, the same may be disclosed in the discretion of the Commissioner. Under Sub-clause (a) there is also a power to furnish information to other authorities. As this matter has not been fully argued or discussed in the present case, it is sufficient to note that there is no power to disclose information to other authorities and officers outside the provisions of the Section. As far as the information already given is concerned, we have no power to give any direction concerning the same."

31. Although by virtue of Section 22 of the Act, the provisions of the Act have an overriding effect over any other inconsistent law, the said provisions of the Act insofar as they are not inconsistent with other statutes must be read harmoniously. Undoubtedly, the income tax returns and information provided to Income Tax Authorities by assessees is confidential and not required to be placed in public domain. Given the nature of the income tax returns and the information necessary to support the same, it would be exempt under Section 8(1)(j) of the Act in respect of individual and unincorporated assessees. The information as disclosed in

the income tax returns would qualify as personal information with regard to several private companies which are, essentially, alter egos of their promoters. However, in cases of widely held companies most information relating to their income and expenditure would be in public domain and the confidential information would be exempt from disclosure under Section 8(1)(d) of the Act. Further, even in cases of corporate entities, the income tax returns and other disclosure made to authorities would also include transactions with other parties and those parties can also claim the exception under Section 8(1) of the Act. One has to also bear in mind that an authority may not have any obligation to provide any information other than in the form in which it is available and the information provided by an assessee may not have been edited to remove references to other persons. Keeping all the aforesaid considerations in view, the parliament has enacted Section 138 of the Income Tax Act, 1961 to provide for disclosure only where it is necessary in public interest. Similar provisions are enacted under the Act and clauses (d), (e) and (j) of Section 8(1) of the Act that specify that information exempt from disclosure under those clauses, could be disclosed in larger public interest. Section 8(2) of the Act also provides for a non obstante clause which permits disclosure of information in larger public interest.

32. It would also be necessary to refer to Section 11 of the Act, which provides for a notice to a third party before any third party information is disclosed. The proviso to Section 11 of the Act also specifies that disclosure of trade or commercial secrets, which are protected by law

would not be allowed unless their disclosure is necessary in public interest. Section 11(1) of the Act reads as under:-

> **"11. Third party information.—**(1) Where a Central Public Information Officer or the 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."

33. In the above context where the nature of income tax returns and other information provided for assessment of income is confidential and its disclosure is protected under the Income Tax Act, 1961 it is not necessary to read any inconsistency between the Act and Income Tax Act, 1961. And, information furnished by an assesse can be disclosed only where it is necessary to do in public interest and where such interest outweighs in importance, any possible harm or injury to the assesse or any other third party. However, information furnished by corporate assessees that neither

relates to another party nor is exempt under Section 8(1)(d) of the Act, can be disclosed.

34. In view of the aforesaid, the principal question that is to be addressed is whether the CIC has misdirected itself in concluding that disclosure of income tax returns and other information relating to assessment of income of the petitioners was in public interest.

35. In order to address this controversy, it is important to understand the purpose of the respondent in seeking such information. The proceedings under the Income Tax Act, 1961 with respect to assessment of income are at different stages. It is stated that in some cases, assessment is complete and appeal proceedings are pending in other fora. In one case, it is contended that the Appellate Authorities have remanded the matter of assessment to the Assessing Officer. It is apparent that the assessment proceedings have thrown up contentious issues which are being agitated between the income tax authorities and the assessees. The respondent, essentially, wants to intervene in those proceedings by adding and providing his contentions or interpretation as to the information provided by the asseesees or otherwise available with the Income Tax Authorities.

36. In my view, the CIC has misdirected itself in concluding that this was in larger public interest. The CIC arrived at this conclusion by noting that disclosure of information was in larger public interest in increasing public revenue and reducing corruption. The assessment proceedings are not public proceedings where all and sundry are allowed to participate and add their opinion to the proceedings. Merely because a spirited citizen

wishes to assist in assessment proceedings, the same cannot be stated to be in larger public interest. On the contrary, larger public interest would require that assessment proceedings are completed expeditiously and by the authorities who are statutorily empowered to do so.

37. In the present case, there was no material to indicate that there was any corruption on the part of the income tax authorities which led to a justifiable apprehension that the said authorities were not performing their function diligently. In any event, the CIC has not found that the proceedings relating to assessment were not being conducted in accordance with law and/or required the intervention of the respondent. Assessment proceedings are quasi-judicial proceedings where assessee has to produce material to substantiate their return of income. Income tax has to be assessed by the income tax authorities strictly in accordance with the Income Tax Act, 1961 and based on the information sought by them. In the present case, the respondent wants to process the information to assist and support the role of an Assessing Officer. This has a propensity of interfering in the assessment proceedings and thus, cannot be considered to be in larger public interest. The CIC had proceeded on the basis that the income tax authorities should disclose information to informers of income tax departments to enable them to bring instances of tax evasion to the notice of income tax authorities. In my view, this reasoning is flawed as it would tend to subvert the assessment process rather than aid it. If this idea is carried to its logical end, it would enable several busy bodies to interfere in assessment proceedings and throw up their interpretation of law and facts as to how an assessment ought to be carried out. The propensity of this to

multiply litigation cannot be underestimated. Further, the proposition that unrelated parties could intervene in assessment proceedings is wholly alien to the Income Tax Act, 1961. The income tax returns and information are provided in aid of the proceedings that are conducted under that Act and there is no scope for enhancing or providing for an additional dimension to the assessment proceedings.

38. The Supreme Court in ***Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*****: (2012) 13 SCC 61** held that the statutory exemption provided under Section 8 of the Act is the rule and only in exceptional circumstances of larger public interest the information would be disclosed. It was also held that 'public purpose' needs to be interpreted in the strict sense and public interest has to be construed keeping in mind the balance between right to privacy and right to information. The relevant extract from the said judgment is quoted below:

> **"21.** ..... Another very significant provision of the Act is Section 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.

22. 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 recognition and protection; something in which the public as a whole has a stake [*Black's Law Dictionary* (8th Edn.)].

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."

39. Applying the aforesaid judgment to the facts of this case, it is apparent that disclosure of information as directed has no discernable element of larger public interest.

40. Accordingly, the petitions are allowed and the impugned order is set aside. The parties are left to bear their own costs.

VIBHU BAKHRU, J

NOVEMBER 24, 2014
RK

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6086/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner

Through : Mr. Naresh Kaushik, Adv. With

Mr.Vardhman Kaushik, Adv.

versus

HAWA SINGH ..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

21.11.2014

1. The petitioner impugns an order dated 18.06.2013 passed by the Central Information Commission (hereinafter referred to as ?CIC?) whereby the petitioner was directed to disclose certain information relating to other candidates who were subject to the selection process undertaken by the petitioner.

2. The question to be adressed is whether the petitioner was obliged to disclose information relating to other candidates i.e. the third party information under the Right to Information Act, 2005 (hereinafter referred to as the ?Act?).

3. The brief facts of the present case are that the respondent was working as a Senior Administrative Officer (Legal) in the office of Controller and Auditor General of India (hereafter ?CAG?) and had appeared before the Departmental Promotion Committee (hereinafter ?DPC?) for the selection to the post of Deputy Director (Legal) in the office of CAG. The respondent had filed an application dated 05.11.2012 under the Act inter alia seeking certain information relating to the said selection process which included the Bio Data as well as other information relating to other candidates.

4. While most of the information was supplied by the petitioner, the

information relating to other candidates and certain other information was declined by the petitoner. This led the respondent to file an appeal before the first appellate authority, which was rejected by an order dated 07.01.2013. Aggrieved by the same, the respondent preferred an appeal before CIC. The CIC considered the appeal and directed the petitioner to supply the following information:-

?i. The biodata of the candidates recommended by the Selection Committee for deputation;

ii. the marks awarded to both the selected candidates as well as to the Appellant during the selection process;

iii the copy of the pro forma and comparative statement of eligibility placed before the Selection Committee, if any:

iv. a statement showing the period for which the ACRs/APARs of various candidates had been considered by the Selection Committee including the grading of the selected candidates as well as that of the Appellant and

v. The copy of the reserve list prepared by the Selection Committee provided the selected candidate has already joined her duty.?

5. Aggrieved by the direction of CIC to provide the Bio Data of the candidates recommended by the Selection Committee for deputation, the petitioner has preferred this petition.

6. Learned counsel for the petitioner submits that the information sought by the respondent is a third party information and thus cannot be disclosed except in public interest and after following the due procedure under Section 11 and Section 19(4) of the Right to Information Act, 2005. The learned counsel referred to a decision of the Supreme Court in Union Public Service Commission v. Gouhari Kamila: Civil Appeal No. 6362/2013, decided on 06.08.2013 whereby the Supreme Court following its earlier decision rendered in CBSE v. Aditya Bandopadhyay: (2011) 8 SCC 497 held as under:-

?12. 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.

13. 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.?

7. In view of the above, the submission of the learned counsel for the

petitioner that the present case is covered by the decision of the Supreme Court in Gouhari Kamila (supra) is well founded. Clearly, the Bio Data of the other selected candidates is a third party information and is exempt from disclosure under Section 8(1)(e) and under Section 8(1)(j) of the RTI Act.

8. The impugned order does not indicate that disclosure of this information was vital in larger public interest. Further, it does not appear that the CIC had issued any notice under Section 19(4) of the RTI Act to other candidates before directing the disclosure of the information.

9. Accordingly, the petition is allowed and the impugned order, in so far as it relates to disclosure of ?Bio Data of candidates recommended by the Selection Committee for deputation? is concerned, is set aside. No order as to costs.

VIBHU BAKHRU, J

NOVEMBER 21, 2014/j

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 4722/2015

STATE BANK OF INDIA ..... Petitioner
Through: Mr Vaibhav Agnihotri, proxy counsel

versus

RAJU VAZHAKKALA ..... Respondent
Through: Mr Ajay Gulati, proxy counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 13.05.2015

CM No. 8546/2015 (Exemption)

Allowed subject to just exceptions.

WP(C) No. 4722/2015 & CM No. 8545/2015 (Stay)

The petitioner is aggrieved by the order dated 20.01.2015 whereby it has been directed to disclose names of the persons and establishments whose debts have been written-off. It is to be noted that these are accounts, even according to the petitioner, which had outstanding amounts of Rs. 100 crores or more.

2.1 The petitioner's case is that since it has a fiduciary relationship with the account holder, it has no obligation to disclose the information in view of the provisions of Section 8(1)(e) of the Right to Information Act, 2005.

2.2 Learned counsel for the petitioner says that the CIC in two matters has taken a view which is propounded by the petitioner. These two orders were passed in the case of: ***Sandeep Godika vs J.K. Sahasmal, PIO & AGM*** and

Shri Anil Pathak vs Public Information Officer, on 18.04.2012 and 31.07.2013, respectively. These orders are appended as Annexure P-6 and P-7 at pages 27 and 30 of the paper book.

3. Prima facie, in my view, this information may have to be disclosed. The reason that I have come to this prima facie conclusion is this : the petitioner, is undoubtedly a nationalized bank, which has on its own showing written off as Non Performing Assets (NPAs), its loan accounts having outstanding of Rs.100 crores or more. The sheer extent of the write off would in my view, perhaps, inject an element of public interest in the matter; which is the exception provided for in Section 8(1)(e) of the RTI Act, 2005. However, this matter needs further examination.

4. Issue notice.

5. Counter affidavit be filed within four weeks. Rejoinder, if any, be filed before the next date of hearing.

6. List on 02.09.2015.

RAJIV SHAKDHER, J

MAY 13, 2015
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IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 29.01.2018

\+ **W.P.(C) 5057/2015**

SATPAL ..... Petitioner

Versus

CENTRAL INFORMATION COMMISSION & ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Dr Vijendra Mahndiyan and Ms Pallavi Awasthi.

For the Respondents :

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 13.11.2014 passed by the Central Information Commission (hereafter 'the CIC'), whereby the information sought by the petitioner was denied on the ground that the same was in the nature of personal information and was exempted under section 7(9), 8(1)(e) and 8(1)(j) of the Right to Information Act, 2005 (hereafter 'the Act').

2. Briefly stated, the relevant facts necessary to address the controversy involved in the present petition are as under:-

2.1 The petitioner filed an application under the Act seeking caste certificates of the employees who were promoted from Group D to Group C under the reserved category of SC/OBC. By the letter dated 28.03.2013, the aforesaid information was denied by the CPIO, Executive Director (Southern Region), Air India (respondent no.2) on the ground that it relates to personal information and, thus, was exempt from disclosure under Section 8(1)(j) of the Act.

2.2 In the meanwhile, the petitioner filed another application (the second application) dated 05.04.2013. The information sought by the petitioner therein was denied by respondent no.3 by a letter dated 30.04.2013, on the ground that the same was exempted from its disclosure under section 8(1)(e) of the Act.

2.3 Thereafter, on 03.06.2013, the petitioner filed an appeal under section 19 of the Act, before the First Appellate Authority (FAA) against the response dated 28.03.2013. On the same day, the petitioner also filed another application (the third application) with respondent no.2 seeking the same information as was sought by the earlier two applications.

2.4 The appeal preferred by the petitioner was disposed of by the FAA by an order dated 13.06.2013. The petitioner's application (the third application) dated 03.06.2013 was also rejected by a communication dated 03.07.2013.

2.5 The petitioner preferred another appeal to the FAA against the communication dated 30.04.2013. The appeal was disposed of by an

order dated 17.07.2013, whereby the decision to deny the information sought by the petitioner was upheld.

2.6 Aggrieved by the denial of information, the petitioner preferred a second appeal under section 19(3) of the Act impugning the order dated 17.07.2013 passed by the FAA. The petitioner also filed an appeal before the FAA against the order dated 13.06.2013. This appeal was not considered and therefore the petitioner preferred another second appeal to the CIC.

2.7 The aforesaid appeals were disposed by the CIC by a common order dated 13.11.2014 (hereafter 'the impugned order'); the CIC concurred with the CPIO that the information sought by the petitioner is exempt from disclosure, as no larger public interest is involved. The relevant extract of the impugned order is set out below:-

> "As per the appellant, he requires this information in public interest. The commission has perused the definition of 'Public Interest' mentioned in Stroud's Judicial Dictionary. Volume 4 (IV Edition). The same is reproduced below:-
>
> *"a matter of public or general interest does not mean that which is interesting as gratifying curiosity or love of information or amusement but that in which a class of community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."*
>
> In the instant case, the appellant, except for stating that he is seeking this information in public interest, has established the same. As per the above definition, he has neither established a class/community having a

pecuniary interest or interest by which their legal right/liabilities are affected.

xxxx xxxx xxxx

It is fairly obvious that the caste and educational certificates of an employee are in the of personal information about a third party. The employee might have filed these documents before the appointing authority for the purpose of seeking employment, but that is not reason enough for this information to be brought in to the public domain to which anybody could have access."

3. The principal question that falls for consideration of this Court is whether the caste certificates submitted by employees for seeking the benefit of reservations in favour of OBC Category are exempt from disclosure under Section 8 (1)(e) & 8(1)(j) of the Act.

4. Section 8(1)(e) & 8(1)(j) of the Act reads 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

(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;

xxxx xxxx xxxx xxxx

(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."

5. It is apparent from the plain language of Clause (e) of Section 8 (1) of the Act that only such information which is available to a person in a fiduciary relationship is exempt from disclosure. In ***Central Board of Secondary Education v. Aditya Bandopadhyay & Ors***: ***(2011) 8 SCC 497***, the Supreme Court considered the question whether an examining body holds evaluated answer books in a fiduciary relationship and consequently exempt from disclosure under Section 8(1)(e) of the Act. The Supreme Court referred to various decisions explaining the term "fiduciary" and "fiduciary relationship" and held as under:-

> "39. 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.
>
> 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."

6. It is apparent from the above that personal information or details submitted by an employee to an employer for the purposes of his employment are expected to be kept confidential. Plainly, the same cannot be available to all and sundry. However, if the competent authority is satisfied that a larger public interest warrants the disclosure of such information, the same can be disclosed, notwithstanding, that the same was available with the person in a fiduciary capacity.

7. It can hardly be disputed that the information relating to the caste of a person would also fall within the definition of "personal information" and, thus, this would also be exempt from disclosure under Section 8(1)(j) of the Act.

8. At this stage, it is also important to note that even though the information available to any person in a fiduciary capacity is exempt from disclosure in terms of Section 8(1)(e) of the Act; the said exemption is not absolute. If the competent authority is satisfied that a larger public interest warrants disclosure of such information, the same would have to be disclosed. The width of the exclusionary provision of Section 8(1)(e) of the Act does not extend to information, the disclosure of which is warranted in public interest.

9. Similarly, in terms of Section 8(1)(j) of the Act, the personal information which is otherwise exempt from disclosure, can be disclosed if a larger public interest justifies such disclosure.

10. In the present case, respondent no.1 has not indicated any material to justify that disclosure of the information sought by the petitioner is warranted in larger public interest.

11. In this view, this Court finds no reason to interfere with the impugned order. However, it is clarified that if the petitioner is able to establish any special circumstances which would warrant disclosure of information sought by him in larger public interest, he would be at liberty to approach the concerned CPIO for such information. Merely stating that disclosure of the information sought would be in the

interest of transparency and, thus, in public interest is plainly insufficient.

12. The petition is disposed of with the aforesaid directions. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JANUARY 29, 2018
pkv/**RK**

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 7845/2013**

PARAS NATH SINGH ..... Petitioner

Through: Petitioner in person.

versus

UNION OF INDIA ..... Respondent

Through: Mr Ruchir Mishra, Mr Mukesh Kumar Tiwari and Mr Abhishek Rao, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 12.02.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 04.09.2013 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC').

2. The petitioner had filed an application dated 06.11.2010 under the Right to Information Act, 2005 (hereafter 'the Act') seeking certain information including the certified copy of a report sent by the then Governor of Karnataka to the Union Home Ministry relating to the political situation in the State of Karanataka and for imposing President's Rule in that State. The petitioner had also sought information as to what action had been taken by the Government of India on the said report and also the file notings in respect of the said report.

3. The said information was declined to the petitioner. The petitioner appealed against such denial to the First Appellate Authority (FAA) under Section 19 (1) of the Act, but was not successful. Aggrieved by the order passed by the FAA, the petitioner preferred a second appeal under section 19(3) of the Act, which is stated to be pending consideration before the CIC.

4. In the meantime, the petitioner filed another application dated 07.06.2012 under the Act, *inter alia,* seeking the following information:-

> "1) Complete details of file notings made on the above said file number as on date.
>
> 2) Separately the daily progress made in case of above said file till date i.e. when did it reach which officer/functionary, how long did it stay with that officer/functionary and what did that officer/functionary, do during that period on the said letter together with file noting and name and designation of each officer/functionary.
>
> 3) List of the officers with their designation to whom before the said file is placed. Also provide me the noting made by them on the said file.
>
> 4) Is it true that the said file is placed before the Union Home Secretary? If yes then provide me the action taken by him thereon. Also provide me the facts and reasons to place the said file before Union Home secretary.
>
> 5) Provide the certified copy of the draft Special Leave Petition which is going to be filed before the Supreme Court by the MHA in the matter of Governor's reports to Union Home Ministry.

6) Is there any correspondence made with the Union Home Minister in this matter. If yes, then provide me the certified copy of the same."

5. The petitioner's request for the information as sought for in his application dated 07.06.2012 was denied by the Central Public Information Officer (CPIO) by a letter dated 25.06.2012. The CPIO claimed that the information as sought by the petitioner was exempt from disclosure under Section 8(1)(e) and Section 2(f) of the Act. According to the CPIO, information pertaining to file notings are not required to be disclosed.

6. Aggrieved by the aforesaid decision of the CPIO, the petitioner preferred an appeal before the FAA, which was also rejected by an order dated 20.07.2012. The FAA held that it had not been *"found feasible to provide the notings of the relevant file under Section 8(1)(e) and Section 2(f) of the RTI Act, 2005 as the same does not includes File Notings"*.

7. Aggrieved by the said decision, the petitioner filed a second appeal under Section 19(3) of the Act (albeit, incorrectly referred to as under Section 18 of the Act). The said appeal was disposed of by the impugned order. Paragraphs 5 and 6 of the impugned order, that indicate the reasons which persuaded the CIC to reject the petitioner's appeal, read as under:-

"5. The CPIO on the other hand submits that the file notings as sought for by the appellant at Point No.1 to 4 and 6 of the RTI application, are the part of the file in which an official records his observations and impressions meant for his immediate superiors. Especially, when the file in which the noting are contained is classified and confidential and

secret the entrustment of the file noting by a junior officer or a subordinate to the next higher or superior officer assumes the character of an information supplied by a 3rd party. This being so, any decision to disclose the information has to be completed in terms of a provision of Section 11(1) of the RTI Act. When the file noting by one officer meant for the next officer with whom he may be in hierarchical relationship, is in the nature of a fiduciary entrustment, it should not ordinarily be disclosed and surely not without any concurrence of the officer preparing that note. The file noting for a confidential and secret part would attract the provisions of Section 8(1)(e) as well as Section 11(1) of the RTI Act. In respect of Point No.5, that is SLP filed in the Supreme Court in the matters of Governor's report to the President of India/Union Ministry of Home Affairs, the same can be obtained by the appellant from the Supreme Court of India.

6. Having considered the submissions of the parties and perused the relevant documents on the file, the Commission is of the view that the file notings as sought for by the appellant at Point No.1 to 4 and 6 of his RTI application, provisions of Section (1)(e) of the RTI Act are attracted, in view of the statement of the respondent that the file in which the notings are contained is classified and confidential and secret. Moreover, no larger public interest has been established by the appellant for its disclosure. At Point No.5 the appellant has been established by the appellant for its disclosure. At Point No.5 the appellant sought copy of SLP file before the Supreme Court of India in the matter of Governor's report to the President of India/Union Ministry of Home Affairs, the Commission hereby directs the CPIO, MHA to transfer this point to the CPIO, Supreme court of India u/s 6(3) of the RTI Act **within five days** of receipt of this order."

8. It is apparent from the plain reading of the above that the respondent had argued the matter before the CIC on the footing that the

petitioner had sought notings on the file pertaining to the report of the Governor regarding the imposition of President's Rule in the State of Karnataka, which had been classified as 'confidential and secret'. Concededly, this is not the information that was sought by the petitioner in his application dated 07.06.2012. The said application was for information relating to how his earlier application dated 06.11.2010 preferred under the Act had been dealt with. The same included notings on the file pertaining to the petitioner's application under the Act. While the file relating to the Governor's report may be classified, the file concerning the petitioner's application cannot, obviously, be considered confidential/secret. Admittedly, this is also not the case of the respondents; they do not claim that the notings on the file relating to the petitioner's application dated 06.11.2010 have been classified as secret or confidential.

9. In view of the above, the impugned order, inasmuch as it holds that the information sought for by the petitioner is exempt from disclosure under Section 8(1)(e) of the Act, cannot be sustained.

10. The contention that notings made by a junior officer for use by his superiors is third party information, which requires compliance of section 11 of the Act, is unmerited. Any noting made in the official records of the Government/public authority is information belonging to the concerned Government/public authority. The question whether the information relates to a third party is to be determined by the nature of the information and not its source. The Government is not a natural person and all information contained in the official records of the Government/public

authority is generated by individuals (whether employed with the Government or not) or other entities. Thus, the reasoning, that the notings or information generated by an employee during the course of his employment is his information and thus has to be treated as relating to a third party, is flawed.

11. Section 8 of the Act provides for exemption from disclosure of certain information and none of the provisions of Section 8 provide for blanket exemption that entitles the respondent to withhold all notings on a file.

12. In view of the above, the impugned order is set aside. The matter is remanded to the CIC to consider afresh. The CIC is requested to pass a final order as expeditiously as possible and preferably within a period of three months from today.

13. The petition is disposed of.

VIBHU BAKHRU, J

FEBRUARY 12, 2018
MK

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: .07.10.2013
Date of Decision: .10.10.2013

\+ W.P.(C) 4079/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

G.S. SANDHU ..... Respondent
Through: Mr Subhiksh Vasudev, Adv.

\+ W.P.(C) 2/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
Versus

SHATMANYU SHARMA ..... Respondent

Through: Counsel for the respondent.

\+ W.P.(C) 8/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

SH. SAHADEVA SINGH ..... Respondent
Through: Mr Praveen Singh, Adv with respondent in person.

\+ W.P.(C) 5630/2013

UNION PUBLIC SERVICE COMMISSION..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

K.L. MANHAS ..... Respondent
Through: Counsel for the respondent.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The issue involved in these petitions as to whether the copies of office notings recorded on the file of UPSC and the correspondence exchanged between UPSC and the Department seeking its advice can be accessed, by the person to whom such advice relates, in RTI Act or not.

The respondent in W.P(C) No.4079/2013 sought information from the CPIO of the petitioner – Union Public Service Commission (hereinafter referred to as "UPSC"), with respect to the advice given by the petitioner – UPSC to the Government of Maharashtra in respect of departmental proceedings against him. The CPIO having declined the information sought by the respondent, an appeal was preferred by him before the First Appellate Authority. Since the appeal filed by him was dismissed, the respondent approached the Central Information Commission (hereinafter referred to as "the Commission") by way of a second appeal. Vide impugned order dated 1.5.2013, the Commission rejected the contention of the petitioner – UPSC that the said information was exempt from disclosure under Section 8(1) (e), (g) & (j) of the Right to Information Act (the Act) and directed the petitioner to disclose the file notings relating to the matter in hand to the respondent, with liberty to the petitioner –UPSC to obliterate the name and designation of the officer who made the said notings. Being aggrieved, the petitioner – UPSC is before this Court by way of this writ petition.

2. The respondent in W.P(C) No.2/2013 sought the information from the petitioner – UPSC with respect to the advice given by it in respect of the disciplinary proceedings initiated against the said respondent. The said information having been denied by the CPIO as well as the First Appellate Authority, the respondent approached the Commission by way of a second appeal. The Commission vide the impugned order dated 26.9.2012 directed the petitioner to provide, to the respondent, the photocopies of the relevant file after masking the signatures of the officers including other identity marks. Being aggrieved, the petitioner – UPSC is before this Court seeking quashing of the aforesaid order passed by the Commission.

3. In W.P(C) No. 5603/2013, the respondent before this Court sought information with respect to the advice given by UPSC to the State of Haryana with respect to the disciplinary proceedings instituted against him. The said information having been refused by the CPIO and the First Appellate Authority, he also approached the Commission by way of a second appeal. The Commission rejected the objections raised by the petitioner and directed disclosure of the file notings and the correspondence relating to the charge-sheet against the respondent. The petitioner being aggrieved from the said order is before this Court by way of this petition.

4. In W.P(C) No.8/2013, the respondent before this Court sought information with respect to the advice given by UPSC in a case of disciplinary proceedings instituted against him. The said information, however, was denied by the CPIO of UPSC. Feeling aggrieved, the respondent preferred an appeal before the First Appellate Authority. The

appeal, however, came to be dismissed. The respondent thereupon approached the Commission by way of a second appeal. The Commission vide the impugned order dated 26.9.2012 directed disclosure of the information to the respondent. The petitioner – UPSC is aggrieved from the aforesaid order passed by the Commission.

5. The learned counsel for the petitioner – UPSC Mr. Naresh Kaushik has assailed the order passed by the Commission on the following grounds (i) there is a fiduciary relationship between UPSC and the department which seeks its advice and the information provided by the Department is held by UPSC in trust for it. The said information, therefore, is exempted from disclosure under Section 8(1)(e) of the Act (ii) the file notings and the correspondences exchanged between UPSC and the department seeking its advice may contain information relating not only to the information seeker but also to other persons and departments and institutions, which, being personal information, is exempt from disclosure under Section 8(1)(j) of the Act (iii) the officers who record the notings on the file of UPSC are mainly drawn on deputation from various departments. If their identity is disclosed, they may be subjected to violence, intimidation and harassment by the persons against whom an adverse note is recorded and if the said officer of UPSC, on repatriation to his parent department, happens to be posted under the person against whom an adverse noting was recorded by him, such an officer may be targeted and harassed by the person against whom the note was recorded. Such an information, therefore, is exempt from disclosure under Section 8(1)(g) of the Act and (iv) the notings recorded by UPSC officer on the file are only inputs given to the Commission to enable it to render an appropriate advice to the

concerned department and are not binding upon the Commission. Therefore, such information is not really necessary for the employee who is facing departmental inquiry, since he is concerned only with the advice ultimately rendered by UPSC to his department and not that the noting meant for consideration of the Commission.

6. Section 8(1) (e)(g) and (j) of the Act reads as under:

> **"Section 8(1)(e) in The Right To Information Act, 2005**
>
> Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
>
> xxx
>
> (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;
> xxx
>
> (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;;
>
> 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."

7. Fiduciary Relationship:

The question which arises for consideration is as to whether UPSC is placed in a fiduciary relationship vis-à-vis the department which seeks its advice and the information provided by the department is held by UPSC in trust for the said department or not. The expression 'fiduciary relationship' came to be considered by the Hon'ble Supreme Court in *Central Board of Secondary Education and Another* versus *Aditya Bandopadhyay & Ors.* [Civil Appeal No.6454 of 2011] and the following view was taken:

> 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 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. ...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. .."

The aforesaid expression also came up for consideration of the Apex Court in *Bihar Public Service Commission* versus *Saiyed Hussain Abbas Rizwi & Anr.* [Civil Appeal No.9052 of 2012] and the following view was taken by the Apex Court:

> "22....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).
> xxx
> 24...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..."

8. The advice from UPSC is taken by the Disciplinary Authority, as a statutory requirement under the service rules applicable to an employee and wherever the Disciplinary Authority takes such an advice into consideration while recording its findings in the matter. The concerned employee is entitled to supply of such advice to him, as a matter of right. There is no relationship of master and agent or a client and advocate between the UPSC and the department which seeks its advice. The information which the department provides to UPSC for the purpose of obtaining its advice normally would be the information pertaining to the employee against whom disciplinary proceedings have been initiated. Ordinarily such information would already be available

with the concerned employee having been supplied to him while seeking his explanation, along with the charge-sheet or during the course of the inquiry. The UPSC, while giving its advice, cannot take into consideration any material, which is not available or is not to be made available to the concerned employee. Therefore, the notings of the officials of UPSC, would contain nothing, except the information which is already made available or is required to be made available to the concerned employee. Sometimes, such information can be a third party information, which qualifies to be personal information, within the meaning of clause (j), but, such information, can always be excluded, while responding to an application made to UPSC, under RTI Act. Therefore, when such information is sought by none other than the employee against whom disciplinary proceedings are sought to be initiated or are held, it would be difficult to accept the contention that there is a fiduciary relationship between UPSC and the department seeking its advice or that the information pertaining to such an employee is held by UPSC in trust. Such a plea, in my view, can be taken only when the information is sought by someone other than the employee to whom the information pertains.

9. The learned counsel for the petitioner has referred to the decision of this Court in *Ravinder Kumar* versus *CIC* [LPA No.418/2008 3.5.2011. The aforesaid LPA arose out of a decision of the learned Single Judge of this Court in W.P(C) No.2269/2011 decided on 5.4.2011, upholding the directions of the Commission to UPSC to provide photocopies of the relevant file notings concerning of two disciplinary cases involving the respondent to him, after deleting the name and other reference to the individual officer/ authority. As noted

by a learned Single Judge of this Court in *UPSC* versus *R.K. Jain* [W.P(C) No.1243/2011 dated 13.7.2012, the order passed by the Division Bench was an order dismissing the application for restoration of the LPA and was not an order on merit and, therefore, it was not a decision on any legal proposition rendered by the Court on merit. It was further held that mere prima facie observation of the Division Bench does not constitute a binding precedent. Therefore, reliance upon the aforesaid order in LPA No.418/2010 is wholly misplaced.

10. As regards the applicability of clause (g), it would be seen that the said clause exempts information of two kinds from disclosure – the first being the information disclosure of which would endanger the life or physical safety of any person and second being the information which would identify the source of information or assistance given in confidence for law enforcement or security purposes. The two parts of the clause are independent of each other – meaning thereby that exemption from disclosure on account of danger to the life or physical safety of any person can be ground of exemption irrespective of who had given the information, who was the person, to whom the information was given, what was the purpose of giving information and what were the terms – expressed or implied subject to which the information was provided. The aforesaid clause came up for consideration before the Hon'ble Supreme Court in *Bihar Public Service Commission*(supra) and the following view was taken:

> "28...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."

11. In my view, the apprehension of the petitioner that if the identity of the author of the file notings is revealed by his name, designation or in any other manner, there is a possibility of such an employee being targeted, harassed and even intimidated by the persons against whom an

adverse noting is recorded by him on the file of UPSC, is fully justified. Though, ultimately it is for the members of the UPSC who are to accept or reject such notings, this can hardly be disputed that the notings do play a vital role in the advice which UPSC ultimately renders to the concerned department. Therefore, the person against whom an adverse advice is given may hold the employee of UPSC recording a note adverse to him on the file, responsible for an adverse advice given by UPSC against him and may, therefore, harass and sometime even harm such an employee/officer of UPSC, directly or indirectly. To this extent, the officers of UPSC need to be protected. However, the purpose can be fully achieved by blocking the name, designation or any other indication which would disclose or tend to disclose the identity of the author of the noting. Denying the notings altogether would not be justified when the intended objective can be fully achieved by adopting such safeguards.

12. Personal Information

As regards clause (j), it would be difficult to dispute that the exemption cannot be claimed when the information is sought by none other than the person to whom the personal information relates. It is only when the information is sought by a third party that such an exemption can be claimed by UPSC. If, the notings recorded on the file and/or the correspondence exchanged between UPSC and the concerned department do contain any such information which pertains to a person other than the information seeker and constitutes personal information within the meaning of section 8(1)(j), the UPSC was certainly be entitled to refuse such information on the ground that it is exempted from disclosure under clause 8(1)(j) of the Act.

13. As regards the contention that the notings recorded by the employees of UPSC are not necessary for the information seeker since he is concerned with the ultimate opinion rendered by UPSC to his department and not with various notings which are recorded by the officer of the Commission, I find the same to be devoid of any merit. While seeking information under the Right to Information Act, the application is not required to disclose the purpose for which the information is sought nor is it necessary for him to satisfy the CPIO that the information sought by him was necessary for his personal purposes or for public purpose. Therefore, the question whether information seeker really needs the information is not relevant in the Scheme of the Act. The learned counsel for the petitioner drew my attention to the following observations made by the Apex Court in *Central Board of Secondary Education and Another* versus *Aditya Bandopadhyay & Ors.* (supra):

> "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."

However, when the file noting is sought by a person in respect of whom advice is rendered by UPSC cannot be said to be indiscriminate or all and sundry information, which would affect the functioning of UPSC. Such notings are available in the file in which advice is recorded by UPSC and, therefore, it would not at all be difficult to provide the same to the information seeker.

For the reasons stated hereinabove, the writ petitions are disposed of with the following directions:-

(i) the copies of office notings recorded in the file of UPSC as well as the copies of the correspondence exchanged between UPSC and the Department by which its advice was sought, to the extent it was sought, shall be provided to the respondent after removing from the notings and correspondence, (a) the date of the noting and the letter, as the case may be; (b) the name and designation of the person recording the noting and writing the letter and; (c) any other indication in the noting and/or correspondence which may reveal or tend to reveal the identity of author of the noting/letter, as the case may be;

(ii) if the notings and/or correspondence referred in (i) above contains personal information relating to a third party, such information will be excluded while providing the information sought by the respondent;

(iii) the information in terms of this order shall be provided within four weeks from today.

No order as to costs.

OCTOBER 10, 2013 V.K. JAIN, J.

RD/BG

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3370/2013 and CM APPL. 6418/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner

Through Mr. Naresh Kaushik, Advocate

versus

T.K. RAMALINGASWAMY ..... Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

O R D E R

16.04.2014

Present writ petition has been filed challenging the order dated 1st March, 2013 passed in Appeal No. CIC/SM/A/2012/001593 by Central Information Commission (for short ?CIC?).

Mr. Naresh Kaushik, learned counsel for petitioner fairly states that he is challenging only one direction issued by the Chief Information Commissioner, namely, the direction to disclose the names of Selection Committee Members along with their designations.

Though the respondent had been served on 23rd September, 2013, yet none has appeared for him either on 9th December, 2013 or today. Consequently, this Court has no other option but to proceed with the

matter.

W.P.(C) 3370/2013 Page 1 of 5

Mr. Kaushik submits that the marks, views, opinions of the experts, who were on the interview board is held by the Commission in fiduciary relationship. He contends that the said information relates to the core functioning of petitioner-UPSC and disclosure of such information would seriously endanger the process of secrecy and confidentiality of the selection process as well as jeopardize the total functioning and activity of petitioner-UPSC by rendering the same amenable to manipulation/misuse by interested individual/groups.

Mr. Kaushik also submits that the information sought has no rational or nexus with the object sought to be achieved by the enactment of Right to Information Act, 2005 (for short ?RTI Act?).

Mr. Kaushik lastly submits that the impugned information is exempt under Section 8(1)(e), (g) and (j) of the RTI Act.

Having heard learned counsel for petitioner, this Court is of the view that disclosure of names, addresses and qualification of the Selection Commission Members would endanger the life and physical safety of said experts and is, consequently, exempt under Section 8(1)(g) of the RTI Act.

The Supreme Court in Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi and Another, (2012) 13 SCC 61 has held as under:-

?28. 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

W.P.(C) 3370/2013 Page 2 of 5

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 [CBSE v. Aditya Bandopadhyay, (2011) 8 SCC 497] has given sufficient reasoning in this regard and at this stage, we may refer to paras 52 and 53 of the said judgment which read as under: (SCC pp. 528-29)

?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, coordinator 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/coordinator/head examiner. The information as to the names or particulars of the examiners/ coordinators/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

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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/coordinators/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/coordinators/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.?

29. 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 crystallised 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 CBSE case [CBSE v. Aditya Bandopadhyay, (2011) 8 SCC 497] . 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.

W.P.(C) 3370/2013 Page 4 of 5

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.?

Keeping in view the aforesaid judgment, this Court sets aside the impugned direction passed by the CIC to disclose the names of the Selection Committee Members along with their designations.

With the aforesaid directions, present petition and application

stand disposed of.

MANMOHAN, J

APRIL 16, 2014

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 1949/2017**

THE CPIO, MINISTRY OF HOME AFFAIRS ..... Petitioner

Through Mr Rahul Sharma, Ms Jyoti Dutt Sharma, Mr C.K. Bhatt, Advocates.

versus

CENTRAL INFORMATION COMMISSIONER & ANR ..... Respondents

Through Mr Nikhil Barwankar, Mr Pankaj Sharma, Mr Shobhit K. and Mr Varsha Ranjan, Advocates for R2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 27.07.2017

VIBHU BAKHRU, J

1. The petitioner (CPIO) has filed the present petition impugning an order dated 21.11.2016 passed by the Central Information Commission (hereafter 'CIC') directing the petitioner to inform whether any security clearance was given to one Shri Hameed Ali who is stated to be working with M/s Jet Airways Ltd. on senior management positions.

2. Respondent no.2 had filed an application under the Right to Information Act, 2005 (hereafter 'the Act') on 19.04.2015, *inter alia*, seeking the following information:-

"Under the provisions of RTI please supply the following

> information. It is learnt that one Mr. Hameed Ali, presently Group Advisor, Jet Airways and Etihad Airways, has been working with M/s Jet Airways India Limited since 2008 in various senior management positions namely Vice-President Operations, Executive Vice-President Operations, Chief Operating Officer, Accountable Manager – M/s Jet Lite Limited and Acting Chief Executive Officer-M/S Jet Airways India Limited. Further it is understood that this Mr. Hameed Ali is a foreigner, a national of Bahrain. 1. Kindly provide a copy of the security clearance and its renewal if any, obtained by Jet Airways towards employment of Mr. Hameed Ali."

3. The information as sought for by the respondent no.2 was denied by the CPIO on the ground that any comments of the Ministry of Home Affairs on any proposal seeking security clearance are based on inputs received from Intelligence Agencies which are exempted from the Act by virtue of Section 24 of the Act. The CPIO further claimed that the information as sought for was also exempt from the Act by virtue of Section 8(1)(g) of the Act. Dissatisfied with aforesaid response, the said respondent preferred an appeal before the First Appellate Authority (FAA), which was also rejected by an order dated 08.07.2015. The FAA, also held that the information as sought for by respondent no.2 was exempt in terms of Section 8(1)(g) of the Act since the disclosure of information relating to security clearance of entities/individuals in sensitive sectors of the economy can prejudicially affect the economic interests of the state.

4. The respondent no.2 appealed against the decision of the FAA, which was allowed by the impugned order. The operative part of the impugned order reads as under:-

> "The Commission, after hearing the submission of both the parties and perusing the records, observes that the

> information has been denied to the appellant on the ground of Sections 8(1)(g) and 24(1) of the RTI Act. However, keeping in view the nature of information sought, the Commission is of the opinion that the exemptions invoked by the respondent would not be applicable to the present case and at best, exemptions available in the present case could be that the information sought relates to a third party. However, no such exemption was claimed by the respondent. The Commission, is of the opinion that the information sought, if disclosed, would serve large public interest since it relates to the issue of security clearance of a person who is working as a senior functionary in the Aviation Sector and not following proper procedures while granting security clearance to such persons could pose a grave threat to the security and safety of the passengers, who travel by air. In view of this, the Commission, directs the respondent to inform the appellant whether any security clearance was given to one Shri Hameed Ali or not, within a period of four weeks from the date of receipt of a copy of this decision."

5. The learned counsel appearing for the petitioner submitted that the information regarding security clearance emanates from intelligence agencies and in terms of Section 24 of the Act, such agencies were outside the purview of the Act. She further pointed out that not only were the organizations mentioned in the schedule to Act are outside the sweep of the Act, but in terms of Section 24 of the Act, any information received by the government from such organisations was also outside the scope of the Act. She further contended that the information as sought for by respondent no.2 was also exempt under Section 8(1)(g) of the Act.

6. Before addressing the controversy, it is relevant to state that respondent no.2 is not seeking any information from the specified security

agencies or any information emanating from them. The respondent no.2 has narrowed down the scope of his inquiry and is only seeking information, whether security clearance was granted to M/s Jet Airways in respect of one Mr Hameed Ali. Such security clearance is mandatory in terms of para 3.4 of the Civil Aviation Requirement (CAR) issued by the Office of the Director General of Civil Aviation. The said para reads as under:-

> "3.4 **Security Clearance**
>
> 3.4.1 Ministry of Home Affairs (MHA) is the competent authority for grant of Security Clearance. In accordance with Policy Guidelines of MHA on National Security Clearance the applicant/company and its Board of Directors shall obtain security clearance from Ministry of Home Affairs (MHA).
> 3.4.2 The Positions of the Chief Executive Officer (CEO) and/or Chief Financial Officer (CFO) and/or Chief Operating Officer (COO), and/or any other similar Designation(s) exercising management control, if held by foreign nationals, would also require security clearance from MHA."

7. The learned counsel for the respondents has also pointed out that the Director General of Civil Aviation permits operation of air carriers subject to certain eligibility conditions, which include regulation of foreign involvement (either in terms of investment or in management/operations).

8. Given the narrow scope of the information sought by respondent no.2, this Court is not persuaded to accept that the said information can be either classified as emanating from organizations specified under the Second schedule to the Act and/or are otherwise exempt from disclosure under Section 8(1)(g) of the Act. Section 8(1)(g) of the Act reads 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 xxxx
>
> (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."

9. The information that respondent no.2 seeks does not in any manner endanger any person's life or could possibly lead to identifying any source of information or assistance given in confidence for law enforcement or for security purposes. Clearly, the petitioner's contention that the information sought for is one that would disclose any source of information received from security agencies, is unsustainable. The information sought for does not require any personal details or any trade secrets. It relates only to eliciting information relating to the Ministry of Home Affairs, Government of India and for ascertaining whether certain statutory compliances under the CAR have been met.

10. In view of the above, the petition is dismissed. Parties are left to bear their own costs.

VIBHU BAKHRU, J

JULY 27, 2017
pkv

IN THE HIGH COURT OF DELHI

WP(C) No. 3114/2007

Decided On: 03.12.2007

Appellants: **Bhagat Singh**
Vs.
Respondent: **Chief Information Commissioner and Ors.**

Hon'ble Judges:
S. Ravindra Bhat, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Girija Varma, Adv. and Party-in-Person

For Respondents/Defendant: Sonia Mathur, Adv. for R-2 and 3

Subject: Right to Information

Acts/Rules/Orders:
Right to Information Act, 2005 - Sections 3, 8, 8(1), 10 and 20; Income Tax Act, 1961 - Sections 131, 143(2) and 148; Constitution of India - Article 19(1)

Cases Referred:
Nathi Devi v. Radha Devi Gupta 2005 (2) SCC 201; B.R. Kapoor v. State of Tamil Nadu 2001 (7) SCC 231; V. Tulasamma v. Sesha Reddy 1977 (3) SCC 99

Disposition:
Petition allowed

JUDGMENT

S. Ravindra Bhat, J.

1. The Petitioner in the present writ proceeding approaches this Court seeking partial quashing of an order of the Central Information Commission and also for a direction from this Court that the information sought by him under the Right to Information Act, 2005 (hereinafter referred to as 'the Act') should be supplied with immediate effect.

2. The facts relevant to decide the case are as follows. The petitioner was married in 2000 to Smt. Saroj Nirmal. In November 2000 she filed a criminal complaint alleging that she had spent/paid as dowry an amount of Rs. Ten Lakhs. Alleging that these claims were false, the Petitioner, with a view to defend the criminal prosecution launched against him, approached the Income Tax Department with a tax evasion petition (TEP) dated 24.09.2003. Thereafter, in 2004 the Income Tax Department summoned the Petitioner's wife to present her case before them. Meanwhile, the Petitioner made repeated requests to the Director of Income Tax (Investigation) to know the status of the hearing and TEP proceedings. On failing to get a response from the second and third Respondents, he moved an application under the Act in November, 2005. He requested for the following information:

(i) Fate of Petitioner's complaint (tax evasion petition) dated 24.09.2003

(ii) What is the other source of income of petitioner's wife Smt. Saroj Nimal than from teaching as a primary teacher in a private school '

iii)What action the Department had taken against Smt. Saroj Nimal after issuing a notice u/s 131 of the Income 'tax Act, 1961, pursuant to the said Tax Evasion Petition.

3. The application was rejected by the second Respondent (the Public Information Officer, designated under the Act by the Income Tax department) on 10th January 2006 under Section 8(1) of the Act, by reasoning that the information sought was personal in nature, relating to dowry and did not further public interest. The relevant portion of this provision is extracted below:

Exemption from Disclosure of Information: (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen.

XXXXXXXXXXXX

(j) information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause un- warranted 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 justices the disclosure of such information.

4. The petitioner, thereafter, appealed to third Respondent- the Appellate Authority which too rejected his request to access the information. While doing so, not only did he reiterate section 8(1)(j) as a ground for rejection but also observed that the information sought could also be denied under Section 8(1)(h), which is reproduced below:

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

5. Against the order of the Appellate Authority, the petitioner filed a second Appeal on 1st March, 2006, before the Respondent No. 1, the Central Information Commission (hereafter 'the CIC') praying for setting aside the Orders of Respondent No. 2 and 3. The petitioner sought the following reliefs:

a) issue directions to Respondent No. 2 and 3 to furnish information,

b) to order an inquiry against Respondent's No. 2 and 3 for not implementing the Right to Information Act properly

c) to impose penalties and disciplinary action against Respondent No. 2 and 3 under Section 20 of the RTI Act and

d) to award cost of proceedings to be recovered from Respondent No. 2and3.

6. The CIC, on 8th May 2006 allowed the second appeal and set aside the rejection of information, and the exemption Clause 8(1) (j) cited by Respondents No. 2and3. The CIC further held that-

as the investigation on TEP has been conducted by DIT (Inv), the relevant report is the outcome of public action which needs to be disclosed. This, therefore, cannot be exempted u/s 8(1) (j) as interpreted by the appellate authority. Accordingly, DIT (Inv) is directed to disclose the report as per the provision u/s 10(1) and (2), after the entire process of investigation and tax recovery, if any, is complete in every respect.

7. The Petitioner contends that the first Respondent was correct in allowing disclosure of information, by holding that Sections 8(1)(j) did not justify withholding of the said information, but incorrectly applied Sec 8(1)

(h) of the Act. He submits that the disclosure of the said information could not in any way impede the investigation process and that the Respondents have not given any reasons as to how such disclosure would hamper investigation. On the other hand, he contends, the information would only help in absolving himself from the false prosecution and criminal harassment. Moreover, he contends that under Section 10 of the Act non-exempt information could have been provided to him after severing it from the exempt information. He in fact applied to the second and third respondent under the aforesaid provision but was informed that the matter was still under investigation.

8. In August 2006 the petitioner filed a contempt petition before the CIC for non compliance of order dated 8th May 2006. Pursuant to this, the CIC asked the second and third respondent to take necessary action. The Petitioner also wrote a letter to the Chief Information Commissioner, seeking his indulgence for compliance of impugned order dated 8th May 2006. Pursuant to this, the first Respondent issued a notice to the other Respondents asking for comments with respect to non-compliance of the order and to show cause as to why a penalty should not be imposed as per Section 20 of the Act. On 15th February, 2007, the Petitioner again appealed to the first Respondent requesting him to impose penalties on the concerned officer of Income Tax Department (Investigation) for non compliance of the order of the Central Information Commission.

9. The petitioner in this writ petition requests this Court to partially quash the order of the first Respondent dated 8th May 2006 in so far as it directs disclosure after the entire process of investigation and tax recovery is completed; to direct the other respondents to forthwith supply the information sought; to direct the CIC to impose penalties under Section 20 and to compensate him for damages suffered due to non supply of information. It was urged that the CIC, after appreciating that there was no merit in the plea regarding applicability of Section 8(1)(h), and being satisfied, should have not imposed the condition regarding completion of proceedings, which could take years. Such power to restrict the access to information did not exist under the Act.

10. The second and third respondents, pursuant to an order of this Court aver that the Petitioner misconstrued letters sent by the Income Tax officer and the Director General of Income Tax in relation to the fact that the investigations are complete. They submit that although there was a

preliminary investigation undertaken by the Income Tax officer, Delhi and a report was submitted pursuant to that, the Assessing officer has issued notices under section 148 of the Income Tax Act, 1961 and the investigation and procedures under the assessing Officer are yet to be completed. Learned Counsel Sonia Mathur, appearing on behalf of the Respondents submitted that, as per the directions of the CIC, the information sought would be supplied after 31st March 2008, after completion of investigation and recovery.

11. The Universal Declaration of Human Rights, adopted by the United Nations in 1948, assures, by Article 19, everyone the right, 'to seek, receive and impart information and ideas through any media, regardless of frontiers'. In Secretary Ministry of Information and Broadcasting, Govt. of India and Orsv. Cricket Association of Bengal and Ors. 1995 (2) SCC 161] the Supreme Court remarked about this right in the following terms:

The right to freedom of speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them.

This right, to information, was explicitly held to be a fundamental right under Article 19(1)(a) of the Constitution of India for the first time by Justice KK Mathew in State of UP v. Raj Narain, (1975) 4 SCC 428. This view was followed by the Supreme Court on a number of decisions and after public demand, the Right to Information Act, 2005 was enacted and brought into force.

12. The Act is an effectuation of the right to freedom of speech and expression. In an increasingly knowledge based society, information and access to information holds the key to resources, benefits, and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy. By one fell stroke, under the Act, the maze of procedures and official barriers that had previously impeded information, has been swept aside. The citizen and information seekers have, subject to a few exceptions, an overriding right to be given information on matters in the possession of the state and public agencies that are covered by the Act. As is

reflected in its preambular paragraphs, the enactment seeks to promote transparency, arrest corruption and to hold the Government and its instrumentalities accountable to the governed. This spirit of the Act must be borne in mind while construing the provisions contained therein.

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

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See Nathi Devi v. Radha Devi Gupta 2005 (2) SCC 201; B. R. Kapoor v. State of Tamil Nadu 2001 (7) SCC 231 and V. Tulasamma v. Sesha Reddy 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted.

14. In the present case, the orders of the three respondents do not reflect any reasons, why the investigation process would be hampered. The direction of the CIC shows is that the information needs to be released only after the investigation and recovery in complete. Facially, the order supports the petitioner's contention that the claim for exemption made by respondent Nos. 2 and 3 are untenable. Section 8(1)(j) relates only to investigation and prosecution and not to recovery. Recovery in tax matters, in the usual

circumstances is a time consuming affair, and to withhold information till that eventuality, after the entire proceedings, despite the ruling that investigations are not hampered by information disclosure, is illogical. The petitioner's grouse against the condition imposed by the CIC is all the more valid since he claims it to be of immense relevance, to defend himself in criminal proceedings. The second and third respondents have not purported to be aggrieved by the order of CIC as far as it directs disclosure of materials; nor have they sought for its review on the ground that the CIC was misled and its reasoning flawed. Therefore, it is too late for them to contend that the impugned order contains an erroneous appreciation of facts. The materials available with them and forming the basis of notice under the Income Tax act is what has to be disclosed to the petitioner, i.e the information seeker.

15. As to the issue of whether the investigation has been complete or not, I think that the authorities have not applied their mind about the nature of information sought. As is submitted by the Petitioner, he merely seeks access to the preliminary reports investigation pursuant to which notices under Sections 131, 143(2), 148 of the Income Tax have been issued and not as to the outcome of the investigation and reassessment carried on by the Assessing Officer. As held in the preceding part of the judgment, without a disclosure as to how the investigation process would be hampered by sharing the materials collected till the notices were issued to the assesse, the respondents could not have rejected the request for granting information. The CIC, even after overruling the objection, should not have imposed the condition that information could be disclosed only after recovery was made.

16. In view of the foregoing discussion the order of the CIC dated 8th May 2006 in so far as it withholds information until tax recovery orders are made, is set aside. The second and third respondents are directed to release the information sought, on the basis of the materials available and collected with them, within two weeks.

17. This Court takes a serious note of the two year delay in releasing information, the lack of adequate reasoning in the orders of the Public Information Officer and the Appellate Authority and the lack of application of mind in relation to the nature of information sought. The materials on record clearly show the lackadaisical approach of the second and third respondent in releasing the information sought. However, the Petitioner has not been able to demonstrate that they malafidely denied the information

sought. Therefore, a direction to the Central Information Commission to initiate action under Section 20 of the Act, cannot be issued.

18. The writ petition is allowed in the above terms. In the peculiar circumstances of the cases, there shall be no order on costs.

(S. RAVINDRA BHAT)
JUDGE
3RD December, 2007.

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INCOME TAX MATTER

LPA 1377/2007

Date of decision : 17th December, 2007

DIRECTOR OF INCOME TAX (INVESTIGATION)
AND ANOTHER ..... Appellant
Through Ms.Sonia Mathur with
Mr.Pankaj Prasad, Advocates

versus

BHAGAT SINGH and ANR ..... Respondents
Through nemo

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

DR. MUKUNDAKAM SHARMA, CJ (oral)

CM No.17356/2007 (exemption)
Allowed, subject to just exceptions.
LPA No.1377/2007 and CM No.17355/2007 (stay)

1.This appeal is directed against the order dated 3rd December, 2007 whereby the learned Single Judge has allowed the writ petition with a direction to the Income Tax Department to supply the information sought by the respondent No.1 herein.

2.The writ petition was filed by the respondent No.1 herein praying for quashing of the order of the Central Information Commission with a direction that the information sought by the respondents under the Right to Information Act, 2005 should be supplied immediately.

3.The respondent No.1 herein was married in 2000 to Smt.Saroj Nirmal, who in November, 2000 filed a criminal complaint alleging that she had spent / paid as dowry an amount of Rs.ten lacs. Alleging that the aforesaid claims are false, the

respondent No.1, in order to enable him to defend the criminal prosecution, approached the Income Tax Department with a Tax Evasion Petition (TEP) dated 24th September, 2003. However, the Department summoned the wife of the respondent No.1 to present her case before them. The respondent No.1 made repeated requests to the Director of Income Tax Department (Investigation) to ascertain and know the status of the hearing and TEP proceedings.

4.Having failed in his endeavour, the respondent No.1 moved an application under the Right to Information Act in November, 2005 praying for the following information: ``(i)Fate of Petitioner's complaint (tax evasion petition) dated 24.09.2003. (ii)What is the other source of income of petitioner's wife Smt.Saroj Nirmal than from teaching as a primary teacher in a private school" (iii)What action the Department had taken against Smt.Saroj Nirmal after issuing a notice u/s 131 of the Income Tax Act, 1961, pursuant to the said Tax Evasion Petition."

5.The aforesaid application filed by the respondent No.1 herein was rejected by the Public Information Officer designated under the Act by the Income Tax Department as against which an appeal was filed before the Appellate Authority, which too rejected the request to have access to the aforesaid information. As against the said order of the Appellate Authority, the respondent No.1 filed a second appeal on 1st March, 2006 before the Central Information Commission praying for setting aside the orders of the respondents No.2 and 3 in the writ petition. The Central Information Commission by an order dated 8th May, 2006 allowed the second appeal and set aside the rejection of information. It was held by the Central Information Commission that as the investigation on TEP has been conducted by Director of Income Tax (Investigation), the relevant report is the outcome of public action and, therefore, the same is required to be disclosed. However, it was directed that the report should be disclosed only after the entire process of investigation and tax recovery, if any, is completed. The appellant / Department has accepted the aforesaid order of the CIC and, therefore, the said order of the CIC has become final and binding. However, the Department has not disclosed all the information in terms of the aforesaid order on the plea that notices under Section 148 of the Income Tax Act, 1961 have been issued but no final assessment orders have been passed. It is also stated that only after recovery of taxes, if any, details could be furnished.

6.The learned Single Judge considered the pleas raised and thereafter it was held that no reason has come out as to why the aforesaid information should not be supplied to the respondent No.1 even at this stage. The learned Single Judge also held that no reason has been given as to why and how the investigation process could be said to be hampered if the aforesaid information is furnished and any prejudice being caused or suffered by the Department. These findings are

challenged in this appeal on which we have heard learned counsel for the appellant.

7.On going through the records, we find that there is a categorical order of the Central Information Commission directing that the aforesaid information should be disclosed after the entire process of investigation and tax recovery, if any, is complete in every respect. The contention and defence based upon Section 8(1)(i) was rejected. The said direction and findings rejecting the plea under Section 8(1)(i) to disclose information has not been challenged by the appellant. The only question is of the stage and whether information should be furnished at this stage. There is no co-relation between the information required and recovery of taxes, if any. Recovery of taxes has nothing to do with investigation on TEP.

8.Information sought for by the respondent No.1 relates to fate of his complaint made in September, 2003, action taken thereon after recording of statement of Ms.Saroj Nirmal and whether Ms.Saroj Nirmal has any other source of income, other than teaching in a private school. This information can be supplied as necessary investigation on these aspects has been undertaken during last four years by the Director of Income Tax (Investigation). In fact proceedings before the said Director have drawn to a close and the matter is now with the ITO i.e. the Assessing Officer. Under Section 8(1)(h) information can be withheld if it would impede investigation, apprehension or prosecution of offenders. It is for the appellant to show how and why investigation will be impeded by disclosing information to the appellant. General statements are not enough. Apprehension should be based on some ground or reason. Information has been sought for by the complainant and not the assessee. Nature of information is not such which interferes with the investigation or helps the assessee. Information may help the respondent No.1 from absolving himself in the criminal trial. It appears that the appellant has held back information and delaying the proceedings for which the respondent No.1 felt aggrieved and filed the aforesaid writ petition in this Court. We also find no reason as to why the aforesaid information should not be supplied to the respondent No.1. In the grounds of appeal, it is stated that the appellant is ready and willing to disclose all the records once the same is summoned by the criminal court where proceedings under Section 498A of the Indian Penal Code are pending. If that is the stand of the appellant, we find no reason as to why the aforesaid information cannot be furnished at this stage as the investigation process is not going to be hampered in any manner and particularly in view of the fact that such information is being furnished only after the investigation process is complete as far as Director of Income Tax (Investigation) is concerned. It has not been explained in what manner and how information asked for and directed will hamper the assessment proceedings.

9.Therefore, no prejudice would be caused in any manner to the Department even if the said information is disclosed. We find no merit in this appeal, which accordingly stands dismissed. All other applications stand consequently disposed of in terms of the aforesaid order.

10.Since the time for furnishing the information is expiring during the course of the day, we extend time for furnishing of the information by one week, during which the information shall be furnished in terms of the order of the learned Single Judge.

11.Copy of the order be given dasti to the counsel appearing for the appellant.

Sd/-
CHIEF JUSTICE

Sd/-
SANJIV KHANNA, J

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 16.12.2014

+ W.P.(C) 3543/2014

ADESH KUMAR ..... Petitioner

versus

UNION OF INDIA & ORS. ..... Respondents

Advocates who appeared in this case:
For the Petitioner : Mr Pramod Singh.
For the Respondents : Ms Suparna Srivastava, CGSC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner impugns an order dated 16.04.2014 passed by the Central Information Commission (hereafter 'CIC') rejecting the petitioner's appeal against an order dated 14.11.2012 passed by the First Appellate Authority (hereafter 'FAA'). The FAA had, by an order dated 14.11.2012, rejected the appeal filed by the petitioner against the decision of the CPIO denying the information as sought by the petitioner under the provisions of the Right to Information Act, 2005 (hereafter the 'Act').

2. The CPIO had denied the information as sought for by the petitioner claiming that the same was exempt from disclosure under Section 8(1)(h) of the Act.

3. Briefly stated, the relevant facts necessary to consider the

controversy are as under:

3.1 The petitioner was posted as Superintendent Engineer, CPWD, Patna. During his tenure, an FIR was lodged in respect of an alleged offence under Section 7 of the Prevention of Corruption Act, 1988 and Section 120B of the Indian Penal Code. Subsequently, a chargesheet, *inter alia*, against the petitioner was submitted after obtaining the sanction from the competent authority.

3.2 After receipt of the chargesheet, the petitioner applied for the following information under the provisions of the Act:-

> "1 The recommendation of Director General (Works), CPWD against sanction sent to Ministry of Urban Development.
>
> 2. The noting on file note Sheet/copy of letter if any sent to CVC for comments/advice if any.
>
> 3. The copy of all letters written to Director CBI, New Delhi by Additional Secretary and Secretary, Ministry of Urban Development. Govt. of India and reply received from CBI, New Delhi/Patna as the case may be.
>
> 4. Initial recommendation of Ministry of Urban Development, Govt. of India against sanction of prosecution of Adesh Kumar sent to CVC.
>
> 5. The details of noting of various officers before declining sanction of prosecution.
>
> 6. Copy of details of noting of various officers before declining sanction of prosecution.

7. Copy of details of noting of various officers at the time of according present sanctions for prosecution of Adesh Kumar, the then SE, PCC."

3.3 The request for the aforesaid information was rejected by the CPIO claiming that there was no obligation to provide the same by virtue of Section 8(1)(h) of the Act. The appeal preferred by the petitioner before the FAA was also rejected and the second appeal preferred by the petitioner before the CIC also met the same fate. The petitioner has challenged the said order passed by the CIC.

4. I have heard the learned counsel for the parties.

5. Before proceeding further, it would be necessary to refer to Section 8(1)(h) of the Act which reads as under:-

"8(1)(h) information which would impede the process of investigation or apprehension or prosecution of offenders;"

6. A plain reading of the aforesaid provision indicates that information which would impede the process of investigation or apprehension or prosecution of offenders could be denied. In order to deny information, the public authority must form an affirmative opinion that the disclosure of information would impede investigation, apprehension or prosecution of offenders; a mere perception or an assumption that disclosure of information may impede prosecution of offenders is not sufficient. In the present case, neither the FAA nor the CIC has considered as to how the information as sought for would impede the process of investigation or apprehension or prosecution of the petitioner and other accused.

7. It is not disputed that the investigation is over and the only issue urged is that the disclosure of information would impede prosecution of the petitioner.

8. After hearing the parties, the CIC had concluded as under:-

> "The Commission heard the submissions made by appellant as well as respondents at length. The Commission also perused the case-file thoroughly; specifically, nature of issues raised by the appellant in his RTI application dt. 21.06.12, CPIO's response dt. 18.07.12 FAA's order dt. 14.11.12 and also the grounds of memorandum of second appeal and the Commission is of the considered view that the plea taken by the respondents u/s 8 (1) (h) of the RTI Act is not only justified but even legally tenable in the case."

9. It is apparent from a bare perusal of the CIC's order that it does not indicate the reasons that persuaded the CIC to uphold the view of the Public Authority that the disclosure of information sought by the petitioner would impede prosecution of the petitioner. A co-ordinate Bench of this Court in the case of ***B.S. Mathur v. Public Information Officer of Delhi High Court*: W.P.(C) 295/2011**, decided on 03.06.2011 had considered the contention with regard to withholding information under Section 8(1)(h) of the Act and held as under:-

> "19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects

> and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would 'impede' the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [***Additional Commissioner of Police (Crime) v. CIC***, decision dated 30th November 2009] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry."

10. A bare perusal of the order passed by the FAA also indicates that the aspect as to how the disclosure of information would impede prosecution has not been considered. Merely, citing that the information is exempted under Section 8(1)(h) of the Act would not absolve the public authority from discharging its onus as required to claim such exemption. Thus, neither the FAA nor the CIC has questioned the Public Authority as to how the disclosure of information would impede the prosecution.

11. The learned counsel for the respondents contended that no prejudice would be caused to the petitioner as a result of denial of information, as all material relied upon by the prosecution to prosecute the petitioner would be available to the petitioner. In my view, this cannot be a ground to deny information to the petitioner. First of all, the question whether the information sought by the petitioner is relevant or necessary, is not relevant or germane in the context of the Act; a citizen has a right to information by virtue of Section 3 of the Act and the same is not conditional on the information being relevant. Secondly, the fact that the petitioner has access to the material relied upon by the prosecution does not prevent him from seeking information, which he considers necessary for his defence.

12. Accordingly, the writ petition is allowed. The impugned order passed by the CIC is set aside and the matter is remanded to the CIC to consider it afresh in view of the aforesaid observations.

VIBHU BAKHRU, J

DECEMBER 16, 2014
RK

IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 213/2007

SURINDER PAL SINGH ..... Appellant
Through Ms.Maninder Acharya, Adv.

versus
UOI and ORS. ..... Respondent
Through
CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA
O R D E R
23.03.2007

1. This appeal is directed against the order dated 10.11.2006 passed by the learned Single Judge dismissing the writ petition filed by the appellant herein holding that the decision of the respondents denying the request of the appellant for furnishing information under the Right to Information Act regarding sanction of prosecution cannot be faulted.

2. The appellant herein is being prosecuted under the Prevention of Corruption Act, 1947. Pursuant to investigation made, charge sheet has been filed against the appellant and he has been summoned.

3. The appellant filed an application under the Right to Information Act praying for furnishing certain information leading to grant of sanction for his prosecution under the Right to Information Act. CPIO, Appellate Authority and the Central Information Commission have declined the said request in view of Section 8(1)(h) of Right to Information Act. The aforesaid authorities have held that the prosecution of the appellant, who is an accused, is pending before the Special Judge and the information sought for cannot be furnished in view of exception carved out under Section 8(1)(h) of the Act.

4. Aggrieved, the appellant filed a writ petition in this Court, which was rejected, inter alia, holding that since prosecution of the appellant is still pending and judgment has not been pronounced, diverging of information would impede the prosecution and, therefore, the respondents were justified in denying information in view of Section 8(1)(h) of Right to Information Act, 2005.

5. We have heard learned counsel for the appellant. It is submitted that the aforesaid grant of sanction against the appellant is illegal.

6. The appellant in our considered opinion has sufficient scope and option to raise the issue of sanction in the trial. This cannot be a ground to direct furnishing of information contrary to Section 8(1)(h) of the Right to Information Act. The authorities under the aforesaid Act cannot examine and hold that sanction is valid or bad in law.

7. The respondents herein have sought exemption from furnishing the information sought for by the appellant in view of provisions of Section 8(1)(h) of Right to Information Act 2005, which provides that notwithstanding other provisions in the Right to Information Act, no application to give specific

information which would impede the process of investigation or apprehension or prosecution of offenders will be entertained and furnished. Section 8(1)(h) of the Act is an overriding and a non-obstante clause. It cannot be denied that the aforesaid clause is attracted. The concerned authorities have right to deny information once Section 8(1) (h) of the Act is attracted.

8. The information, which is sought for, is in our opinion would impede the prosecution of the offender and, therefore, the respondents are justified in invoking clause 8(1)(h) of the Right to Information Act and claim exemption from furnishing such information. In view of the said provision, we find no reason to interfere with the aforesaid orders by the concerned authorities and interfere with the order passed by the learned Single Judge. Appeal has no merit and the same is dismissed.

CHIEF JUSTICE

SANJIV KHANNA, J
MARCH 23, 2007
RN

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 295/2011

Reserved on: 23rd May 2011
Decision on: 3rd June 2011

B S MATHUR ..... Petitioner
Through: Mr. Amit S. Chadha, Senior Advocate with Mr. Kunal Sinha, Advocate.

versus

PUBLIC INFORMATION OFFICER
OF DELHI HIGH COURT ..... Respondent

Through: Mr. Rajiv Bansal, Advocate.

AND
W. P. (C) 608/2011

B S MATHUR ..... Petitioner
Through: Mr. Amit S. Chadha, Senior Advocate with Mr. Kunal Sinha, Advocate.

versus

PUBLIC INFORMATION OFFICER
OF DELHI HIGH COURT ..... Respondent
Through: Mr. Rajiv Bansal, Advocate.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT
03.06.2011

1. In Writ Petition (Civil) 295 of 2011, the Petitioner challenges an order dated 6th

September 2010, passed by the Central Information Commission ('CIC') dismissing his appeal against an order dated 28th April 2010 of the Appellate Authority of the High Court of Delhi under the Right to Information Act, 2005 ('RTI Act') declining to furnish the complete information sought by him in RTI Application No. 184 of 2008.

2. In Writ Petition (Civil) 608 of 2011 the Petitioner challenges the same order insofar as it relates to the dismissal of his Appeal Nos. 314 and 315 dated 13th August 2010 in relation to RTI Application Nos. 35 and 36 of 2010.

Factual matrix

3. The Petitioner was a Member of the Delhi Higher Judicial Service. Pursuant to a Resolution dated 26th August 2008 of the Full Court, a Committee of five Judges of the High Court heard the Petitioner on 29th May 2008 and decided that it was desirable to place him under suspension pending disciplinary action. While disposing of his writ petition challenging the order of suspension, the Supreme Court by an order dated 13th August 2008 directed that the inquiry against the Petitioner may be completed within a period of five months. On 3rd November 2008, a memorandum was issued to the Petitioner furnishing him the articles of charges, statement of imputation of misconduct, list of witnesses and documents along with the documents. The Petitioner's statement of defence was considered by the Full Court at a meeting held on 27th November 2008. A learned Judge of the High Court was appointed as the Inquiry Officer.

4. On 19th August 2008, the Petitioner filed an application No. 143 of 2008 under the RTI Act seeking the following information:

> (i) Copy of directions of Committee of Hon'ble Inspecting Judges allowing Registrar (Vig.) to scrutinise personal file of applicant containing intimations supplied under the Conduct Rules.
>
> (ii) Copy of the report of the Registrar (Vig.) dated 06.02.2008 in compliance of (i) above.
>
> (iii) Copy of the minutes of the meeting of the committee of the Hon'ble Inspecting Judges dated 14.2.2008.
>
> (iv) Copy of the minutes of the meeting of the committee of the Hon'ble Inspecting Judges held on 03.04.2008.

(v) Copy of the minutes of the meeting of the committee of the Hon'ble Inspecting Judges dated 14.05.2008.

(vi) Copy of the minutes of the meeting of the Administrative Committee held on 19.5.2008.

(vii) Copies of the comments and/or material supplied/placed before the committee of the Hon'ble Inspecting Judges.

(viii) Copies of the comments and/or material supplied/placed before the Hon'ble Full Court prior to its meeting dated 26.5.2008.

(ix) Copies of the Agenda and the minutes of the Hon'ble Full Court held on 26.5.2008.

(x) Copy of the minutes/decision of the Committee headed by the Hon'ble Chief Justice in connection with the reply of letters dated 20.2.2008, held on 29.5.2008.

(xi) Subject and date wise list of all the intimations submitted by the applicant to the Hon'ble High Court from time to time since the date of his joining service till date.

(xii) Copy of the minutes/decision of the Committee of the Hon'ble Inspecting Judges held post intimation dated 1.6.2007 by the applicant.

5. On 16th September 2008, the Public Information Officer ('PIO') of the High Court of Delhi informed the Petitioner that the information sought by him could not be supplied as "the same is exempt under Section 8 (1) (h) of the RTI Act read with Rule 5 (b) of the Delhi High Court (Right to Information) Rules, 2006" (hereinafter 'the Rules').

6. Aggrieved by the above decision, the Petitioner filed Appeal No. 21 of 2008 which was dismissed by the Appellate Authority on 31st October 2008. It was held by the Appellate Authority that the documents referred at serial No. (xi) could be supplied to the Petitioner. However, as far as the remaining information was concerned it was observed that the disciplinary authority was still examining the material for holding inquiry and, therefore, disclosure of any such material at that stage might impede the inquiry.

7. Aggrieved by the above decision, the Petitioner filed Appeal No. 203 of 2009 before the CIC on 16th December 2008.

8. After completion of the inquiry the Inquiry Officer submitted a report on 18th November 2009. With the inquiry being over, on 23rd January 2010 the Petitioner filed another RTI Application No. 35 of 2010 seeking the following information:

i. Copy of directions of Committee of Hon'ble Inspecting Judges allowing Registrar (Vig.) to scrutinize personal file of applicant containing intimations supplied under the Conduct Rules.

ii. Copy of report of the Registrar (Vig.) dated 6.2.2008 in compliance of (i) above.

iii. Copy of the minutes of the meeting of the Committee of the Hon'ble the Inspecting Judges dated 14.2.2008.

iv. Copy of the minutes of the meeting of the Committee of the Hon'ble Inspecting Judges dated 3.4.2008.

v. Copy of the minutes of the meeting of the Committee of the Hon'ble Inspecting Judges dated 14.5.2008.

vi. Copy of the minutes of the Administrative Committee held on 19.5.2008.

vii. Copies of comments and/or material supplied/placed before the Committee of the Hon'ble Inspecting Judges to its meeting dated 26.5.2008.

viii. Copies of comments and/or material supplied/placed before the Committee of the Hon'ble Inspecting Judges to its meeting dated 26.5.2008.

ix. Copy of the agenda and minutes of the Full Court meeting held on 26.05.08.

x. Copy of the minutes/decision of the Committee headed by the Hon'ble Chief Justice in connection with the reply of letters dated 20.2.2008, held on 29.5.2008.

xi. Copy of the minutes/decision of the Committee of the Hon'ble Inspecting Judges held post intimation dated 1.6.2007 by the applicant.

xii. Copy of the decision of the Committee of the Hon'ble Judges headed by Hon'ble Chief Justice on representation/review petition filed by the applicant on 28.6.2008.

xiii. Copy of the minutes/decision of the meeting of the Committee above (xii) which was communicated to the applicant vide communication No. 1222/DHC/Gaz/VI.E.2(a)/2008 dated 3.7.2008.

xiv. Copy of the agenda for Full Court meeting dated 29.9.2008.

xv. Copy of the minutes of the meeting regarding the decision taken by the Full Court on 29.9.2008 qua applicant.

xvi. Copies of agenda and the minutes of the Full Court meeting dated 1.9.2008.

xvii. Copy of the minutes of the Administrative Committee held on 4.9.2008.

xviii. Copies of the agenda and minutes of the Full Court meeting held on 5.9.2008.

9. The Petitioner also filed Application No. 36 of 2010 in which he sought the following information:

i. Copy of agenda for the Full Court meeting dated 27.09.2008 with respect to the applicant.

ii. Copy of the minutes of the Full Court meeting dated 27.09.2008.

iii. Details of the number and names of the Judges (who) actually participated in the discussion for and against the agenda.

iv. Details of the number and names of the Judges who participated in the discussion and approved the finalization of Article of Charges subsequently issued against the applicant.

v. Copy of the minutes of the Full Court meeting dated 27.11.2008.

vi. Copy of the agenda laid before the Full Court meeting held on 27.11.2008.

vii. Detail as to how many inquiries have been initiated against the applicant. If more than one, then furnish the detail about the pending inquiry preliminary or otherwise, if any.

viii. Copy of the agenda and minutes of the Full Court meeting held on 18.08.2009.

ix. Copy of the agenda and minutes of the Full Court meeting held on 18.11.2009.

x. Copy of the agenda and minutes of the Full Court meeting held on 15.12.2009.

xi. Copy of the agenda and minutes of the Full Court meeting held on 15.01.2010.

xii. Copy of the criteria/policy of the Hon'ble High Court adopted for appointment of District & Sessions Judge and District Judges in the year 2007.

xiii. Copy of the criteria/policy of the Hon'ble High Court adopted for appointment of District & Sessions Judge and District Judges in the year 2008.

xiv. Copy of the criteria/policy of the Hon'ble High Court adopted for appointment of District & Sessions Judges and District Judges and District Judges in the year 2009.

10. By an order dated 16th February 2010 the PIO of the High Court declined the information at serial Nos. (i) to (xiii) of the Application No. 35 of 2010 under Section 8 (1) (h) of the RTI Act read with Rule 5 (b) of the Rules. Part of the information sought at serial Nos. (xiv) to (xviii) was disclosed. By a separate order dated 16th February 2010 passed in Application No. 36 of 2010, the information at serial Nos. (i) to (iii) was declined stating that no Full Court Meeting was held on 27th September 2008. Information at serial No. (vii) was also declined claiming exemption under Section 8 (1) (h) RTI Act. Aggrieved by the PIO's orders dated 16th February 2010 the Petitioner filed Appeal Nos. 16 and 17 of 2010 before the Appellate Authority of the High Court.

11. On 28th April 2010, the Appellate Authority partly allowed Appeal No.16 of 2010 by directing the Full Court Agenda to be supplied to the Petitioner. However, the decision of the PIO declining information at serial No. (vii) of Application No. 36/2010 was upheld. By a separate order on the same date the Appellate Authority dismissed Appeal No. 17 of 2010 by noting that the information sought at serial Nos. (i) to (xiii) in the application 35/2010 was a verbatim reproduction of the information sought at serial Nos. (i) to (xi) of the earlier Application No. 184 of 2008 in respect of which an appeal was pending before the CIC and notice has been issued to the High Court in the said appeal. The representation made by the Petitioner against the Inquiry report was under consideration by the High Court. The Appellate Authority held that the matter was *sub judice* before

the CIC and any decision taken in the appeal might conflict with the decision to be taken by the CIC.

12. Aggrieved by the orders dated 28th April 2010, the Petitioner filed Appeal Nos. 314-15 of 2010 before the CIC. The CIC heard the Petitioner's Appeal Nos. 203 of 2009 and 314-15 of 2010 together.

13. Meanwhile, on 14th July 2010 the Full Court of the High Court accepted the inquiry report dated 18th November 2009 and imposed a penalty of withholding two increments without cumulative effect on the Petitioner. On 11th August 2010, the Full Court decided not to extend the superannuation of the Petitioner beyond 58 years by invoking Rule 26 B of the Delhi Higher Judicial Service Rules, 1971 ('DHJS Rules').

14. On 6th September 2010, the CIC dismissed the Petitioner's three appeals by a common order. The CIC noted that at the hearing on 30th August 2010, the Joint Registrar ('JR') of the High Court submitted that there were two investigations. The second investigation was initiated "even before the closure of the first with wider ramification, which is still under process and regarding which information could not be disclosed under Section 8 (1) (h)". It was stated that "this investigation file is with the Vigilance Division of the Delhi High Court to which even the Registry does not have access." The operative portion of the impugned order dated 6th September 2010 of the CIC reads as under:

> "On the question of whether there is an attempt to mislead the Supreme Court this Commission has no authority to opine. Nevertheless, it has now been clarified to appellant Shri Mathur that there were, in fact, two enquiries, one of which stands completed and the other that is still in progress. It is the contention of respondents that disclosing even the nature of the second enquiry will seriously compromise the enquiry itself. Insofar as the appellant's plea that he should have been informed of why he is being penalized, this information had already been provided to him with regard to the enquiry that has been completed on the basis of which report he has, in fact, been penalised. When and if a formal enquiry is initiated in consequence of the second investigation appellant Shri Mathur will be duly informed of the consequences of the investigation. However, before that investigation is complete disclosure of any information would seriously undermine the process. PIO has separately disclosed a paper in confidence to this Commission providing

the subject of the ongoing investigation.

The Commission has already, in our interim decision, ruled on the question of application of exemption under Sec. 8 (1) (h) to departmental investigation. In the hearing, the question of appellant on the number of investigations initiated by the High Court of Delhi stands answered in the hearing. On the remaining issue of whether the case merits application of Sec. 8(1) (h) to the simple question enquiring on the subject of the investigation, to which this Commission is privy, remains to be decided. In the view of the Commission, disclosure of the subject of investigation will "impede" the process of investigation. Delhi High Court in W.P. (C) 7930/2009 held "The word impede therefore does not mean total obstruction and compared to the word obstruction or prevention, the word impede requires hindrance of a lesser degree. It is less injurious than prevention or an absolute obstacle."

Contextually in Section 8 (1) (h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. In this context the Commission is satisfied that disclosure of the subject will indeed "impede" the process of investigation in view of the peculiar facts and circumstances of this case. The appeals are disposed of accordingly."

15. While hearing W.P. (C) 608 of 2011 on 1st February 2011 the following order was passed by this Court:

"1. Mr. Chadha states that the information at Serial No. (i) to (xv) & (xvii) in the first application (details of which are at Pages 53 and 54 of the paper book) as well as the information sought in Serial No. (i) to (iii) & (vii) of the second application (details of which are at Page 56 of the paper book) have not been furnished to the Petitioner on the ground that there is a second inquiry pending against the Petitioner.

2. Mr. Bansal, appearing for the Respondent on advance notice, states that a chart showing how much of the above information has already been provided to the Petitioner and how much of it is connected with the second inquiry will be placed on record by the Respondent by way of an affidavit within a period of three weeks. The affidavit will also indicate when the second inquiry commenced.

3. List on 7th March 2011."

16. An affidavit was filed on behalf of the High Court on 25th March 2011 enclosing a copy of the information sought and to what extent information sought was connected with the second inquiry. Further, in para 5 it was stated as under:

> "That it is pertinent to mention here that when the case of the second enquiry was placed before Hon'ble the Chief Justice for directions, His Lordship has been pleased to direct on 03.03.2011 that the enquiry against Shri B.S. Mathur (petitioner) be kept in abeyance."

17. Mr. Amit S. Chadha, learned Senior Counsel appearing for the Petitioner submitted that once the second inquiry has been kept in abeyance, there was no question of the disclosure of information as sought by the Petitioner "impeding such inquiry". At the hearing on 21st April 2011 the Court was shown the original file. The Court then observed in its order passed on that date as under:

> "3. In light of the above development, it requires to be examined whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) of the Right to Information Act, 2005. On this specific aspect Mr. Bansal, learned counsel for the Respondent states that the matter will be considered once again and a decision taken within three weeks."

18. At the hearing on 23rd May 2011 Mr. Rajiv Bansal learned counsel appearing for the Respondent stated that he had been sent a letter dated 21st May 2011 enclosing therewith a note containing the "stand" of the Delhi High Court pursuant to the order dated 21st April 2011. The note states that "the documents in question, the copy of which is sought by Shri B.S. Mathur related to the first enquiry which is already over" and the second inquiry "are so much interconnected that it is difficult to segregate the two to avoid any kind of bearing on the investigation ordered to be kept in abeyance for present." The next reason is that the CIC had in its impugned order already held that "disclosure of the subject will indeed 'impede' the process of investigation in view of the peculiar facts and circumstances." The third reason is that "it would be desirable to stick to the stand taken in the affidavit" dated 25th March 2011 filed by the Respondent in these proceedings. Fourthly the note states that the Petitioner could be supplied information against serial No. (vii) that the second inquiry "which was at the fact finding stage has been kept in abeyance at present." As far as the information at serial No. (vii) is concerned, the

Petitioner already knew of it during the hearing of his appeals before the CIC.

19. The question that arises for consideration has already been formulated in the Court's order dated 21st April 2011: Whether the disclosure of the information sought by the Petitioner to the extent not supplied to him yet would "impede the investigation" in terms of Section 8 (1) (h) RTI Act? The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in Section 8 RTI Act. As regards Section 8 (1) (h) RTI Act, which is the only provision invoked by the Respondent to deny the Petitioner the information sought by him, it will have to be shown by the public authority that the information sought "would impede the process of investigation." The mere reproducing of the wording of the statute would not be sufficient when recourse is had to Section 8 (1) (h) RTI Act. The burden is on the public authority to show in what manner the disclosure of such information would 'impede' the investigation. Even if one went by the interpretation placed by this Court in W.P. (C) No.7930 of 2009 [***Additional Commissioner of Police (Crime) v. CIC***, decision dated 30th November 2009] that the word "impede" would "mean anything which would hamper and interfere with the procedure followed in the investigation and have the effect to hold back the progress of investigation", it has still to be demonstrated by the public authority that the information if disclosed would indeed "hamper" or "interfere" with the investigation, which in this case is the second enquiry.

20. The stand of the Respondent that the documents sought by the Petitioner "are so much interconnected" and would have a "bearing" on the second enquiry does not satisfy the requirement of showing that the information if disclosed would "hamper" or "interfere with" the process of the second inquiry or "hold back" the progress of the second inquiry. Again, the stand in the chart appended to the affidavit dated 25th March 2011 on behalf of the Respondent is only that the information sought is either "intricately connected" or "connected" with the second inquiry or has a "bearing" on the second inquiry. This does not, for the reasons explained, satisfy the requirement of Section 8 (1) (h) RTI Act.

21. Mr. Bansal submitted that this Court could examine the records and determine for itself which of the information would if disclosed impede the second enquiry. This submission is untenable for the simple reason that it is not for this Court to undertake such an exercise. This is for the PIO of the High Court to decide. However, the PIO nowhere states that the disclosure of the information would "hamper" or "interfere with" the process of the second enquiry. There is consequently no need for this Court to form an opinion in that regard.

22. The reliance placed by the Respondent on the conclusion of the CIC in the impugned order that the disclosure of the information would impede the process of investigation "in the peculiar facts and circumstances" begs the question for more than one reason. First, there is a marked change in the circumstances since the impugned order of the CIC. The second enquiry has, by a decision of the Chief Justice of 3rd March 2011, been kept in abeyance which was not the position when the appeals were heard by the CIC. Secondly, it is difficult to appreciate how disclosure of information sought by the Petitioner could hamper the second inquiry when such second inquiry is itself kept in abeyance. The mere pendency of an investigation or inquiry is by itself not a sufficient justification for withholding information. It must be shown that the disclosure of the information sought would "impede" or even on a lesser threshold "hamper" or "interfere with" the investigation. This burden the Respondent has failed to discharge.

23. It was submitted by Mr. Bansal that this Court could direct that if within a certain timeframe the second enquiry is not revived, then the information sought should be disclosed. This submission overlooks the limited scope of the present writ petition arising as it does out of the orders of the CIC under the RTI Act. It is not within the scope of the powers of this Court in the context of the present petition to fix any time limit within which the Respondent should take a decision to recommence the second enquiry which was kept in abeyance by the order dated 3rd March 2011 of the Chief Justice.

24. No grounds have been made out by the Respondent under Section 8 (1) (h) of the RTI Act to justify exemption from disclosure of the information sought by the Petitioner.

25. The writ petitions are accordingly allowed and the impugned order dated 6th

September 2010 of the CIC is hereby set aside. Information to the extent not already provided in relation to the three RTI applications should be provided to the Petitioner by the Respondent within a period of four weeks from today. While providing the information it will be open to the Respondent to apply Section 10 RTI Act where required.

S. MURALIDHAR, J

JUNE 3, 2011
akg

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7048/2011

SUDHIRRANJAN SENAPATI

ADDL.COMMISSIONER OF INCOME TAX ..... Petitioner

Through: Mr. K.G. Sharma, Advocate

versus

UNION OF INDIA AND ORS ..... Respondents

Through: Mr. B.V. Niren, CGSC for R-1

Mr. A.S. Singh and Mr. R.N. Singh, Advocates for R-2 and 3

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

05.03.2013

1. This petition has been filed to impugn the order dated 18.07.2011 passed by the Central Information Commission (in short CIC).

2. The broad facts which have led to the institution of the present writ petition are as follows :-

3. The petitioner herein is admittedly an accused in criminal proceedings lodged against him by the State, under the Prevention of Corruption Act, 1988. The prosecution of the petitioner was apparently sanctioned, at the relevant time, by the concerned authority.

4. It is the sanction accorded qua prosecution, which triggered the petitioner?s request for furnishing information with regard to the decision arrived at in that behalf. Accordingly, an application dated 17.05.2010 was

filed by the petitioner with the Central Public Information Officer (in short CPIO), under the Right to Information Act, 2005 (in short the RTI Act).

4.1 More specifically, the information sought was as follows :-

?..Certified true copies of ?all order sheet entries / Note Sheet entries / File notings of US, VandL / DS, VandL/Director, VandL/JS (Admn.)/Member (PandV)/Chairman, CBDT/Secretary, Revenue/MOS (R), if any, / Finance Minister, if any? pertaining to prosecution sanction by the Central Government u/s. 19(1)(a) of Prevention of Corruption Act, 1988 vide such sanction order dated 09.04.2009 in F.No.C-14011/8/2008-VandL of Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, GOI, New Delhi..?

4.2 The CPIO vide order dated 16/17.08.2010, declined the request for furnishing information by taking recourse to the provisions of Section 8(1)(h) of the RTI Act. Pertinently, no reasons were set out in the order. All that is said, in the order of the CPIO is that, requisite information cannot be supplied as the same is exempted from disclosure under Section 8(1)(h) of the RTI Act.

5. Being aggrieved, the petitioner preferred an appeal with the First Appellate Authority. The appeal met the same fate. By an order dated 05.10.2010, the First Appellate Authority dismissed the petitioner?s appeal. The sum and substance of the rationale given in the order of the First Appellate Authority was that, since criminal prosecution was pending, information sought for by the petitioner could not be disclosed. The First Appellate Authority went on to observe in its order that, any disclosure of information prior to a final decision would be premature and injurious to the process of investigation. Accordingly, relying upon the provisions of

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Section 8(1)(h) of the RTI Act, it sustained the order of the CPIO.

6. The petitioner being aggrieved, with the order of the First Appellate Authority, preferred an appeal with the CIC. The CIC by virtue of the impugned order dated 18.07.2011, rejected the petitioner?s appeal. By a cryptic order, the CIC accepted the stand of the respondents that information sought for, could not be supplied to the petitioner as the case was pending in court and that disclosure of information would impede the process of prosecution.

7. The learned counsel for the petitioner has impugned the decision of the CIC and the authorities below on the following grounds :-

(i). The investigation is complete. The chargesheet qua the accused,

which includes the petitioner, has been filed in court. On failure of the respondents to demonstrate as to how the disclosure of information would impede prosecution of the petitioner, the said information ordinarily ought to have been supplied to the petitioner. The learned counsel for the petitioner says that disclosure of information is the rule, the denial of the same is an exception. He submits that the exception carved out in Sections 8 and 9 of the RTI Act have thus to be construed strictly.

8. In support of the submission, the learned counsel for the petitioner relies upon the judgment of a Single Judge of this Court in Bhagat Singh Vs. Chief Information Commissioner and ors., 146 (2008) DLT 385.

9. The contesting respondents i.e., respondent nos.2 and 3 are represented by Mr. Singh, who has largely relied upon the stand taken in the counter affidavit. Mr. Singh submits that since the prosecution of the petitioner is ensuing, any disclosure of information would compromise the

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case of the prosecution and hence, cannot be divulged. Recourse was taken to the provisions of Section 8(1)(h) to support the stand of the respondents.

9.1 Mr. Singh also relied upon a judgment of another learned Single Judge of this court, dated 10.11.2006, passed in WP(C) 16712/2006, titled Surinder Pal Singh Vs. Union of India and Others. Mr. Singh submits with all persuasive powers at his command that the facts in Surinder Pal?s case are identical to the present case and therefore having regard to the fact that the court sustained the stand of the official respondents in that case wherein information was denied by taking recourse to the provisions of Section 8(1)(h) of the RTI Act, similar result ought to follow in the present case.

10. I have heard the learned counsels for the parties and perused the record.

11. At the outset, as noticed above, a chargesheet against the petitioner has been filed and the trial has commenced. Therefore, the questions which falls for consideration is: whether the case of the petitioner would come within the ambit of the provisions of Section 8(1)(h) of the RTI Act. The said provision reads as follows :-

8. Exemption from disclosure of information ?

(i). Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen ?

(a). x x x x

(b). x x x x

(c). x x x x

(d). x x x x

(e). x x x x

(f). x x x x

(g). x x x x

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(h). Information which would impede the process of investigation or apprehension or prosecution of offenders..?

11.1 As rightly contended by the learned counsel for the petitioner, a learned Single Judge of this court in Bhagat Singh?s case has construed the said provision of the Act to mean that in order to claim exemption under the said provision, the authority withholding the information must disclose satisfactory reasons as to why the release of information would hamper investigation. The reasons disclosed should be germane to the formation of opinion that the process of investigation would be hampered. The said opinion should be reasonable and based on material facts. The learned Single Judge, I may note goes on to observe that sans this consideration, Section 8(1)(h) and other such provisions of the RTI Act would become a ?haven for dogging demands for information?.

11.2 In the light of the aforesaid observations of the learned Single Judge in Bhagat Singh?s case, one would have to see as to whether the affidavit filed on behalf of respondent nos.2 and 3 discloses the reasons as to how information sought, would hamper the prosecution of the petitioner. A perusal of the affidavit shows that no such averment is made in the counter affidavit filed by respondent nos.2 and 3. Undoubtedly, the petitioner here is seeking information with regard to the sanction accorded for his own prosecution. It cannot be disputed, as is noticed by my predecessor, in this very matter, in the order dated 14.10.2011, that the accused during the course of his prosecution can impugn the sanction accorded for his prosecution, on the basis of which the prosecution is launched. For this proposition, the learned Judge, in its order dated 14.10.2011, relies upon the

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following judgments :-

State Inspector of Police, Visakhapatmam Vs. Surya Sankaran Karri (2006) 7 SCC 172 and Romesh Lal Jain Vs. Naginder Singh Rana, (2006) 1 SCC 294

11.3 I have no reason to differ with the view taken either in Bhagat Singh case or with the prima facie view taken in the order passed by my predecessor in his order dated 14.10.2010. It is trite that an accused can challenge the order by which sanction is obtained to trigger a prosecution against the accused. If that be so, I do not see any good reason to withhold information which, in one sense, is the underlying material, which led to the final order according sanction for prosecution of the petitioner. As a matter of fact, the trial court is entitled to examine the underlying material on the basis of which sanction is accorded when a challenge is laid to it, to determine for itself as to whether the sanctioning authority had before it the requisite material to grant sanction in the matter. See observations in Gokulchand Dwarkadas Morarka vs The King AIR 1948 PC 82 and State of Karnataka vs Ameerjan (2007) 11 SCC 273. Therefore, the said underlying material would be crucial to the cause of the petitioner, who seeks to defend himself in criminal proceedings, which the State as the prosecutor cannot, in my opinion, withhold unless it can show that such information, would hamper prosecution.

12. As indicated above, no reasons are set out in the counter affidavit. The argument of Mr. Singh that a Single Judge of this court in Surinder Pal Singh?s case (supra) has taken a view in favour of the respondents, is not quite correct, for the reason that the learned Single Judge in the facts and

W.P.(C) 7048/2011 Page 6 of 8

circumstances of that case came to the conclusion that the apprehension of the respondent i.e., the State in that case, was ?not without any basis?.

12.1 It appears in that case the petitioner, who was being criminally prosecuted for having fraudulently reduced the quantum of excise duty to be paid by an assessee, while passing an adjudication order, had sought information with regard to: note sheets; correspondence obtaining qua the material in the file of the CBI; correspondence in the file of the CVC pertaining to the matter; and correspondence in the file of the Department of Vigilance, CBES.

12.2 A close perusal of the nature of information sought seems to suggests that much of it may have been material collected during the course of investigation, the disclosure of which could have perhaps hampered the prosecution of the petitioner.

13. Therefore, in my view, in such like cases when, the State takes a stand the information cannot be disclosed; while dilating on its stand in

that behalf, the State would necessarily have to, deal with the aspect as to how the information sought, is of such a nature, that it could impede prosecution. Much would thus depend, on the nature of information sought, in respect of which, a clear stand needs to be taken by the

State, while declining the information. The burden in this regard is on the State [see B.S. Mathur Vs. Public Information Officer of Delhi High Court, 180 (2011) DLT 303]

13.1 The facts obtaining in Surinder Pal case?s are distinguishable and hence, the ratio of that judgment would not apply to the facts obtaining in the present case.

13.2 It also be noted that the learned Single Judge?s view in Bhagat Singh

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case has been upheld by a reasoned order by the Division Bench in Directorate of Income Tax and Anr. Vs. Bhagat Singh, dated 17.12.2007 passed in LPA 1377/2007.

14. With the aforesaid observations in place, the writ petition is allowed. The order of the CIC is set aside. The respondents will supply the information sought for by the petitioner within three weeks from today, after redacting names of officers who wrote the notes or made entries in the concerned files.

Dasti.

RAJIV SHAKDHER, J

MARCH 05, 2013

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 3616/2012**

UNION OF INDIA ..... Petitioner

Through: Mr. Ruchir Mishra, Mr. Mukesh Tiwari and Ms. Ramneek Mishra, Advs.

versus

SH. O.P.NAHAR ..... Respondent

Through: Respondent in person.

\+ **W.P.(C) 405/2014**

UNION OF INDIA ..... Petitioner

Through: Mr. Ruchir Mishra, Mr. Mukesh Tiwari and Ms. Ramneek Mishra, Advs.

versus

O.P. NAHAR ..... Respondent

Through: Respondent in person.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 22.04.2015

1. These are two writ petitions placed before me. The first writ petition; being W.P.(C) No.3616/2012, assails the order dated 5.12.2011, passed by the Central Information Commission (in short the CIC). In the second writ petition, being W.P. (C) No.405/2014, a challenge has been laid to order dated 26.6.2013, passed by the CIC.

2. There are two issues which, according to the learned counsels for the parties, arise for consideration of this court. These are as follows:-

(i) Whether, the respondent, is entitled to the information sought which, essentially, pertains to his own prosecution in a criminal case lodged by the Central Bureau of Investigation (in short the CBI)?

(ii) Whether, the notification dated 9.6.2011 whereby, the CBI has been included in the second schedule to the Right to Information Act, 2005 (in short the RTI Act), will impact the applications filed by the respondent prior to the said date, i.e., on 28.02.2011 and 5.5.2011?

3. Before I proceed further, I may only indicate that the respondent had filed a third application under the RTI Act, which is, dated 26.12.2011. The respondent, who appears in person, says that he does not wish to press the application dated 26.12.2011.

4. The matter has reached this court in the background of the following facts:

4.1 The respondent, who at one time, was serving as the Chairperson of the Appellate Tribunal for Foreign Exchange (in short the Tribunal), had a criminal case registered against him by the CBI. This case was registered by the CBI, in 2007. The investigation, in this case, was carried on and, admittedly, a charge sheet was filed by the CBI, in the competent court on 20.12.2010.

4.2 I am informed by the respondent that no charges have been framed to date.

4.3 Be that as it may, on 28.2.2011, the respondent filed an application before the Central Public Information Officer (in short the CPIO) of the CBI, seeking information with regard to certain aspects. Since, information was not furnished to the respondent, the respondent preferred an application with the First Appellate Authority (in short the FAA).

4.4 On 18.4.2011, some part of the information was supplied to the respondent. The CPIO, also filed, its reply to the appeal, on 3.5.2011, which was finally disposed of by the FAA on 5.5.2011. The petitioner on that very date, filed a second application under the RTI Act. This application is also dated 5.5.2011.

4.5 The respondent, being aggrieved by the order dated 5.5.2011, passed by the FAA, decided to prefer a second appeal with the CIC. This appeal was filed on 1.6.2011. Pertinently, while the appeal was pending before the CIC, on 9.6.2011, the Government of India issued a notification whereby, CBI was placed in the second schedule of the RTI Act, as indicated above. The effect of this notification and the inclusion of the CBI in the second schedule was that it could avail of the protective shield provided by Section 24 of the RTI Act. In other words, agencies which are included in the second schedule of the RTI Act, are exempted from the provisions of the RTI. The exception of course being, qua information pertaining to allegations of corruption and human rights violation.

4.6 The CIC, vide order dated 5.12.2011 partially allowed the appeal of the respondent. The operative directions contained in the order of the CIC are as under:

> "8. In any contingency, the Commission hereby directs that the information sought by the Appellant on Query Nos.3 & 6 of his RTI Application must be provided to him free of cost within 15 days of the receipt of this Order. Since the information sought by the Appellant under Query No.1 is not maintained in its official record by the Respondent Ministry, the Commission cannot direct the Respondent to create and provide the same. However, it shall be open for the Respondent Ministry to call for such information from the CBI, in case it decides

> to complete and maintain its own official file records and if so happens, then the Appellate will be entitled to get such information under the RTI Act."

4.7 To be noted, the directions contained in paragraph 8 were passed in the context of the queries set out in the respondent's application dated 28.2.2011. The queries, which the respondent made and in respect of which he had sought information are set out in paragraph 1 of the order dated 5.12.2011, passed by the CIC. The queries, as recorded in the order, are extracted hereinafter:

> "1. The date and nature of permission sought for by the CBI in 2007 to register a criminal case against Sh. O.P. Nahar, the then Chairman ATFE, and the documents filed in support of the request.
>
> 2. Whether sought for permission is granted or declined and on what date along with reasons for such decision.
>
> 3. The notings recorded by the CVO and the Law Secretary while taking decision on the request of the CBI. Also name the final authority who took decision on the above described request and the reasons thereof.
>
> 4. Any replies, if sought for from Sh. O.P. Nahar before taking the final decision then supply the comments received from him.
>
> 5. Provide details of procedure adopted with documents before taking final decision on the matter.
>
> 6. Did CBI request on second occasion in 2009 for the grant of permission, if yes, then supply the date and copy of the second request or otherwise the first decision is over-ruled suo moto on the same facts narrated in the CBI's request. Please supply the documents and the notings made by the CVO, the Law Secretary or any other authority functioning

in this regard.

7. Is it a fact firstly that the 2007 request by CBI was declined but later in 2009 same request is granted without any addition of fresh factual difference or fresh request, if so, then supply the reasons recorded for change of the old decision and name the authority with their notings on what they recorded this regard".

4.8 Since directions were issued by the CIC only with regard to query Nos.1, 3 & 6, the same are set out hereinbelow:

"1. The date and nature of permission sought for by the CBI in 2007 to register a criminal case against Shri O.P. Nahar, the then Chairman ATFE and the documents filed in support of the request..."

"3. The notings recorded by the CVO and the Law Secretary while taking decision on the request of the CBI. Also name the final authority who took decision on the above described request and the reasons thereof..."

"6. Did CBI request on second occasion in 2009 for the grant of permission, if yes, then supply the date and copy of the second request or otherwise the first decision is over-ruled suo moto on the same facts narrated in the CBI's request. Please supply the documents and the notings made by the CVO, the Law Secretary or any other authority functioning in this regard..."

4.9. Insofar as the second order of the CIC is concerned, which is dated 26.6.2013, the operative directions passed by the CIC are contained in paragraph 10 of the said order. For the sake of convenience, the same are extracted hereinbelow:

"10. Having considered the submissions of the parties

> and perused the relevant documents on the file, the Commission finds that the CBI has been exempted under the provisions of the RTI Act vide Notification dated 9.6.2011 whereas the appellant's RTI application is dated 5.5.2011, which is prior to the said Notification. Therefore, the CBI was not an exempted organisation at the time of filing of the RTI application. Moreover, it has not been explained by the respondent how the disclosure of the information in the present case can impede the process of investigation or apprehension or prosecution of offenders, which is admittedly over. The Commission hereby directs the Deputy Secretary/Vig. & CPIO to provide to the appellant the documents as requested by him at Para 9 above **within two weeks** of receipt of this order."

5. The issues, therefore, in these facts, which arise for consideration, have been set out hereinabove.

6. Mr. Mishra, who appears for the CBI, says that CBI is not obliged to provide any information of the kind that CIC has directed for the reason that it is an agency which falls within the ambit of the second schedule of the RTI Act.

6.1 This apart, it is Mr. Mishra's contention that the provisions of Section 8(1)(h) of the Act clearly provides that notwithstanding anything contained in the RTI Act, there would be no obligation on the holder of information to provide such information which would impede the process of investigation or apprehension or prosecution of the offenders.

6.2 This submission is made by Mr. Mishra in support of his contention that, even if, the respondent's stand was to be accepted, that a vested right enured in his favour, on 28.2.2011, and thereafter on 5.5.2011, the said information, can be denied if, the information would "impede" investigation

or apprehension or prosecution of the offender.

7. The respondent, who appears in person, says that the provision of the Act, in particular, Section 7 is indicative of the fact that the holder of the information, i.e. a public authority, is required to furnish the information within a period of 30 days. The respondent submits that the period of 30 days, in this case, was well and truly over, if one were to have regard to the date of the first application, which is, dated 28.2.2011.

8. Insofar as the second application is concerned, the period of 30 days also came to an end prior to the date of notification, which is, 9.6.2011.

9. I have heard the learned counsels for the parties. According to me, what is important is the events which occurred prior to the issuance of the notification dated 9.6.2011. Admittedly, two applications were filed by the respondent to seek information. The first application, as indicated above, is dated 28.2.2011. The second application is dated 5.5.2011.

10. I had asked Mr. Mishra as to what was the date of receipt of the application, which is dated 5.5.2011. Mr. Mishra was not able to furnish any information in that regard.

10.1 The moot point, which has been raised in the second petition, is whether notification dated 9.6.2011, will apply, to an application filed prior to that date. The said aspect should have, therefore, been adverted to by the petitioner in, at least, the second writ petition. Therefore, it will have to be presumed, at this juncture, that the application was received by the petitioner herein on 5.5.2011.

11. Having regard to the provisions of Section 7 of the RTI, it was incumbent upon the petitioner to furnish the information sought, if otherwise permissible, under the provisions of the RTI Act, within 30 days of the

receipt of the application. The information having not been supplied, a vested right accrued in favour of the respondent after the completion of the 30 days and, therefore, notification dated 9.6.2011 insofar as the respondent is concerned, in my view cannot come in his way. Therefore, this would be the position not only vis-a-vis the application dated 28.02.2011 but also qua application dated 05.05.2011.

12. This brings me to the other question, which is: whether the petitioner can take recourse to the provisions of Section 8(1)(h) of the Act to deny information to the respondent. The relevant provisions of Section 8(1)(h) of the RTI Act read as follows:-

> "8. **Exemption from disclosure of information**. — (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
> ...
> (h) information which would **impede** the process of investigation or apprehension or prosecution of offenders;
> (emphasis is mine)

13. A careful reading of the provision would show that the holder of the information can only withhold the information if, it is able to demonstrate that the information would **"impede"** the process of investigation or apprehension or prosecution of the offenders.

14. In the present case, the facts, as set out hereinabove, clearly demonstrate that the investigation is over. The charge sheet in the case was filed, as far back as on 31.12.2010.

14.1 The question then is, would the information sought for by the respondent "***impede***" the respondent's apprehension or prosecution. The respondent is in court and he says that he has been granted bail by the

competent court. Therefore, *prima faice*, the view of the competent court, which is trying him, is that there is no impediment in apprehending the respondent, and that he would be available as and when required by the court. The petition makes no averments as to how the information sought for by the respondent would prevent his prosecution.

14.2 In that view of the matter, according to me the provisions of Section 8(1)(h) of the RTI Act will not help the cause of the petitioner. Accordingly, the information, as directed by the CIC, will have to be supplied to the respondent. It so ordered. In support of this proposition, I may only advert to the following judgments of this Court (See ***Bhagat Singh v. Chief Information Commissioner [2008 (100) DRJ 63]; B.S. Mathur v. Public Information Officer of Delhi High Court [180 (2011) DLT 303]; Adesh Kumar v. Union of India and Ors. [216 (2015) DLT 230]; Director of Income Tax (Investigation) and Anr. v. Bhagat Singh and Anr. [(2008) 168 TAXMAN 190 (Delhi)]; Sudhir Ranjan Senapati v. Addl. Commissioner of Income Tax,*** W.P.(C) 7048/2011 dated 5.3.2013***;*** and ***Pradeep Singh Jadon v. UOI,*** W.P.(C) 7863/2013 dated 2.2.2015, which have taken similar view on this issue.

15. The petitioner will comply with the order of the CIC.

16. The writ petitions are dismissed accordingly. Parties are, however, left to bear their own costs.

RAJIV SHAKDHER, J

APRIL 22, 2015
s.pal

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 11.07.2012**

+ **W.P.(C) No.13090 of 2006**

Union of India ... Petitioner

versus

Central Information Commission & Anr. ... Respondents

Advocates who appeared in this case:

For the Petitioner :Mr.Amarjeet Singh Chandhihok Additional Solicitor General with Mr. Sumeet Pushkarna Advocate, Mr. Ritesh Kumar and Mr. Gaurav Verma Advocate

For Respondents : Mr. Prashant Bhushan Advocate with Mr. Ramesh K.Mishra Advocate for Respondent no.2

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

ANIL KUMAR, J.

1. This writ petition has been filed by the petitioner, Union of India, seeking the quashing of the order/judgment dated 8th August, 2006 passed by respondent no.1, Central Information Commission, directing the production of the document/correspondences, disclosure of which was sought by respondent no.2, Shri C. Ramesh, under the provisions of the Right to Information Act, 2005.

2. The brief facts of the case are that the respondent no.2, Shri C. Ramesh, by way of an application under Section 6 of the Right to Information Act, 2005 sought the disclosure from the Central Public Information Officer (hereinafter referred to as 'CPIO') of all the letters sent by the former President of India, Shri K.R. Narayanan, to the then Prime Minister, Shri A.B. Vajpayee, between 28th February, 2002 to 15th March, 2002 relating to '*Gujarat riots*'.

3. The CPIO by a communication dated 28th November, 2005 denied the request of respondent no.2 on the following grounds:-

> "(1) .....that Justice Nanavati/Justice Shah commission of enquiry had also asked for the correspondence between the President, late Shri K.R.Narayanan and the former Prime minister on Gujarat riots and the privilege under section 123 & 124 of the Indian Evidence Act, 1872 and Article 74(2) read with Article 78 and 361 of the Constitution of India has been claimed by the Government, for production of those documents;
>
> (2) .....that in terms of Section 8(1) (a) of the Right to Information Act, 2005, the information asked for by you, the disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State etc."

4. The respondent no.2, thereafter, filed an appeal under Section 19(1) of the Right to Information Act, 2005 before the Additional Secretary (S & V), Department of Personnel and Training, who is the designated first appellate authority under the Act, against the order of the CPIO on the ground that the Right to Information Act, 2005 has an

overriding effect over the Indian Evidence Act, 1872 and that the document disclosure of which was sought by him are not protected under Section 8 of the Right to Information Act, 2005 or Articles 74(2), 78 and 361 of the Constitution of India, which appeal was also dismissed by an order dated 2nd January, 2006. The respondent no.2 aggrieved by the order of the first appellate authority preferred a second appeal under Section 19(3) of the Act before the Commission, Respondent no.1. The Commission after hearing the appeal by an order dated 7th July, 2006 referred the same to the full bench of the Commission, respondent no.1, for re-hearing.

5. After hearing the appeal, the full bench of the Commission, upholding the contentions of respondent no.2 passed an order/judgment dated 8th August, 2006, calling for the correspondences, disclosure of which was sought by the respondent no.2 under the provisions of the Right to Information Act, so that it can examine as to whether the disclosure of the same would serve or harm the public interest, after which, appropriate direction to the public authority would be issued. This order dated 8th August, 2006 is under challenge. The direction issued by respondent no.1 is as under:-

> "The Commission, after careful consideration has, therefore, decided to call for the correspondence in question and it will examine as to whether its disclosure will serve of harm the public interest. After examining the documents, the Commission will first consider whether it would be in

public interest to order disclosure or not, and only then it will issue appropriate directions to the public authority."

6. The order dated 8th August, 2006 passed by the Central Information Commission, respondent no.1, has been challenged by the petitioner on the ground that the provisions of the Right to Information Act, 2005 should be construed in the light of the provisions of the Constitution of India; that by virtue of Article 74(2) of the Constitution of India, the advise tendered by the Council of Ministers to the President is beyond the judicial inquiry and that the bar as contained in Article 74(2) of the Constitution of India would be applicable to the correspondence exchanged between the President and the Prime Minister. Thus, it is urged that the consultative process between the then President and the then Prime Minister, enjoys immunity. Further it was contended that since the correspondences exchanged cannot be enquired into by any Court under Article 74(2) consequently respondent no.1 cannot look into the same. The petitioner further contended that even if the documents form a part of the preparation of the documents leading to the formation of the advice tendered to the President, the same are also 'privileged'. According to the petitioner since the correspondences are privileged, therefore, it enjoys the immunity from disclosure, even in proceedings initiated under the Right to Information Act, 2005.

7. The petitioner further contended that by virtue of Article 361 of the Constitution of India the deliberations between the Prime Minister and the President enjoy complete immunity as the documents are 'classified documents' and thus it enjoys immunity from disclosure not because of their contents but because of the class to which they belong and therefore the disclosure of the same is protected in public interest and also that the protection of the documents from scrutiny under Article 74(2) of the Constitution of India is distinct from the protection available under Sections 123 and 124 of the Indian Evidence Act, 1872. Further it was contended that the documents which are not covered under Article 74(2) of the Constitution, privilege in respect to those documents could be claimed under section 123 and 124 of the Evidence Act.

8. The petitioner stated that the freedom of speech and expression as provided under Article 19(1)(a) of the Constitution of India, which includes the right to information, is subject to Article 19(2) of the Constitution of India wherein restrictions can be imposed on the fundamental rights of freedom of speech and expression. Therefore, it was contended that the right to information cannot have a overriding effect over and above the provisions of Article 19(2) of the Constitution of India and since the Right to Information, Act originates from the

Constitution of India the same is secondary and is subject to the provisions of the Constitution. The petitioner contended that the observation of respondent no.1 that the Right to Information Act, 2005 erodes the immunity and the privilege afforded to the cabinet and the State under Articles 74(2), 78 and 361 of the Constitution of India is patently erroneous as the Constitution of India is supreme over all the laws, statutes, regulations and other subordinate legislations both of the Centre, as well as, of the State. The petitioner has sought the quashing of the impugned judgment on the ground that the disclosure of the information which has been sought by respondent no.2 relates to Gujarat Riots and any disclosure of the same would prejudicially affect the national security, sovereignty and integrity of India, which information is covered under Sections 8(1)(a) and 8(1)(i) of the RTI Act. It was also pointed out by the petitioner that in case of conflict between two competing dimensions of the public interest, namely, right of citizens to obtain disclosure of information vis-à-vis right of State to protect the information relating to the crucial state of affairs in larger public interest, the later must be given preference.

9. Respondent no.2 has filed a counter affidavit refuting the averments made by the petitioner. In the affidavit, respondent no.2 relying on section 18(3) & (4) of the Right to Information Act, 2005 has contended that the Commission, which is the appellate authority under

the RTI Act, has absolute power to call for any document or record from any public authority, disclosure of which documents, before the Commission cannot be denied on any ground in any other Act. Further the impugned order is only an interim order passed by the Commission by way of which the information in respect of which disclosure was been sought has only been summoned in a sealed envelope for perusal or inspection by the commission after which the factum of disclosure of the same to the public would be decided and that the petitioner by challenging this order is misinterpreting the intent of the provisions of the Act and is questioning the authority of the Commission established under the Act. It was also asserted by respondent no.2 that the Commission in exercise of its jurisdiction in an appeal can decide as to whether the exemption stipulated in Section 8(1)(a) of the RTI Act is applicable in a particular case, for which reason the impugned order was passed by the Commission, and thus by prohibiting the disclosure of information to the Commission, the petitioner is obstructing the Commission from fulfilling its statutory duties. Also it is urged that the Right to Information Act, 2005 incorporates all the restrictions on the basis of which the disclosure of information by a public authority could be prohibited and that while taking recourse to section 8 of the Right to Information Act for denying information one cannot go beyond the parameters set forth by the said section. The respondent while admitting that the Right to Information Act cannot override the

constitutional provisions, has contended that Articles 74(2), 78 and 361 of the Constitution do not entitle public authorities to claim privilege from disclosure. Also it is submitted that the veil of confidentiality and secrecy in respect of cabinet papers has been lifted by the first proviso to section 8(1)(i) of the Right to Information Act, which is only a manifestation of the fundamental right of the people to know, which in the scheme of Constitution overrides Articles 74(2), 78 and 361 of the Constitution. Respondent no.2 contended that the information, disclosure of which has been sought, only constitutes the documents on the basis of which advice was formed/decision was made and the same is open to judicial scrutiny as under Article 74(2) the Courts are only precluded from looking into the 'advice' which was tendered to the President. Thus in terms of Article 74(2) there is no bar on production of all the material on which the ministerial advice was based. The respondent also contended that in terms of Articles 78 and 361 of the constitution which provides for participatory governance, the Government cannot seek any privilege against its citizens and under the Right to Information Act what cannot be denied to the Parliament cannot be denied to a citizen. Relying on Section 22 of the Right to Information Act the respondent has contended that the Right to Information Act overrides not only the Official Secrets Act but also all other acts which ipso facto includes Indian Evidence Act, 1872, by virtue of which no public authority can claim to deny any information

on the ground that it happens to be a 'privileged' document under the Indian Evidence Act, 1872. The respondent has sought the disclosure of the information as same would be in larger public interest, as well as, it would ensure the effective functioning of a secular and democratic country and would also check non performance of public duty by people holding responsible positions in the future.

10. This Court has heard the learned counsel for the parties and has carefully perused the writ petition, counter affidavit, rejoinder affidavit and the important documents filed therein. The question which needs determination by this Court, which has been agreed by all the parties, is whether the Central Information Commission can peruse the correspondence/letters exchanged between the former President of India and the then Prime Minster of India for the relevant period from 28th February, 2002 till 1st March, 2002 in relation to 'Gujarat riots' in order to decide as to whether the disclosure of the same would be in public interest or not and whether the bar under Article 74(2) will be applicable to such correspondence which may have the advice of Council of Minister or Prime Minister.

11. The Central Information Commission dealt with the following issues while considering the request of respondent No. 2:

> (1) Whether the Public Authority's claim of privilege under the Law of Evidence is justifiable under the RTI Act 2005?

(2) Whether the CPIO or Public Authority can claim immunity from disclosure under Article 74(2) of the Constitution?

(3) Whether the denial of information to the appellant can be justified in this case under section 8(1) (a) or under Section 8(1) (e) of the Right to Information Act 2005?

(4) Whether there is any infirmity in the order passed by the CPIO or by the Appellate Authority denying the requested information to the Appellant?

While dealing with the first issue the Central Information Commission observed that on perusing Section 22 of the Right to Information Act, 2005, it was clear that it not only over-rides the Official Secrets Act, but also all other laws and that ipso facto it includes the Indian Evidence Act as well. Therefore, it was held that no public authority could claim to deny any information on the ground that it happens to be a "privileged" one under the Indian Evidence Act. It was also observed that Section 2 of the Right to Information Act cast an obligation on all public authorities to provide the information so demanded and that the right thus conferred is only subject to the other provisions of the Act and to no other law. The CIC also relied on the following cases:

(1) S.R. Bommai vs. Union of India: AIR 1994 SC 1918, wherein it was held that Article 74(2) is no bar to the production of all the material on which the ministerial advice was based.

(2) Rameshwar Prasad and Ors. vs. Union of India and Anr. AIR 2006 SC 980 wherein the above ratio was further clarified.

(3) SP Gupta vs. Union of India, 1981 SCC Supp. 87 case, wherein it was held that what is protected from disclosure under clause (2) of the Article 74 is only the advice tendered by the Council of Ministers. The reasons that have weighed with the Council of Ministers in giving the advice would certainly form part of the advice. But the material on which the reasoning of the Council of Ministers is based and advice given cannot be said to form part of the advice. It was also held that disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest.

(4) R.K. Jain vs. Union of India & Ors. AIR 1993 SC 1769 wherein the SC refused to grant a general immunity so as to cover that no document in any particular class or one of the categories of Cabinet papers or decisions or contents thereof should be ordered to be produced.

Based on the decisions of the SC in the above cases, the CIC had also inferred that Article 74(2), 78 and 361 of the Constitution of India do not per se entitle the public authorities to claim privilege from disclosure.

12. However, instead of determining whether the correspondence in question comes under the special class of documents exempted from disclosure on account of bar under Article 74 (2) of the Constitution of India, the CIC has called for it in order to examine the same. The petitioners have contended that the CIC does not have the power to call for documents that have been expressly excluded under Article 74(2),

read with Article 78 and Article 361 of the Indian Constitution, as well as the provisions of the Right to Information Act, 2005 under which the CIC is established and which is also the source of all its power. As per the learned counsel for the petitioner, the exemption from the disclosure is validated by Section 8(1)(a) and Section 8(1)(i) of the Right to Information Act, 2005 as well. The respondents, however, have contended that the correspondence is not expressly barred from disclosure under either the Constitution or the Provisions of the Right to Information Act, 2005. Therefore, the relevant question to be determined by this Court is whether or not the correspondence remains exempted from disclosure under Article 74(2) of the Constitution of India or under any provision of the Right to information Act, 2005. If the answer to this query is in the affirmative then undoubtedly what stands exempted under the Constitution cannot be called for production by the CIC as well. Article 74 (2) of the Constitution of India is as under:

> **74. Council of Ministers to aid and advise President.—**
>
> (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:
>
> [Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.]

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

13. Clearly Article 74(2) bars the disclosure of the advice rendered by the Council of Ministers to the President. What constitutes this advice is another query that needs to be determined. As per the learned counsel for the petitioner, the word "advice" cannot constitute a single instance or opinion and is instead a collaboration of many discussions and to and fro correspondences that give result to the ultimate opinion formed on the matter. Hence the correspondence sought for is an intrinsic part of the "advice" rendered by the Council of Ministers and the correspondence is not the material on which contents of correspondence, which is the advise, has been arrived at and therefore, it is barred from any form of judicial scrutiny.

14. The respondents have on the other hand have relied on the judgments of S.R. Bommai vs. Union of India: AIR 1994 SC 1918; Rameshwar Prasad and Ors. vs. Union of India and Anr. AIR 2006 SC 980 and SP Gupta vs. Union of India, 1981 SCC Supp. 87, with a view to justify that Article 74(2) only bars disclosure of the final "advice" and not the material on which the "advice" is based.

15. However, on examining these case laws, it is clear that the factual scenario which were under consideration in these matters, where wholly different from the circumstances in the present matter. Even the slightest difference in the facts could render the ratio of a particular case otiose when applied to a different matter.

16. A decision is an authority for which it is decided and not what can logically be deduced therefrom. A little difference in facts or additional facts may make a lot of difference in the precedent value of a decision. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.,(2003) 2 SCC 111*, at page 130, the Supreme Court had held in para 59 relying on various other decision as under:

> "59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See *Ram Rakhi* v. *Union of India* AIR 2002 Del 458 (db), *Delhi Admn. (NCT of Delhi)* v. *Manohar Lal* (2002) 7 SCC 222, *Haryana Financial Corpn.* v. *Jagdamba Oil Mills* (2002) 3 SCC 496 and *Nalini Mahajan (Dr)* v. *Director of Income Tax (Investigation)* (2002) 257 ITR 123 (Del).]"

17. In Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr. (AIR 2004 SC 778), the Supreme Court had held that a decision cannot be relied on without considering the factual situation. In the said judgment the Supreme Court had observed:-

> " Court 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.

18. In the case of S.R. Bommai (supra) Article 74(2) and its scope was examined while evaluating if the President's functions were within the constitutional limits of Article 356, in the matter of his satisfaction. The extent of judicial scrutiny allowed in such an evaluation was also ascertained. The matter dealt with the validity of the dissolution of the Legislative Assembly of States of Karnataka, Meghalaya, Nagaland, Madhya Pradesh, Himachal Pradesh and Rajasthan, by the President under Article 356, which was challenged.

19. Similarly in Rameshwar Prasad (supra) since no political party was able to form a Government, President's rule was imposed under Article 356 of the Constitution over the State of Bihar and consequently the Assembly was kept in suspended animation. Thereafter, the assembly was dissolved on the ground that attempts are being made to cobble a majority by illegal means as various political parties/groups

are trying to allure elected MLAs and that if these attempts continue it would amount to tampering of the constitutional provisions. The issue under consideration was whether the proclamation dissolving the assembly of Bihar was illegal and unconstitutional. In this case as well reliance was placed on the judgment of S.R. Bommai (supra). However it is imperative to note that only the decision of the President, taken within the realm of Article 356 was judicially scrutinized by the Supreme Court. Since the decision of the President was undoubtedly based on the advice of the Council of Ministers, which in turn was based on certain materials, the evaluation of such material while determining the justifiability of the President's Proclamation was held to be valid.

20. Even in the case of S.P Gupta (supra) privilege was claimed against the disclosure of correspondences exchanged between the Chief Justice of the Delhi High Court, Chief Justice of India and the Law Minister of the Union concerning extension of the term of appointment of Addl. Judges of the Delhi High Court. The Supreme Court had called for disclosure of the said documents on the ground that the non disclosure of the same would cause greater injury to public interest than what may be caused by their disclosure, as the advice was tendered by the Council of Ministers after consultation with the Chief Justice of Delhi High Court and the Chief Justice of India and thus it

was held that the views expressed by the Chief justices could not be said to be an advice and therefore there is no bar on its disclosure.

21. It will be appropriate to consider other precedents also relied on by the parties at this stage. In State of U.P. vs. Raj Narain, AIR 1975 SC 865 the document in respect of which exclusion from production was claimed was the Blue Book containing the rules and instructions for the protection of the Prime Minister, when he/she is on tour or travelling. The High Court rejected the claim of privilege under section 123 of the Evidence Act on the ground that no privilege was claimed in the first instance and that the blue book is not an unpublished document within the meaning of section 123 of Indian Evidence Act, as a portion of it had been published, which order had been challenged. The Supreme Court while remanding the matter back to the High Court held that if, on the basis of the averments in the affidavits, the court is satisfied that the Blue Book belongs to a class of documents, like the minutes of the proceedings of the cabinet, which is per se entitled to protection, then in such case, *no question of inspection of that document by the court would arise*. If, however, the court is not satisfied that the Blue Book belongs to that class of privileged documents, on the basis of the averments in the affidavits and the evidence adduced, which are not sufficient to enable the Court to make up its mind that its disclosure will injure public interest, then it will be open to the court to inspect the

said documents for deciding the question of whether it relates to affairs of the state and whether its disclosure will injure public interest.

22. In R.K.Jain vs. Union Of India, AIR 1993 SC 1769 the dispute was that no Judge was appointed as President in the Customs Central Excise and Gold (Control) Appellate Tribunal, since 1985 and therefore a complaint was made. Notice was issued and the ASG reported that the appointment of the President has been made, however, the order making the appointment was not placed on record. In the meantime another writ petition was filed challenging the legality and validity of the appointment of respondent no.3 as president and thus quashing of the said appointment order was sought. The relevant file on which the decision regarding appointment was made was produced in a sealed cover by the respondent and objection was raised regarding the inspection of the same, as privilege of the said documents was claimed. Thereafter, an application claiming privilege under sections 123, 124 of Indian Evidence Act and Article 74(2) of the Constitution was filed. The Government in this case had no objection to the Court perusing the file and the claim of privilege was restricted to disclosure of its contents to the petitioner. The issue before the Court was whether the Court would interfere with the appointment of Shri Harish Chander as President following the existing rules. Considering the circumstances, it was held that it is the duty of the Minister to file an affidavit stating the grounds

or the reasons in support of the claim of immunity from disclosure in view of public interest. It was held that the CEGAT is a creature of the statute, yet it intended to have all the flavors of judicial dispensation by independent members and President, therefore the Court ultimately decided to set aside the appointment of Harish Chandra as President.

23. In People's Union For Civil Liberties & Anr. vs. Union of India (UOI) and Ors. AIR 2004 SC 1442, the appellants had sought the disclosure of information from the respondents relating to purported safety violations and defects in various nuclear installations and power plants across the country including those situated at Trombay and Tarapur. The respondents claimed privilege under Section 18 (1) of the Atomic Energy Act, 1962 on the ground that the same are classified as 'Secrets' as it relates to nuclear installations in the country which includes several sensitive facilities carried out therein involving activities of classified nature and that publication of the same would cause irreparable injury to the interest of the state and would be prejudicial to the national security. The Court while deciding the controversy had observed that the functions of nuclear power plants are sensitive in nature and that the information relating thereto can pose danger not only to the security of the state but to the public at large if it goes into wrong hands. It was further held that a reasonable restriction on the exercise of the right is always permissible in the interest of the

security of the state and that the functioning and the operation of a nuclear plant is information that is sensitive in nature. If a reasonable restriction is imposed in the interest of the State by reason of a valid piece of legislation the Court normally would respect the legislative policy behind the same. It was further held that that normally the court will not exercise power of judicial review in such matters unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonesty or corrupt practices. For a claim of immunity under Section 123 of the IEA, the final decision with regard to the validity of the objection is with the Court by virtue of section 162 of IEA. The balancing between the two competing public interests (i.e. public interest in withholding the evidence be weighed against public interest in administration of justice) has to be performed by the Court even where an objection to the disclosure of the document is taken on the ground that it belongs to a class of documents which are protected irrespective of their contents, as there is no absolute immunity for documents belonging to such class. The Court further held that there is no legal infirmity in the claim of privilege by the Government under Section 18 of the Atomic Energy Act and also that perusal of the report by the Court is not required in view of the object and the purport for which the disclosure of the report of the Board was withheld.

24. In Dinesh Trivedi vs. Union of India (1997) 4 SCC 306, the petitioner had sought making public the complete Vohra Committee Report on criminalization of politics including the supporting material which formed the basis of the report as the same was essential for the maintenance of democracy and ensuring that the transparency in government was secured and preserved. The petitioners sought the disclosure of all the annexures, memorials and written evidence that were placed before the committee on the basis of which the report was prepared. The issue before the Court was whether the supporting material (comprising of reports, notes and letters furnished by other members) placed before the Vohra Committee can be disclosed for the benefit of the general public. The Court had observed that Right to know also has recognized limitations and thus by no means it is absolute. The Court while perusing the report held that the Vohra Committee Report presented in the parliament and the report which was placed before the Court are the same and that there is no ground for doubting the genuineness of the same. It was held that in these circumstances the disclosure of the supporting material to the public at large was denied by the court, as instead of aiding the public it would be detrimentally overriding the interests of public security and secrecy.

25. In State of Punjab vs. Sodhi Sukhdev Singh, AIR 1961 SC 493, on the representation of the District and Sessions Judge who was removed

from the services, an order was passed by the Council of Ministers for his re-employment to any suitable post. Thereafter, the respondent filed a suit for declaration and during the course of the proceedings he also filed an application under Order 14, Rule 4 as well as Order 11, Rule 14 of the Civil Procedure Code for the production of documents mentioned in the list annexed to the application. Notice for the production of the documents was issued to the appellant who claimed privilege under section 123 of the IEA in respect of certain documents. The Trial Court had upheld the claim of privilege. However, the High Court reversed the order of the Trial Court in respect of four documents. The issue before the Supreme Court was whether having regard to the true scope and effect of the provisions of Sections 123 and 162 of the Act, the High Court was in error in refusing to uphold the claim of privilege raised by the appellant in respect of the documents in question. The contention of the petitioner was that under Sections 123 and 162 when a privilege is claimed by the State in the matter of production of State documents, the total question with regard to the said claims falls within the discretion of the head of the department concerned, and he has to decide in his discretion whether the document belongs to the privileged class and whether or not its production would cause injury to public interest. The Supreme Court had ultimately held that the documents were 'privilege documents' and that the disclosure of the same cannot

be asked by the appellant through the Court till the department does not give permission for their production.

26. In S.P. Gupta (supra)the Supreme Court had observed that a seven Judges' bench had already held that the Court would allow the objection to disclosure, if it finds that the document relates to affairs of State and its disclosure would be injurious to public interest, but on the other hand, if it reaches the conclusion that the document does not relate to affairs of the State or that the public interest does not compel its non-disclosure or that the public interest in the administration of justice in the particular case before it overrides all other aspects of public interest, it will overrule the objection and order disclosure of the document. It was further observed that 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 the democratic rights given to them and make the democracy a really effective and 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. Therefore, disclosure of information with regard to the functioning of the Govt. must be the rule and secrecy can be exceptionally justified only where strict requirement of public

information is assumed. It was further observed that 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, at all times that the disclosure also serves an important aspect of public interest. In that the said case, the correspondence between the constitutional functionaries was inspected by the Court and disclosed to the opposite parties to formulate their contentions.

27. It was further held that under Section 123 when immunity is claimed from disclosure of certain documents, a preliminary enquiry is to be held in order to determine the validity of the objections to production which necessarily involves an enquiry in the question as to whether the evidence relates to an affairs of State under Section 123 or not. In this enquiry the court has to determine the character or class of the document. If it comes to the conclusion that the document does not relate to affairs of State then it should reject the claim for privilege and direct its production. If it comes to the conclusion that the document relates to the affairs of the State, it should leave it to the head of the department to decide whether he should permit its production or not. 'Class Immunity' under Section 123 contemplated two kinds of public interest which may clash. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of

justice shall not be frustrated by the withholding of documents; which must be produced if justice is to be done. It is for the Court to decide the claim for immunity against disclosure made under Section 123 by weighing the competing aspects of public interest and deciding which, in the particular case before the court, predominates. It would thus seem clear that in the weighing process, which the court has to perform in order to decide which of the two aspects of public interest should be given predominance, the character of the proceeding, the issues arising in it and the likely effect of the documents on the determination of the issues must form vital considerations, for they would affect the relative weight to be given to each of the respective aspects of public interest when placed in the scales.

28. In these circumstance the Court had called for the disclosure of documents on the ground that the non disclosure of the same would cause greater injury to public interest than what may be caused by their disclosure as the advice was tendered by the Council of Ministers after consultation with the Chief Justice of High Court and Chief Justice of India and the views expressed by the Chief Justices could not be said to be an advice and therefore it was held that there is no bar to its disclosure. Bar of judicial review is on the factum of advice but not on the reasons i.e. material on which the advice was founded.

29. These are the cases where for proper adjudication of the issues involved, the court was called upon to decide as to under what situations the documents in respect of which privilege has been claimed can be looked into by the Court.

30. The CIC, respondent No.1 has observed that Article 74(2), 78 and 361 of the Constitution of India do not per se entitle the public authorities to claim privilege from disclosure. The respondent No.1 had observed that since the Right to information Act has come into force, whatever immunity from disclosure could have been claimed by the State under the law, stands virtually extinguished, except on the ground explicitly mentioned under Section 8 and in some cases under Section 11 of the RTI Act. Thus, CIC has held that the bar under Section 74(2) is not absolute and the bar is subject to the provisions of the RTI Act and the only exception for not disclosing the information is as provided under Sections 8 & 11 of the RTI Act. The proposition of the respondent No.1 is not logical and cannot be sustained in the facts and circumstances. The Right to Information Act cannot have overriding effect over the Constitution of India nor can it amend, modify or abrogate the provisions of the Constitution of India in any manner. Even the CIC cannot equate himself with the Constitutional authorities,

the Judges of the Supreme Court of India and all High Courts in the States.

31. The respondent No.1 has also tried to create an exception to Article 74(2) on the ground that the bar within Article 74(2) will not be applicable where correspondence involves a sensitive matter of public interest. The CIC has held as under:-

> ".....Prima facie the correspondence involves a sensitive matter of public interest. The sensitivity of the matter and involvement of larger public interest has also been admitted by all concerned including the appellant. .....in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make final decision depending upon the particular facts involved in each individual case.....therefore we consider it appropriate that before taking a final decision on this appeal, we should personally examine the documents to decide whether larger public interest would require disclosure of the documents in question or not..."

32. The above observation of respondent No.1 is legally not tenable. Right to Information Act, 2005 which was enacted by the Legislature under the powers given under the Constitution of India cannot abrogate, amend, modify or change the bar under Article 74(2) as has been contended by the respondent No.1. Even if the RTI Act overrides Official Secrets Act, the Indian Evidence Act, however, this cannot be construed in such a manner to hold that the Right to Information Act will override the provisions of the Constitution of India. The learned

counsel for the respondent No.2 is unable to satisfy this Court as to how on the basis of the provisions of the RTI Act the mandate of the Constitution of India can be amended or modified. Amendment of any of the provisions of the Constitution can be possible only as per the procedure provided in the Constitution, which is Article 368 and the same cannot be deemed to be amended or obliterated merely on passing of subsequent Statutes. There can be no doubt about the proposition that the Constitution is supreme and that all the authorities function under the Supreme Law of land. For this Golak Nath v. State of Punjab, AIR 1967 SC 1643 can be relied on. In these circumstances, the plea of the respondents that since the Right to Information Act, 2005 has come into force, whatever bar has been created under Article 74(2) stands virtually extinguished is not tenable. The plea is not legally sustainable and cannot be accepted.

33. A bench of this Court in Union of India v. CIC, 165 (2009) DLT 559 had observed as under:-

> "…when Article 74 (2) of the Constitution applies and bars disclosure, information cannot be furnished. RTI Act cannot and does not have the ability and mandate to negate the constitutional protection under Article 74 (2). The said Article refers to inquiry by Courts but will equally apply to CIC."

Further it has been observed in para 34 as under:-

> " ….Possibly the only class of documents which are granted immunity from disclosure is those mentioned under Article 74 (2) of the Constitution. These are documents or

> information which are granted immunity from disclosure not because of their contents but because of the class to which they belong."

34. In the circumstances, the bar under Article 74(2) cannot be diluted and whittled down in any manner because of the class of documents it relates to. The respondent No.1 is not an authority to decide whether the bar under Article 74(2) will apply or not. If it is construed in such a manner then the provision of Article 74(2) will become sub serving to the provisions of the RTI Act which was not the intention of the Legislature and even if it is to be assumed that this is the intention of the Legislature, such an intension, without the amendment to the Constitution cannot be sustained.

35. The judgments relied on by the CIC have been discussed hereinbefore. It is apparent that under Article 74(2) of the Constitution of India there is no bar to production of all the material on which the advice rendered by the Council of Ministers or the Prime Minister to the President is based.

36. The correspondence between the President and the Prime Minister will be the advice rendered by the President to the Council of Ministers or the Prime Minister and vice versa and cannot be held that the information in question is a material on which the advice is based.

In any case the respondent No.2 has sought copies of the letters that may have been sent by the former President of India to the Prime Minster between the period 28th February, 2002 to 15th March, 2002 relating to the Gujarat riots. No exception to Article 74(2) of the Constitution of India can be carved out by the respondents on the ground that disclosure of the truth to the public about the stand taken by the Government during the Gujarat carnage is in public interest. Article 74(2) contemplates a complete bar in respect of the advice tendered, and no such exception can be inserted on the basis of the alleged interpretation of the provisions of the Right to Information Act, 2005.

37. The learned counsel for the respondents are unable to satisfy this Court that the documents sought by the respondent No.2 will only be a material and not the advice tendered by the President to the Prime Minister and vice versa. In case the correspondence exchanged between the President of India and the Prime Minister during the period 28th February, 2002 to 15th March, 2002 incorporates the advice once it is disclosed to the respondent No.1, the bar which is created under Article 74(2) cannot be undone.

38. In the case of S.R.Bommai v. Union of India, (1994) 3 SCC 1 at page 242, Para 323 the Supreme Court had held as under:-

" But, Article 74(2) does not and cannot mean that the Government of India need not justify the action taken by the President in the exercise of his functions because of the provision contained therein. No such immunity was intended — or is provided — by the clause. If the act or order of the President is questioned in a court of law, it is for the Council of Ministers to justify it by disclosing the material which formed the basis of the act/order..... The court will not ask whether such material formed part of the advice tendered to the President or whether that material was placed before the President. **The court will not also ask what advice was tendered to the President, what deliberations or discussions took place between the President and his Ministers and how was the ultimate decision arrived at**..... The court will only see what was the material on the basis of which the requisite satisfaction is formed and whether it is relevant to the action under Article 356(1). The court will not go into the correctness of the material or its adequacy.

The Supreme Court in para 324 had held as under:-

24. In our respectful opinion, the above obligation cannot be evaded by seeking refuge under Article 74(2). The argument that the advice tendered to the President comprises material as well and, therefore, calling upon the Union of India to disclose the material would amount to compelling the disclosure of the advice is, if we can say so respectfully, to indulge in sophistry. The material placed before the President by the Minister/Council of Ministers does not thereby become part of advice. Advice is what is based upon the said material. Material is not advice. The material may be placed before the President to acquaint him — and if need be to satisfy him — that the advice being tendered to him is the proper one. But it cannot mean that such material, by dint of being placed before the President in support of the advice, becomes advice itself. **One can understand if the advice is tendered in writing; in such a case that writing is the advice and is covered by the protection provided by Article 74(2).** But it is difficult to appreciate how does the supporting material become part of advice. The respondents cannot say that whatever the President sees — or whatever is placed before the President becomes prohibited material and cannot be seen or summoned by the court.

39. The plea of the respondents that the correspondence may not contain the advice but it will be a material on which the advice is rendered is based on their own assumption. On such assumption the CIC will not be entitled to get the correspondences and peruse the same and negate the bar under said Article of the Constitution of India. As already held the CIC cannot claim parity with the Judges of Supreme Court and the High Courts. The Judges of Supreme Court and the High Courts may peruse the material in exercise of their power under Article 32 and 226 of the Constitution of India, however the CIC will not have such power.

40. In the case of S.P.Gupta (supra) the Supreme Court had held that what is protected against disclosure under clause (2) of Article 74 is the advice tendered by the Council of Ministers and the reason which weighed with the Council of Ministers in giving the advice would certainly form part of the advice.

41. In case of Doypack Systems Pvt Ltd v. Union of India, (1988) 2 SCC 299 at para 44 the Supreme Court after examining S.P.Gupta (supra) had held as under:-

> "44. Shri Nariman however, submitted on the authority of the decision of this Court in S.P. Gupta v. Union of India that the documents sought for herein were not privileged.

> The context and the nature of the documents sought for in S.P. Gupta case were entirely different. **In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitution which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired into in any court. This Court is precluded from asking for production of these documents...**.....
>
> **....It is well to remember that it is the duty of this Court to prevent disclosure where Article 74(2) is applicable."**

42. The learned counsel for the respondents had laid lot of emphasis on S.P.Gupta (supra) however, the said case was not about what advice was tendered to the President on the appointment of Judges but the dispute was whether there was the factum of effective consultation. Consequently the propositions raised on behalf of the respondents on the basis of the ratio of S.P.Gupta will not be applicable in the facts and circumstances and the pleas and contentions of the respondents are to be repelled.

43. The Commission under the Right to Information Act, 2005 has no such constitutional power which is with the High Court and the Supreme Court under Article 226 & 32 of the Constitution of India, therefore, the interim order passed by the CIC for perusal of the record in respect of which there is bar under Article 74(2) of the Constitution of

India is wholly illegal and unconstitutional. In Doypack Systems (supra) at page 328 the Supreme Court had held as under:-

> **"**43. The next question for consideration is that by assuming that these documents are relevant, whether the Union of India is liable to disclose these documents. Privilege in respect of these documents has been sought for under Article 74(2) of the Constitution on behalf of the Government by learned Attorney General.
>
> 44. Shri Nariman however, submitted on the authority of the decision of this Court in *S.P. Gupta* v. *Union of India* that the documents sought for herein were not privileged. The context and the nature of the documents sought for in *S.P. Gupta case* were entirely different. In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitution which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired into in any court. **This Court is precluded from asking for production of these documents.** In *S.P. Gupta case* the question was not actually what advice was tendered to the President on the appointment of judges. The question was whether there was the factum of effective consultation between the relevant constitutional authorities. In our opinion that is not the problem here. We are conscious that there is no sacrosanct rule about the immunity from production of documents and the privilege should not be allowed in respect of each and every document. We reiterate that the claim of immunity and privilege has to be based on public interest. Learned Attorney-General relied on the decision of this Court in the case of *State of U.P.* v. *Raj Narain*. The principle or ratio of the same is applicable here. We may however, reiterate that the real damage with which we are concerned would be caused by the publication of the actual documents of the Cabinet for consideration and the minutes recorded in its discussions and its conclusions. It is well settled that the privilege cannot be waived. In this connection, learned Attorney General drew our attention to an unreported decision in *Elphistone Spinning and Weaving Mills Co. Ltd.* v. *Union of India*. This resulted ultimately in *Sitaram Mills case.*. The Bombay High Court held that the Task Force Report was withheld deliberately as it would

support the petitioner's case. It is well to remember that in *Sitaram Mills case* this Court reversed the judgment of the Bombay High Court and upheld the take over. Learned Attorney General submitted that the documents there were not tendered voluntarily. **It is well to remember that it is the duty of this Court to prevent disclosure where Article 74(2) is applicable. We are convinced that the notings of the officials which lead to the Cabinet note leading to the Cabinet decision formed part of the advice tendered to the President as the Act was preceded by an ordinance promulgated by the President.**

45. We respectfully follow the observations in *S.P. Gupta* v. *Union of India* at pages 607, 608 and 609. We may refer to the following observations at page 608 of the report: (SCC pp. 280-81, para 70)

"It is settled law and it was so clearly recognised in *Raj Narain case* that there may be classes of documents which public interest requires should not be disclosed, no matter what the individual documents in those classes may contain or in other words, the law recognizes that there may be classes of documents which in the public interest should be immune from disclosure. There is one such class of documents which for years has been recognised by the law as entitled in the public interest to be protected against disclosure and that class consists of documents which it is really necessary for the proper functioning of the public service to withhold from disclosure. The documents falling within this class are granted immunity from disclosure not because of their contents but because of the class to which they belong. This class includes cabinet minutes, minutes of discussions between heads of departments, high level inter-departmental communications and dispatches from ambassadors abroad (vide *Conway* v. *Rimmer*) and *Reg* v. *Lewes Justices, ex parte Home Secretary*, papers brought into existence for the purpose of preparing a submission to cabinet (vide: *Lanyon Property Ltd.* v. *Commonwealth 129 Commonwealth Law Reports 650*) and indeed any documents which relate to the framing of Government policy at a high level (vide: *Re Grosvenor Hotel, London* 1964 (3) All E.R. 354 (CA).

46. Cabinet papers are, therefore, protected from disclosure not by reason of their contents but because of the class to

which they belong. It appears to us that Cabinet papers also include papers brought into existence for the purpose of preparing submission to the Cabinet. See Geoffrey Wilson — *Cases and Materials on Constitutional and Administrative Law,* 2nd edn., pages 462 to 464. At page 463 para 187, it was observed:

"The real damage with which we are concerned would be caused by the publication of the actual documents of the Cabinet for consideration and the minutes recording its discussions and its conclusions. Criminal sanctions should apply to the unauthorized communication of these papers."

44. Even in R.K.Jain (supra) at page 149 the Supreme Court had ruled as under:-

'34. Equally every member is entitled to insist that whatever his own contribution was to the making of the decision, whether favorable or unfavorable, every other member will keep it secret. Maintenance of secrecy of an individual's contribution to discussion, or vote in the Cabinet guarantees the most favorable and conducive atmosphere to express views formally. To reveal the view, or vote, of a member of the Cabinet, expressed or given in Cabinet, is not only to disappoint an expectation on which that member was entitled to rely, but also to reduce the security of the continuing guarantee, and above all, to undermine the principle of collective responsibility. Joint responsibility supersedes individual responsibility; in accepting responsibility for joint decision, each member is entitled to an assurance that he will be held responsible not only for his own, but also as member of the whole Cabinet which made it; that he will be held responsible for maintaining secrecy of any different view which the others may have expressed. The obvious and basic fact is that as part of the machinery of the government. **Cabinet secrecy is an essential part of the structure of the government.** 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 affectivity 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.

45. Consequently for the foregoing reason there is a complete bar under Article 74(2) of the Constitution of India as to the advice tendered by the Ministers to the President and, therefore, the respondent No.1 CIC cannot look into the advice tendered by the President to the Prime Minster and consequently by the President to the Prime Minister or council of Ministers. The learned counsel for the respondents also made an illogical proposition that the advice tendered by the Council of Ministers and the Prime Minster to the President is barred under Article 74(2) of the Constitution of India but the advice tendered by the President to the Prime Minister in continuation of the advice tendered by the Prime Minster or the Council of Ministers to the President of India is not barred. The proposition is not legally tenable and cannot be accepted. The learned counsel for the respondent No.2, Mr. Mishra also contended that even if there is a bar under Article 74(2) of the Constitution of India, the respondent No.2 has a right under Article 19(1) (a) to claim such information. The learned counsel is unable to show any such precedent of the Supreme Court or any High Court in support of his contention and, therefore, it cannot be accepted. The

freedom of speech and expression as provided under Article 19(1)(a) of the Constitution of India, which includes the right to information, is subject to Article 19(2) of the Constitution of India wherein restrictions can be imposed on the fundamental rights of freedom of speech and expression. The right to information cannot have a overriding effect over and above the provisions of Article 19(2) of the Constitution of India and since the Right to Information, Act originates from the Constitution of India the same is secondary and is subject to the provisions of the Constitution.

46. The documents in question are deliberations between the President and the Prime Minister within the performance of powers of the President of India or his office. As submitted by the learned counsel for the petitioner such documents by virtue of Article 361 would enjoy immunity and the immunity for the same cannot be asked nor can such documents be perused by the CIC. Thus the CIC has no authority to call for the information in question which is barred under Article 74(2) of the Constitution of India. Even on the basis of the interpretation to various provisions of the Right to Information Act, 2005 the scope and ambit of Article 74(2) cannot be whittled down or restricted. The plea of the respondents that dissemination of such information will be in public interest is based on their own assumption by the respondents. Disclosure of such an advice tendered by the Prime Minster to the

President and the President to the Prime Minister, may not be in public interest and whether it is in public interest or not, is not to be adjudicated as an appellate authority by respondent No.1. The provisions of the Right to Information Act, 2005 cannot be held to be superior to the provisions of the Constitution of India and it cannot be incorporated so as to negate the bar which flows under Article 74(2) of the Constitution of India. Merely assuming that disclosure of the correspondence between the President and the Prime Minster and vice versa which contains the advice may not harm the nation at large, is based on the assumptions of the respondents and should not be and cannot be accepted in the facts and circumstances. In the circumstances the findings of the respondent No.1 that bar under Article 74(2), 78 & 361 of the Constitution of India stands extinguished by virtue of RTI Act is without any legal basis and cannot be accepted. The respondent No.1 has no authority to call for the correspondent in the facts and circumstances.

47. The learned junior counsel for the respondent no.2, Mr. Mishra who also appeared and argued has made some submissions which are legally and prima facie not acceptable. His contention that the bar under Article 74(2) of the Constitution will only be applicable in the case of the High Courts and Supreme Court while exercising the power of judicial review and not before the CIC as the CIC does not exercise

the power of judicial review is illogical and cannot be accepted. The plea that bar under Article 74(2) is not applicable in the present case is also without any basis. The learned counsel has also contended that the correspondence between the President and the Prime Minster cannot be termed as advice is based on his own presumptions and assumptions which have no legal or factual basis. As has been contended by the learned Additional Solicitor General, the bar under Article 74(2) is applicable to all Courts including the CIC. In the case of S.R.Bommai v. Union of India, (1994) 3 SCC 1 at page 241 it was observed as under:-

> **"**321**.** Clause (2) of Article 74, understood in its proper perspective, is thus confined to a limited aspect**. It protects and preserves the secrecy of the deliberations between the President and his Council of Ministers.**"

48. Consequently the bar of Article 74(2) is applicable in the facts and circumstances and the CIC cannot contend that it has such power under the Right to Information Act that it will decide whether such bar can be claimed under Article 74 (2) of the Constitution of India.. In case of UPSC v. Shiv Shambhu, 2008 IX AD (Delhi) 289 at para 2 a bench of this Court had held as under:-

> " At the outset this Court directs the deletion of the CIC which has been arrayed as Respondent No.1 to this appeal, consequent upon it being arrayed as such in the writ petition. This Court has repeatedly issued practice directions stressing that a judicial or quasi-judicial body or Tribunal whose order is challenged in a writ petition ought not to itself be impleaded as a party respondent. The only exception would be if mala fides are alleged against any

> individual member of such authority or Tribunal in which case again it would be such member, and not the authority/Tribunal who may be impleaded as a respondent."

49. The respondent No.2 has sought copies of the letters that may have been sent by the President of India to the Prime Minister during the period 28th February, 2002 to 15th March, 2002 relating to Gujarat riots. In the application submitted by respondent No.2 for obtaining the said information, respondent No.2 had stated as under:-

> "I personally feel that the contents of the letters, stated to have been sent by the former President of India to the then Prime Minister are of importance for foreclosure of truth to the public on the stand taken by the Government during the Gujarat carnage. I am therefore interested to know the contents of the letters"

50. Considering the pleas and the averments made by the respondents it cannot be construed in any manner that the correspondence sought by the respondent No.2 is not the advice rendered, and is just the material on which the advice is based. What is the basis for such an assumption has not been explained by the counsel for the respondent No.2. The impugned order by the respondent No.1 is thus contrary to provision of Article 74(2) and therefore it cannot be enforced and the petitioner cannot be directed to produce the letters exchanged between the President and the Prime Minister or the

Council of Ministers as it would be the advice rendered by the President in respect of which there is a complete bar under Article 74(2).

51. In the case of S.R.Bommai (supra) at page 241 the Supreme Court had observed as under:-

> "321. Clause (2) of Article 74, understood in its proper perspective, is thus confined to a limited aspect. It protects and preserves the secrecy of the deliberations between the President and his Council of Ministers."

The Supreme Court at para 324 had also observed as under:-

> "..... **One can understand if the advice is tendered in writing; in such a case that writing is the advice and is covered by the protection provided by Article 74(2).** But it is difficult to appreciate how does the supporting material become part of advice. The respondents cannot say that whatever the President sees — or whatever is placed before the President becomes prohibited material and cannot be seen or summoned by the court.

52. Thus there is an apparent and conspicuous distinction between the advice and the material on the basis of which advice is rendered. In case of Doypack (supra) the Supreme Court had held as under:-

> "44. Shri Nariman however, submitted on the authority of the decision of this Court in S.P. Gupta v. Union of India that the documents sought for herein were not privileged. The context and the nature of the documents sought for in S.P. Gupta case were entirely different. In this case these documents as we see are part of the preparation of the documents leading to the formation of the advice tendered to the President of India and as such these are privileged under Article 74(2) of the Constitution which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be enquired

> into in any court. This Court is precluded from asking for production of these documents…….
>
> ….It is well to remember that it is the duty of this Court to prevent disclosure where Article 74(2) is applicable."

53. The learned counsel for the respondents also tried to contend that even if Article 74(2) protects the disclosure of advice from the Council of Ministers/Prime Minister to President it does not bar disclosure of communication from President to the Prime Minister. In case of PIO vs. Manohar Parikar, Writ Petition No. 478 of 2008, the Bombay High Court at Goa Bench had held that the protection under Article 361 will not be available for the Governor if any information is sought under RTI Act. However, the reliance on the said precedent cannot be made, as the same judgment has been stayed by the Supreme Court in SLP (C) No.33124/2011 and is therefore sub judice and consequently the respondents are not entitled for any direction to produce the correspondence which contains the advice rendered by the President to the Prime Minister for the perusal by the CIC. The plea of the respondents that the CIC can call the documents under Section 18 of RTI Act, therefore, cannot be sustained. If the bar under Article 74(2) is absolute so far as it pertains to advices, even under Section 18 such bar cannot be whittled down or diluted nor can the respondents contend that the CIC is entitled to see that correspondence and consequently the respondent No.2 is entitled for the same. For the foregoing reasons

and in the facts and circumstances the order of the CIC dated 8th August, 2006 is liable to be set aside and the CIC cannot direct the petitioner to produce the correspondence between the President and the Prime Minister, and since the CIC is not entitled to peruse the correspondence between the President and the Prime Minister, as it is be barred under Article 74(2) of the Constitution of India, the application of the petitioner seeking such an information will also be not maintainable.

54. Consequently, the writ petition is allowed and the order dated 8th August, 2006 passed by Central Information Commission in Appeal No.CIC/MA/A/2006/00121 being 'C.Ramesh v. Minister of Personnel & Grievance & Pension' is set aside. The application of the respondent No.2 under Section 6 of the Right to Information Act, 2005 dated 7th November, 2005 is also dismissed, holding that the respondent No.2 is not entitled for the correspondence sought by him which was exchanged between the President and the Prime Minster relating to the Gujarat riots. Considering the facts and circumstances the parties are, however, left to bear their own cost.

July 11, 2012 **ANIL KUMAR, J.**

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2952/2016 & C.M.No.12344/2016

RAHUL KESARWANI ..... Petitioner

Through Mr.Prag Chawla with Mr.Abhay Narula, Advocates.

versus

CENTRAL INFORMATION COMMISSION & ANR ..... Respondents

Through None

% Date of Decision : 5th April, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed with the following prayers :-

(a) This Hon'ble Court may issue a writ of Certiorari and or any other appropriate Writ and or direction to set aside the order of the Respondent No.1 dated 7.1.2016 passed in Rahul Kesarwani Vs. CPIO/Joint Commissioner of Income Tax, Income Tax Department CIC/RM/A/2014/903298/ BS/9466.

(b) This Hon'ble Court may issue a writ of mandamus and or any other appropriate writ and or direction against the Respondent No.2 directing them to provide the Action Taken Report on the Tax Evasion petition filed by the Petitioner alongwith documents including representations and replies filed by Ms.Sunita Bhuyan.

(c) *Direct the Respondent No.2 to produce the said record before the Court of Ms.Charu Gupta, Ld. Metropolitan Magistrate, Saket District Court, New Delhi pressing over the proceedings of FIR No.198 of 2012.*

(d) *Any other order or direction which this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case may also be passed.*

2. It has been averred in the petition that vide impugned order dated 7th January, 2016 passed by respondent no. 1-CIC, the information sought by the petitioner regarding action taken report in reference to his letter dated 21st February, 2014 was rejected on the ground that information sought is exempt under Section 8(1)(j) of the Right to Information Act, 2005 (for short 'RTI Act, 2005').

3. It has been stated in the petition that an FIR No. 198/2012 was registered against the petitioner under Sections 498A/406 IPC by his wife Ms. Sunita Bhuyan. It has been further stated that petitioner filed a tax evasion petition before the Chief Commissioner of Income Tax to investigate the allegations of Ms. Sunita Bhuyan relating to her alleged income and expenditure during the wedding.

4. Learned counsel for the petitioner states that the information sought is crucial for the adjudication in the aforesaid criminal case pending against the petitioner. In support of his submissions, he relies upon the judgment of the Division Bench in ***Director of Income Tax (Investigation) and Anr. Vs. Bhagat Singh and Anr. in LPA No.1377/2007 decided on 17th December, 2007***, wherein it has been held as under:-

> "…….*It is for the appellant to show how and why investigation will be impeded by disclosing information to the*

appellant. General statements are not enough. Apprehension should be based on some ground or reason. Information has been sought for by the complainant and not the assessed. Nature of information is not such which interferes with the investigation or helps the assessed. Information may help the respondent No. 1 from absolving himself in the criminal trial. It appears that the appellant has held back information and delaying the proceedings for which the respondent No. 1 felt aggrieved and filed the aforesaid writ petition in this Court. We also find no reason as to why the aforesaid information should not be supplied to the respondent No. 1. In the grounds of appeal, it is stated that the appellant is ready and willing to disclose all the records once the same is summoned by the criminal court where proceedings under Section 498A of the Indian Penal Code are pending. If that is the stand of the appellant, we find no reason as to why the aforesaid information cannot be furnished at this stage as the investigation process is not going to be hampered in any manner and particularly in view of the fact that such information is being furnished only after the investigation process is complete as far as Director of Income Tax (Investigation) is concerned. It has not been explained in what manner and how information asked for and directed will hamper the assessment proceedings."

5. After hearing the learned counsel for the petitioner, this Court is of the view that as the criminal proceeding filed by the petitioner's wife is still pending and her cross-examination is not complete, the petitioner can cross-examine her with regard to her income-tax returns and/or the petitioner can file an appropriate application for production of the relevant income tax records. The petitioner can also summon the witnesses from the income-tax department with regard to the tax evasion petition filed by him. Needless to say, the said request shall be considered by the Trial Court in accordance with law.

6. Consequently, as the petitioner has an alternative efficacious remedy for seeking the documents, this Court is of the view that no further orders are called for in the present writ petition.

7. This Court also clarifies that the Division Bench judgment relied upon by learned counsel for the petitioner in ***Director of Income Tax (supra)*** only refers to Section 8(1)(h) and not 8(1)(j) of the RTI Act, 2005. Accordingly, the present writ petition and the application are dismissed.

MANMOHAN, J

APRIL 05, 2016
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.257 of 2013
Reserved on:22.04.2014
Date of Decision:16.05.2014

Hemant Goswami

... Appellant

Versus

Central Bureau of Investigation and another

... Respondents

CORAM:HON'BLE MR. JUSTICE SANJAY KISHAN KAUL, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Hemant Goswami, appellant in person.

Mr. Sumeet Goel, Advocate,
for respondent No.1.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

*****

ARUN PALLI, J.

We are seized of an intra-court appeal, under Clause X of the Letters Patent, against the judgment rendered by the learned Single Judge.

Matter in hand is an offshoot of an infamous "Chandigarh Teachers Recruitment Scam". Finding, that there were mass scale bungling in the selection of teachers, the appellant filed a complaint with the CBI (respondent No.1). CBI held a preliminary inquiry and probed the matter at some length. Eventually, only a report was sent to the Chief Vigilance Officer (Chandigarh), recommending certain

corrective steps. However, pursuant to a complaint received by the Chandigarh Police, an FIR was registered in the matter and the same being investigated.

The appellant sought certain documents along with a complete information, from respondent No.1, in relation to the complaint he had made. Initially, respondent No.1 had decided to supply the information sought for by the appellant. However, subsequently the same was denied on the ground that a petition bearing number CWP No.17021 of 2009 – *Karamjit Singh v. Union of India and others*, was pending before this Court, wherein, a direction was being prayed to hand over the investigation being carried out by the Chandigarh Police to CBI. Aggrieved by this, appellant filed an appeal before the Central Information Commission (for short, 'the Commission'). The prayer made by the appellant was accepted and respondent No.1 was directed to supply the information, as was initially agreed to, along with the report that was sent to the Chief Vigilance Officer, Chandigarh. It is the said order, which was assailed by the CBI, before the learned Single Judge of this Court.

The short question, that evolved for consideration before the learned Single Judge was, could the order passed by the Commission be sustained in the wake of the provisions of Section 8(1)(g) & (h) of the Right to Information Act, 2005

(for short, 'the Act'). On an analysis of the matter, the learned Single Judge was of the view, that pursuant to the directions issued by this Court on 30.03.2012 in Karamjit Singh's case (supra), CBI had registered an FIR on 24.05.2012, in relation to selection of teachers. The matter was being investigated by the CBI and, therefore, in terms of Section 8(1)(g) & (h) of the Act, the information in relation thereto could not be supplied. However, the report that was sent to the Administration by the CBI, pursuant to the complaint made by the appellant, was directed to be supplied, as the same could not be treated as part of the investigation. The operative part of the said order reads as thus:

> ***"As the situation stands today, in terms of the directions issued by this Court, FIR has been registered by CBI for investigation into the scam pertaining to recruitment of teachers in Chandigarh. No doubt, the prayer in the writ petition filed before this Court was for transfer of investigation in the FIR already registered by Chandigarh Police, but the direction of this court is for handing over the entire record pertaining to the case, which was either with Chandigarh Police or the preliminary enquiry conducted by CBI on a complaint filed by respondent No.2.***
>
> ***Though respondent No.2 sought to raise an apprehension that the grievance***

raised by him in his complaint may not be enquired into by CBI, hence, this cannot be said to be a matter under investigation and the copies of documents forming part thereof can be supplied to him, as the bar under Section 8(1)(h) of the Act will not be applicable. However, the contention is misconceived, if considered in the light of the directions issued by this court and the stand taken by learned counsel for the petitioner before this court. Once the matter is under investigation, in terms of provisions of Section 8(1)(h) of the Act, the information pertaining thereto cannot be supplied in a query under the Act."

We have heard the appellant, who appeared in person and the counsel for respondent No.1.

The appellant reiterates his case and the submissions he had advanced before the learned Single Judge. He submits, that it was only the investigation that was being carried out pursuant to an FIR registered by the Chandigarh Police, which was entrusted to CBI. The subject matter of the said FIR was altogether different. Thus, what was being investigated were not the allegations he had made in his complaint. That being so, the provisions of Section 8(1)(g) & (h) of the Act were of no consequence.

Per contra, counsel for respondent No.1, contends that initially the CBI passed an order to provide the

documents and the information that has been sought by the appellant. However, having got to know that a writ petition was pending before this Court, wherein the investigation that was being carried out by the Chandigarh Police, was prayed to be entrusted to CBI, the said decision was reversed. As it could adversely effect the investigation of the case, in the eventuality of the investigation being entrusted to CBI, by this Court. He submits, that post directions by this Court on 30.03.2012, an FIR stood registered by the CBI on 24.05.2012. It was reiterated that the matter was investigated from every conceivable angle including the illegalities and irregularities pointed out by the appellant in the complaint made by him.

It is deemed apposite and necessary, before we proceed further, to refer to the provisions of Section 8(1)(g) & (h), which read as thus:

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

As is discernible from the records, the information that was directed to be furnished to the appellant, by the Commission, was the action that was resorted to by the CBI pursuant to the complaint made by the appellant. And also the material which was collected in this regard. In CWP No.17021 of 2009, filed in public interest, a Division Bench of this Court directed that the investigation in the matter be conducted by the CBI, Delhi. All records pertaining to the case, which were with the CBI, Chandigarh and the Chandigarh Police, were directed to be handed over to the CBI, Delhi. It was maintained by learned counsel appearing for the CBI, before learned Single Judge, that the investigation in the matter was not just confined to the FIR registered by the Chandigarh Police, rather, the matter as a whole was under investigation including the illegalities and irregularities pointed out even by the appellant in a complaint made by him.

That being so, the provisions of Section 8(1)(h) attracts itself to the matter. Respondent No.1, is well within its right to claim exemption from disclosure of information

under the said clause. Provisions of Section 8(1)(h) are clear, conscious and incapable of any misconstruction. The same postulates that the information that would impede the process of investigation or apprehension or prosecution of offenders, notwithstanding anything contained in the Act, there shall be no obligation to give the said information to any citizen.

We are reminded to point out at this juncture, learned counsel for respondent No.1 submits, that the investigation in the matter is complete. So much so, the CBI has even submitted a final report/charge-sheet in the Court of Chief Judicial Magistrate, Chandigarh and the matter is now posted for recording the prosecution evidence on 28.07.2014. Needless to assert, the provisions of Clause (h) does not take only the process of investigation within its sweep but also the prosecution of offenders as well.

In the wake of the position as has been noticed above, we are dissuaded to interfere in the order passed by the learned Single Judge. The appeal being bereft of merit is, accordingly, dismissed. The parties are left to bear their own costs.

(SANJAY KISHAN KAUL)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

May 16, 2014
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2760/2016 & C.M.No.11604/2016

UNION BANK OF INDIA ..... Petitioner

Through Mr.O.P.Gaggar, Advocate.

versus

CENTRAL INFORMATION COMMISSION & ANR.

..... Respondents

Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

O R D E R

% 30.03.2016

Present writ petition has been filed challenging the order dated 29th January, 2016 passed by CIC, whereby the petitioner was directed to disclose the information sought by respondent No.2 vide RTI application dated 24th July, 2014 regarding process notes and other requisite papers placed before the Appellate Authority, process notes before Chief Vigilance Officer, noting of the Chief Vigilance Officer and decisions of the Appellate Authority or any other authority.

Learned counsel for petitioner states that the information sought by respondent No.2 is directly related to his second criminal case pending adjudication before CBI Court, Saket and therefore, the information is exempt under Section 8(1)(h) of the Right to Information Act, 2005.

In response to a pointed query, learned counsel for the petitioner has admitted that the services of the respondent no.2 have

been terminated and he has already been convicted in another criminal case filed by the CBI.

Keeping in view the aforesaid, this Court is of the opinion that Section 8(1)(h) of the RTI Act does not apply to disclosure of the information sought as the respondent no.2's services already stand terminated and Criminal Court has pronounced a judgment in one of the cases. This Court is also of the view that the respondent no.2 must 'have his say in Court'. If he can rely upon some of the internal documents of the Bank, the said opportunity should not be denied.

It is pertinent to mention that one of the grounds in the present writ petition is that disclosure of the vigilance reports of the Bank would have the effect of eroding the confidence of the public in the security and safety of their money of which the bank is the custodian!

Consequently, the present writ petition and the application are dismissed.

MANMOHAN, J

MARCH 30, 2016
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 1000/2016**

HIRA LAL BANSAL ..... Petitioner

Through: Mr Saurabh Jain, Advocate.

versus

CENTRAL INFORMATION COMMISSION & ORS ..... Respondents

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 10.08.2017

VIBHU BAKHRU, J

1. The present petition was moved on 08.02.2016 and notice was issued to the respondents on that date. Despite service of notice, none has been appearing on behalf of the respondents. This Court does not consider it apposite to defer the hearing of this matter to await the appearance on behalf of the respondents.

2. The petitioner has filed the present petition impugning an order dated 01.10.2015 (hereafter 'the impugned order') passed by the Central Information Commissioner (hereafter 'the CIC') upholding the decisions of respondent no.3 (hereafter 'the CPIO') and respondent no.2, the First Appellate Authority (hereafter 'the FAA'), rejecting the petitioner's request for disclosure of Form No.1 sent by the Chief Judicial Magistrate, Bikaner, Rajasthan for testing of a drug in batch no.28 manufactured by M/s Ronald

Pharmaceuticals Pvt. Ltd. (hereafter 'Ronald Pharma').

3. The said information has been denied to the petitioner on the ground that it would reveal the details, address, name of the company that manufactured the drug in question and would also reveal the particulars of the offence alleged. Learned counsel for the petitioner stoutly contests the aforesaid finding.

4. Briefly stated the relevant facts necessary to address the controversy in the present petition are as follows:-

4.1 The petitioner was working as an Assistant Drugs Controller, Government of Rajasthan and superannuated from the services on 31.10.2012. During his tenure of service, he had the occasion to render assistance in a case (Case no.1250/07 captioned as '*M/s Ronald Pharmaceuticals Pvt. Ltd. v. Drug Controller*') filed before the Chief Judicial Magistrate (CJM), Bikaner, Rajasthan. During the course of the proceedings in that matter, the learned CJM had sent a drug sample for testing to the Central Drugs Laboratory, Kolkata (hereafter 'CDL Kolkata'). CDL Kolkata sent its report dated 01.11.2006, with regard to the said sample, to the court of the learned CJM pointing out that the batch number of the sample sent was different from the batch number referred to in the Form No.1: the batch number of the drug was DE-27 while Form No.1 stated the batch number to be DE-28.

4.2 The petitioner states that in view of the above discrepancies, certain disciplinary proceedings have been commenced against the petitioner and his post retirement benefits have been withheld. It is in the aforesaid context

that the petitioner required information as to the Form No.1 allegedly sent to CDL Kolkata and, accordingly, the petitioner filed an application under the Right to Information Act, 2005 (hereafter 'the RTI Act') before the CPIO on 12.08.2014 requesting for the attested copy of Form No.1. The relevant extract of the petitioner's application is set out below:-

> "You are requested to please send me the photo state attested copy of form No.1 sent by Chief Judicial Magistrate, Bikaner (Rajasthan) vide Sr. No. 01/06 dated 25-01-2006 of sample No. BKR/HLB/Sept. 04/04 of Drug cortiflam-D (Dex chlorphenriamine Maleate Tablet USP) Batch no DE 28 Manufactured by M/s Ronald Pharmaceutical Pvt. Ltd. Manjusar Distt. Baroda."

4.3 The information as sought for by the petitioner was denied by the CPIO by an order dated 15.09.2014 on the ground that it was exempt under Section 8(1)(d) of the RTI Act. The CPIO claimed that such information related "*to commercial confidentiality, trade secrets and disclosure of which would harm the competitive position of third party*."

4.4 Aggrieved by the aforesaid decision, the petitioner preferred an appeal before the First appellate Authority (FAA), *inter alia*, contending that no confidential information was sought by the petitioner and the information sought was intentionally denied to the petitioner.

4.5 The FAA disposed of the appeal by an order dated 13.11.2014. The FAA did not comment on the question whether information sought was confidential and would harm the competitive position of a third party; the FAA rejected the petitioner's appeal on the ground that "*disclosure of desired information would impede the process of investigation/ongoing*

court proceeding and is exempted under Section 8 (1) (h) of Right to Information Act, 2005". The petitioner was also advised to approach the concerned court to get a copy of the Form No.1 in question.

4.6 The petitioner asserts that the proceedings before the CJM concluded on 31.07.2007 and, therefore, there was no ongoing proceedings that were pending, which would be affected by the disclosure of a copy of Form No.1. In any event, even assuming that such proceedings were still pending, providing a copy of Form No.1 could not possibly impede or obstruct any such proceedings.

4.7 Aggrieved by the aforesaid decision of the FAA, the petitioner preferred a second appeal under Section 19(3) of the RTI Act before the CIC.

4.8 The CIC has also rejected the said appeal, by the impugned order. The CIC concurred with the CPIO that disclosure of information sought by the petitioner would harm the "*image, goodwill, reputation and in turn competitive position"* of Ronald Pharma in the market. According to the CPIO, if Form No.1 is revealed in public domain, it would reveal the details of Ronald Pharma, "*its address, drug sample in question, particulars of the offence alleged, and the matter on which opinion from Central Drugs Laboratory*" was required.

5. This Court is of the view that none of the aforesaid grounds are sustainable. The name of the manufacturer is not confidential. The fact that the said manufacturer had commenced proceedings before the learned CJM is also in public domain. Form No.1 is only a memorandum under the cover

of which drug samples are sent for testing. It indicates what the drug purports to be; the distinguishing number on the packet sent; the particulars of offence (if any); matters on which opinion is required; and the fee paid.

6. The CPIO had denied the information sought by the petitioner claiming that such information was exempt from disclosure by virtue of Section 8(1)(d) of the RTI Act, which reads 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;"

7. It is at once apparent that the exemption in terms of Section 8(1)(d) was not available in respect of the information sought by the petitioner as Form No.1 could not be termed as information forming '*commercial confidence*'*;* it is not a '*trade secret*'; and definitely does not constitute '*intellectual property*'. This Court finds it difficult to accept that disclosure of the particular Form No.1 as sought by the petitioner, would in any manner harm the image, goodwill, reputation or the competitive position of the company in question.

8. The proceedings pursuant to which the samples were sent for testing are already in public domain.

9. It is also relevant to note that the FAA did not reject the petitioner's appeal on the ground that it was exempt under Section 8(1)(d) of the RTI Act; the petitioner's appeal by the FAA had been rejected only on the ground that the disclosure of the desired information would impede the progress of investigation and thus was exempt under Section 8(1)(h) of the Act.

10. In view of the above, the only question to be examined by the CIC in petitioner's appeal was whether the disclosure of the information sought for by the petitioner would impede the progress of any ongoing investigation or court proceedings and thus was exempt under Section 8(1)(h) of the Act. It is apparent that the CIC did not subscribe to the FAA's view.

11. The petitioner has produced copies of the order sheets in Case no. 1250/07 and the same clearly indicate that the proceedings in that case - in the context of which Form No.1 was sent - stand concluded. Therefore, there can be no question of the disclosure of such Form No.1 impeding any ongoing court proceedings or investigation; and, plainly, the information sought for by the petitioner could not be withheld on the ground of Section 8(1)(h) of the Act.

12. In view of the above, the impugned order is set aside. The respondents are directed to disclose the information as sought for by the petitioner within a period of six weeks from today.

13. The petition is allowed.

VIBHU BAKHRU, J

AUGUST 10, 2017/pkv

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 8616/2011 and CM No. 19477/2011**

DEPUTY COMMISSIONER OF POLICE ..... Petitioner
Through: Mr Naushad Ahmed Khan, ASC (Civil) GNCTD.
ACP Attar Singh, Spl. Cell/SR.

versus

SUBHASH CHANDRA AGARWAL ..... Respondent
Through: Mr T. Sudhaker, Advocate.

AND

\+ **W.P.(C) 8618/2011 and CM No. 19485/2011**

DEPUTY COMMISSIONER OF POLICE ..... Petitioner
Through: Mr Naushad Ahmed Khan, ASC (Civil) GNCTD.
ACP Attar Singh, Spl. Cell/SR.

versus

SUBHASH CHANDRA AGARWAL ..... Respondent
Through: Mr T. Sudhaker, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 15.01.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning a common order dated 14.11.2011 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC'), *inter alia*, directing the petitioner to provide the respondent with a copy of the forensic report regarding doctored CDs in the Criminal Case relating to FIR No. 47/2011.

2. The respondent had filed three applications (applications dated

06.05.2011, 16.05.2011 and 30.05.2011) under the Right to Information Act, 2005 (hereafter 'the Act') seeking various queries in connection with or relating to the alleged doctored CDs. The information, as sought by the respondent, was denied by the Central Public Information Officer (CPIO) as being exempt under Section 8(1)(h) of the Act. It was claimed that furnishing of such information would hamper the process of investigation. The appeals preferred by the respondent before the First Appellate Authority under Section 19 of the Act were also rejected.

3. Aggrieved by the same, the respondent preferred the Second Appeal under Section 19(3) of the Act before the CIC, which was allowed by the impugned order.

4. A perusal of the impugned order indicates that the CIC had noted that the information sought was in relation to an FIR (being FIR No. 47 of 2011) alleging that certain CDs had been doctored. The said allegation was investigated by the concerned officer of the petitioner and a final report prepared under section 173 Cr PC was submitted before the CMM, Tis Hazari Courts. The CIC noted that as per the said report, the investigation in the case FIR No. 47 of 2011 was closed and, therefore, the question of such disclosure of information as sought by the respondent, impeding any investigation did not arise.

5. Mr Naushad Ahmed Khan, the learned counsel appearing for the petitioner submitted that merely because the final report under Section 173 Cr.P.C. had been filed before a court does not mean that the investigation cannot be recommenced. He submitted that in the present case, a protest

petition has been filed and the report submitted by the petitioner has not been accepted as yet. He also submitted that the concerned authorities would always have the right to further investigate the matter and, therefore, the information as sought for by the respondent could not be provided to him.

6. Section 8(1)(h) of the Act, which is relied upon by the petitioner, reads 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
>
> (h)information which would impede the process of investigation or apprehension or prosecution of offenders;"

7. It is seen from the above that Section 8(1)(h) of the Act does not provide a blanket exemption in respect of all information that may be subject matter of any investigation. It only provides exemption from disclosure of such information *"which would impede the process of investigation"* or *"apprehension or prosecution of offenders"*. Although, in the present case, it is claimed on behalf of the petitioner that the petitioner may be called upon to investigate further and that the petitioner also has a right to *suo moto* investigate further, there is no material to indicate that disclosure of such information sought would impede any such investigations.

8. Undisputedly, the information which is the subject matter of investigation can also be disclosed, provided that such disclosure does not

impede such investigation. It is also noted that a considerable period has since elapsed (more than six years) since the date of the impugned order. The learned counsel appearing for the petitioner also submits that no further investigation has been carried out after the closure report dated 24.05.2014 (which was the second closure report filed after the impugned order was passed) was filed with the concerned court.

9. In this view, this Court finds no reason to interfere with the operative part of the impugned order directing disclosure of the information as sought for by the respondent. However, it is clarified that if such information relates to third parties, their consent would be taken before such disclosure. Further, if the third party(ies) do not consent for disclosure of such information, the CPIO would have to take a decision whether the disclosure of such information is required in the larger public interest and follow the procedure as specified under Section 11 of the Act.

10. The petitions and the applications are disposed of with the aforesaid observations.

VIBHU BAKHRU, J

JANUARY 15, 2018
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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.02.2018

\+ **W.P.(C) 5547/2017 & CM No. 23333/2017**

CENTRAL BOARD OF DIRECT TAXES ..... Petitioner

versus

SATYA NARAIN SHUKLA ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Ruchir Bhatia, Senior Standing Counsel with Mr Gurpreet Shah Singh, Dy. CIT (O&D), CBDT.

For the Respondent : Respondent in person.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereafter 'CBDT') impugns an order dated 29.05.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC') in a second appeal preferred by the respondent under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act').

2. By the impugned order, the CIC has, *inter alia*, directed disclosure of the information sought by the respondent and photocopies of responses received from Director Generals of Income Tax (DGs) to CBDT's letter dated 11.08.2015. According to CBDT, the said information is excluded from the scope of the Act as it emanates from the Directorate General of Income Tax (Investigation). The said office is placed in the Second

Schedule of the Act and, thus, any information received from the said office is excluded from the purview of the Act by virtue of Section 24(1) of the Act. CBDT also claims that the said information is exempt from disclosure under the provisions of Section 8(1)(h) of the Act.

3. Briefly stated, the relevant facts necessary to consider the aforesaid controversy are as under:-

4. The respondent filed an application dated 16.11.2015 seeking the following information under the Act:-

> "(1) Photocopies of the letters no. F. No. 282/4/2012-IT(Inv) dated 1.10.2013 and No. 282/04/2012-IT(Inv. V)/140 dated 9.7.2015.
>
> (2) Photocopies of the responses received from the DGs to the letter No. 282/4/012-IV (Inv. V)/192 dated 11.08.2015 from Shri Rajat Mittal, Under Secretary (Inv. V) CBDT."

5. The Central Public Information Officer (CPIO) of CBDT responded to the petitioner's application by a letter dated 28.12.2015. He did not provide the photocopies of the letters as sought for at point no.1 but briefly indicated the contents of those letters. Insofar as the information sought at point no.2 is concerned, the CPIO responded as under:-

> "Since, the matter is under investigation, hence under the provisions of Section 8(h) of RTI Act, 2005 (Information which would impede the process of investigation or apprehension or prosecution of offenders) information cannot be provided at this stage."

6. Aggrieved by the response of the CPIO, the respondent preferred an appeal under Section 19(1) of the Act before the First Appellate Authority

(hereafter 'the FAA'). The said appeal was disposed of by an order dated 11.02.2016, whereby the FAA directed the CPIO to provide photocopies of the relevant letters as requested by the respondent as per point no.1 of his application. In respect of the respondent's request for responses received from the DGs to the letter dated 11.08.2015 is concerned, the FAA upheld the CPIO's decision that the said information was exempt under the provisions of Section 8(1)(h) of the Act and, therefore, could not be provided at that stage. However, the FAA directed the CPIO to convey the outcome of the investigations once the same are concluded.

7. Aggrieved by the decision of the FAA rejecting the request for furnishing the responses received from the DGs, the respondent preferred a second appeal before the CIC. The said appeal was allowed by the impugned order and the CPIO was directed to supply the information sought for by the respondent.

8. The controversy relates to the verification of the affidavits filed by the Members of Parliament (MPs) and Members of Legislative Assembly (MLAs) disclosing their assets to the Election Commission. The respondent had submitted a list of MPs and MLAs whose assets have allegedly increased more than fivefold after the previous election (that is, during the term of their office as elected representatives after the previous election).

9. The said list of MPs and MLAs were forwarded to the DGs for verification. By a letter dated 11.08.2015, the following instructions were issued to the DGs with regard to the list of MPs and MLAs provided by the respondent:-

> "The undersigned is directed to convey that any such case, featuring in the list that is yet to be verified, should be got verified urgently. A comprehensive report of the verifications done as per guidelines fixed by the Board may also be provided, if not done earlier. The report may be submitted *within a month from the date* of this letter in the annexed proforma. It is requested that the "Brief outcome" column must sufficiently record the outcome and the suggested course of action."

10. The learned counsel appearing for CBDT submitted that CBDT could not be compelled to provide the photocopies of responses received from the DGs because: (i) the information sought for is exempted from disclosure by virtue of Section 8(1)(h) of the Act; and (ii) that any information from Directorate General of Income Tax (Investigation) is excluded from the purview of the Act by virtue of Section 24(1) of the Act.

11. Section 8(1)(h) of the Act reads 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
>
> (h) information which would impede the process of investigation or apprehension or prosecution of offenders."

12. It is clear from the above that only such information which would (i) impede the process of investigation; (ii) impede the apprehension or prosecution of offenders, is exempted from disclosure by virtue of Section 8(1)(h) of the Act. In the present case, there is no material to indicate that any investigation is being conducted, which would be impeded by disclosure

of the information sought for by the respondent. It is stated by CBDT that the Election Commission of India forwards the affidavits submitted by MPs and MLAs disclosing their assets for verification to CBDT. Such affidavits are forwarded by CBDT to the Directorate General of Income Tax (Investigation) for verification and the outcome of such verification is shared directly by the Directorate General of Income Tax (Investigation) with the Election Commission of India.

13. The petitioner further states that the verification exercise carried out by the Directorate General of Income Tax (Investigation) is only indicative in nature and any further action proposed under the Income Tax Act, 1961 has to be followed up by an assessment order, which is passed by the concerned assessing officers. The verification affidavits filed by the candidates cannot be equated with an investigation as referred to in Section 8(1)(h) of the Act. The process of investigation as contemplated under Section 8(1)(h) of the Act is one in the nature of a probe and an inquiry. Clearly, verification from records cannot be termed as an "investigation".

14. Even if, it is assumed that the verification being conducted by the Directorate General of Income Tax (Investigation) is in the nature of an investigation, the same is no ground for denial of information. Only such information which impedes the process of investigation can be denied. Thus, it would be necessary for the CPIO to specify the CIC that: (a) the investigation was conducted or was proposed; and (b) the information sought would impede the process of investigation. It is apparent that in the present case, these conditions are not met. First of all, there is no assertion that any process of investigation is under way; and secondly, there is no

material to indicate that disclosure of the information as sought would impede any such investigation.

15. The suggestion that the expression "process of investigation" includes within its ambit an assessment proceedings resulting in the assessment order is plainly unmerited. The assessment proceedings merely relate to scrutiny of the Income Tax Returns and an assessment income on tax payable by an assessee. Plainly, such proceedings do not take the colour of investigation.

16. The next question to be addressed is whether the information sought for by the respondent is excluded from the purview of the Act.

17. Section 24(1) of the Act reads as under:-

> "**24. Act not to apply to certain organizations.**– (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:
>
> Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:
>
> Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request."

18. A plain reading of Section 24(1) of the Act indicates that the provisions of the Act would not be applicable to Intelligence and Security

Organizations as specified in the Second Schedule. Further, any information received from such organizations falls under the exclusionary clause of Section 24(1) of the Act. CBDT is not one of the offices, public organizations which are specified under the Second Schedule; but, the Directorate General of Income Tax (Investigation) is. Thus, any information received from the Directorate General of Income Tax (Investigation) by any Public Authority would also fall within the exclusionary provisions of Section 24(1) of the Act. Indisputably, the information sought for by the respondent emanates from the Directorate General of Income Tax (Investigations) (various DGs who have called upon to submit a comprehensive report of verification). Thus, CBDT would be justified in denying such information to the respondent.

19. It was also contended by the respondent that since the information sought for by him related to allegations of corruption, the same falls within the exception to the exclusionary clause of Section 24(1) of the Act. The respondent is correct that by virtue of the first proviso to Section 24(1) of the Act, all information pertaining to allegations of corruption and human rights violations falls within the exception to Section 24(1) of the Act. In other words, notwithstanding that such information emanates from any of the organizations as specified under the Second Schedule of the Act, it is not excluded from the purview of the Act.

20. However, in the present case, it is difficult to accept that the information sought by the respondent pertains to allegations of corruption, as no such allegations have been made at any stage. The respondent had merely highlighted that the net wealth of certain MLAs and MPs had

increased fivefold and the respondent had sought verification of the same in order to bring about a higher level of transparency. No specific or general allegations of corruption were advanced by the respondent.

21. Thus, it is not possible to accept that the information as sought for by the respondent falls within the purview of the Act even though it emanates from the organization which is placed in the Second Schedule.

22. In view of the above, the order passed by the CIC cannot be sustained and is, accordingly, set aside. However, it is clarified that in the event any citizen was to make an allegation of corruption, the information as sought by the respondent would not be excluded from the scope of the Act.

23. The petition and the pending application are disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

FEBRUARY 19, 2018
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2760/2016 & C.M.No.11604/2016

UNION BANK OF INDIA ..... Petitioner

Through Mr.O.P.Gaggar, Advocate.

versus

CENTRAL INFORMATION COMMISSION & ANR.

..... Respondents

Through None

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

O R D E R

% 30.03.2016

Present writ petition has been filed challenging the order dated 29th January, 2016 passed by CIC, whereby the petitioner was directed to disclose the information sought by respondent No.2 vide RTI application dated 24th July, 2014 regarding process notes and other requisite papers placed before the Appellate Authority, process notes before Chief Vigilance Officer, noting of the Chief Vigilance Officer and decisions of the Appellate Authority or any other authority.

Learned counsel for petitioner states that the information sought by respondent No.2 is directly related to his second criminal case pending adjudication before CBI Court, Saket and therefore, the information is exempt under Section 8(1)(h) of the Right to Information Act, 2005.

In response to a pointed query, learned counsel for the petitioner has admitted that the services of the respondent no.2 have

been terminated and he has already been convicted in another criminal case filed by the CBI.

Keeping in view the aforesaid, this Court is of the opinion that Section 8(1)(h) of the RTI Act does not apply to disclosure of the information sought as the respondent no.2's services already stand terminated and Criminal Court has pronounced a judgment in one of the cases. This Court is also of the view that the respondent no.2 must 'have his say in Court'. If he can rely upon some of the internal documents of the Bank, the said opportunity should not be denied.

It is pertinent to mention that one of the grounds in the present writ petition is that disclosure of the vigilance reports of the Bank would have the effect of eroding the confidence of the public in the security and safety of their money of which the bank is the custodian!

Consequently, the present writ petition and the application are dismissed.

MANMOHAN, J

MARCH 30, 2016
KA

REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) NOS.8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 AND 3607 OF 2007,**

Reserved on : 12th August,2009/2nd September, 2009.

% **Date of Decision** : 30th November , 2009.

(1) **WRIT PETITION (CIVIL) NO. 8396 OF 2009**

UNION OF INDIA THR. DIRECTOR,
MINISTRY OF PERSONNEL, PG & PENSION ….Petitioner
Through Mr.S.K.Dubey, Mr.Deepak Kumar, advocates.

versus

CENTRAL INFORMATION COMMISSION &
SHRI P.D. KHANDELWAL ….Respondents
Through Prof. K.K. Nigam, advocate for CIC.
Respondent no.2, in person.

(2) **WRIT PETITION (CIVIL) NO.16907 OF 2006**

UNION OF INDIA ..... Petitioner
Through Mr. A.S. Chandhiok, ASG with Mr. Ritesh Kumar, Ms. Vibha Dhawan & Mr. Sandeep Bajaj, Advocates.

versus

SWEETY KOTHARI ..... Respondent
Through Mr. Bhakti Pasrija, Advocate.

(3) **WRIT PETITION (CIVIL) NO. 4788 OF 2008**

UNION OF INDIA THR. SECRETARY,
MINISTRY OF DEFENCE & ANOTHER .... Petitioners
Through Mr. A.S. Chandhiok, ASG with Mr. R. Balasubramanian, Advocate.

versus

THE CENTRAL INFORMATION COMMISSION

THR. ITS REGISTRAR & ANOTHER ..... Respondents
Through Prof. K.K. Nigam, Advocate for respondent No. 1.

(4) **WRIT PETITION (CIVIL) NO. 9914 OF 2009**

UNION OF INDIA THR. SECRETARY,
MINISTRY OF DEFENCE & ANOTHER .... Petitioners
Through Mr. A.S. Chandhiok, ASG with Mr. R. Balasubramanian, Advocate.

versus

THE CENTRAL INFORMATION COMMISSION
THR. ITS REGISTRAR &
MAJ.RAJ PAL (RETD.) ..... Respondents
Through Prof. K.K. Nigam, Advocate for respondent No. 1.
Maj. Raj Pal, in person.

(5) **WRIT PETITION (CIVIL) NO. 6085 OF 2008**

UNION OFINDIA & ANOTHER ..... Petitioners
Through Mr. A.S. Chandhiok, ASG with Mr. R. Balasubramanian, Advocate.

versus

CENTRAL INFORMATION COMMISSION
& ANOTHER ..... Respondents
Through Prof. K.K. Nigam, Advocate for respondent No. 1.

(6) **WRIT PETITION (CIVIL) NO. 7304 OF 2007**

UNION OF INDIA ..... Petitioner
Through Mr. A.S. Chandhiok, ASG with Mr. Ritesh Kumar, Ms. Vibha Dhawan & Mr. Sandeep Bajaj, Advocates.

Versus

BHABARANJAN RAY & ANOTHER ..... Respondents
Through

(7) **WRIT PETITIION (CIVIL) NO. 7930 OF 2009**

ADDL.COMMISSIONER OF
POLICE (CRIME) ..... Petitioner

Through Mr. A.S. Chandhiok, ASG with Ms. Mukta Gupta , Ms. Anagha, Mr. Ritesh Kumar, Ms. Vibha Dhawan & Mr. Sandeep Bajaj & Mr. Bhagat Singh, Advocates.

versus

CENTRAL INFORMATIONAL COMMISSION
& ANOTHER. ..... Respondents

Through Prof. K.K. Nigam, Advocate for respondent No. 1.
Mr. Prashant Bhushan, Advocate for respondent No. 2 .

(8) **WRIT PETITION (CIVIL) NO. 3607 OF 2007**

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA ..... Petitioner

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Rakesh Agarwal & Mr. Anuj Bhandari, Advocates.

Versus

CENTRAL INFORMATION COMMISSION ..... Respondent

Through Prof. K.K. Nigam, Advocate.

CORAM :
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

SANJIV KHANNA, J.:

1. The petitioners herein have challenged orders passed by the Central Information Commission (hereinafter also referred to as CIC,

for short) under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act, for short).

2. The challenge to the impugned orders involves interpretation of Sections 8(1), 18 and 19 of the RTI Act, which read as under:-

> "**Section 8. Exemption from disclosure of information.-** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
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> (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 secretes 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;
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> 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 authority 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. ”

“Section 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-limit 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 court 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 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.

Section 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 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 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.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under Section 11 to disclose third-party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(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.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, 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.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

SECTION 8 OF THE RTI ACT

3. Section 8 (1) of the RTI Act begins with a non-obstante clause and stipulates that notwithstanding any other provision under the RTI Act, information need not be furnished when any of the clauses (a) to (j) apply. Right to information is subject to exceptions or exclusions stated in section 8(1) (a) to (j) of the RTI Act. Sub-clauses (a) to (j) are in the nature of alternative or independent sub clauses. In the present cases, we are primarily concerned with Clauses (e), (h), (i) and (j) of the RTI Act. Each sub-clause has been interpreted separately. Section 8(1)(h) of the RTI Act has been interpreted while examining WP(C) No. 7930/2009, Addl. Commissioner of Police (Crime) Vs. Central Information Commission & Another.

SECTION 8 (1) (e) OF THE RTI ACT

4. Section 8(1)(e) protects information available to a person in his fiduciary relationship. As per Section 3(42) of the General Clauses Act, 1897 the term “person” includes a juristic person, any company or association or body of individuals, whether incorporated or not. Section 8(1)(e) adumbrates that information should be available to a person in his fiduciary relationship. The “person” in Section 8(1)(e) will include the “public authority”. The word “available” used in this Clause will include information held by or under control of a public authority and also information to which the public authority has access to under any other statute or law. The term “information” has been defined in Section 2(f) of the RTI Act as under:

> “(*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; “

5. The information relating to a private body which can be accessed by a public authority under any other law in force is information which may be made available. Information “available” with a public authority can be furnished.

6. The term “fiduciary relationship” has not been defined in the RTI Act. Therefore, we have to interpret the term “fiduciary

relationship" keeping in mind the object and purpose of the RTI Act and the term "fiduciary" as is understood in common parlance. The RTI Act is a progressive and a beneficial legislation enacted to provide a practical regime to secure to the citizen's, right to information; to promote transparency, accountability and efficiency and eradicate corruption. Sub-section 8(1)(e) of the RTI Act permits screening and preservation of confidential and sensitive information made available due to fiduciary relationship. The aforesaid Clause has been interpreted by S. Ravindra Bhat, J. in ***CPIO, Supreme Court of India, New Delhi versus Subhash Chandra Agarwal and another*** (Writ Petition No. 288/200) decided on 2nd September, 2009 as under:-

> "55. It is necessary to first discern what a fiduciary relationship is, since the term has not been defined in the Act. In *Bristol & West Building Society v. Mothew* [1998] Ch 1, the term "fiduciary",was described as under:
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> > *"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." Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*,(2005) 1 SCC 212 and *Needle Industries (India) Ltd v. Needle Industries (Newey) India Holding Ltd* : 1981 (3) SCC 333 establish that Directors of a company owe fiduciary duties to its shareholders. In *P.V. Sankara Kurup v. Leelavathy Nambiar,* (1994) 6 SCC 68, the Supreme Court held that an agent and power of attorney holder can be said to owe a fiduciary relationship to the principal.
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> 56. In a recent decision *(Mr. Krishna Gopal Kakani v. Bank of Baroda* 2008 (13) SCALE 160) the Supreme Court had to decide whether a transaction resulted in a fiduciary relationship. Money was sought to be recovered

by the plaintiff, from a bank, who had moved the court for auction of goods imported, and retained the proceeds,; the trail court overruled the objection to maintainability, stating that the bank held the surplus (of the proceeds)in a fiduciary capacity. The High Court upset the trial court 's findings, ruling that the bank did not act in a fiduciary capacity. The Supreme Court affirmed the High Court 's findings. The court noticed Section 88 of the Trusts Act, which reads as follows:

> *"Section 88.Advantage gained by fiduciary.- Where a trustee, executor, partner, agent, director of a company, legal advisor, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained."*

Affirming the High Court 's findings that the bank did not owe a fiduciary responsibility to the appellant, it was held by the Supreme Court, that:

> *"9.An analysis of this Section would show that the Bank, to whom the money had been entrusted, was not in the capacity set out in the provision itself. The question of any fiduciary relationship therefore arising between the two must therefore be ruled out. It bears reiteration that there is no evidence to show that any trust had been created with respect to the suit money.."*

The following kinds of relationships may broadly be categorized as "fiduciary ":

Trustee/beneficiary (Section 88, Indian Trusts Act, 1882);

Legal guardians / wards (Section 20, Guardians and Wards Act, 1890);

Lawyer/client;

Executors and administrators / legatees and heirs;

Board of directors / company;

Liquidator/company;

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

Doctor/patient;

Parent/child.

57. *The Advanced Law Lexico*n, 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 relationship ….Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who is 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 "*

58. From the above discussion, it may be seen that a fiduciary relationship is one whereby a person places complete confidence in another in regard to a particular transaction or his general affairs or business. The relationship need not be "formally "or "legally "ordained, or established, like in the case of a written trust; but can be one of moral or personal responsibility, due to the better or superior knowledge or training, or superior status of the fiduciary as compared to the one whose affairs he handles."

7. In ***Woolf vs Superior Court*** (2003)107 Cal.App. 4th 25**,** the California Court of Appeals defined fiduciary relationship as "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."

8. Fiduciary can be described as an arrangement expressly agreed to or at least consciously undertaken in which one party trusts, relies and depends upon another's judgment or counsel. Fiduciary relationships may be formal, informal, voluntary or involuntary. It is legal acceptance that there are ethical or moral relationships or duties in relationships which create rights and obligations. The fiduciary obligations may be created by a contract but they differ from contractual relationships for they can exist even without payment of consideration by the beneficiaries and unlike contractual duties and obligations, fiduciary obligations may not be readily tailored and modified to suit the parties. In a fiduciary relationship, the principal emphasis is on trust, and reliance, the fiduciary's superior power and corresponding dependence of the beneficiary on the fiduciary. It requires a dominant position, integrity and responsibility of the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself.

9. One basic difference between fiduciary and contractual or any other relationship is the quality and the extent of good faith obligation.

In contractual or in other non fiduciary relationship, the obligation is substantially weaker and qualitatively different as compared to a fiduciary's legal obligation. Fiduciary loyalty and obligation requires complete subordination of self-interest and action exclusively for benefit of the beneficiary. Primary fiduciary duty is duty of loyalty and disloyalty an anathema. Contractual or other non fiduciary relationship may require that a party should not cause harm or damage the other side, but fiduciary relationship casts a positive obligation and demands that the fiduciary should protect the beneficiary and not promote personal self interest. Although, strict liability may not apply to instances of disloyalty, other than in cases of self-dealing, judicial scrutiny is still intense and the level of commitment and loyalty expected is higher in fiduciary relationships than non-fiduciary relationships. In some cases, trustees have been held liable even when there is conflict of interests as the beneficiary relies upon and is dependent upon the fiduciary's discretion. Fiduciary's loyalty obligation is stricter than the morals of the market place. It is not honesty alone, but the *punctilio* of an honour, the most sensitive is the standard of behaviour (Justice Cardozo in ***Meinhard vs Salmon N.Y. (1928) 164, n.e. 545, 546***.

10. In a contractual or other non fiduciary relationship, the relationship between parties is horizontal and parties are required to attend to and take care of their interests. Law of contract does not systematically or formally assign contracting parties to dominant or

subordinate roles. Paradigmatically, image of a contract is a horizontal relationship. Fiduciary relationship defines the fiduciary as a dominant party who has systematically empowered over the subordinate beneficiary.

11. It is not possible to accept the contention of Mr.Prashant Bhushan, advocate that statutory relationships or obligations and fiduciary relationships or obligations cannot co-exit. Statutory relationships as between a Director and a company which is regulated by the Companies Act, 1956, can be fiduciary. Similarly, fiduciary relationships do not get obliterated because a statute requires the fiduciary to act selflessly with integrity and fidelity and the other party depends upon the wisdom and confidence reposed. All features of a fiduciary relationship may be present even when there is a statute, which endorses and ensures compliance with the fiduciary responsibilities and obligations. In such cases the statutory requirements, reiterates the moral and ethical obligation which already exists and does not erase the subsisting fiduciary relationship but reaffirms the said relationship.

12. A contractual or a statutory relationship can cover a very broad field but fiduciary relationship may be confined to a limited area or act, e.g. directors of a company have several statutory obligations to perform. A relationship may have several facets. It may be partly fiduciary and partly non fiduciary. It is not necessary that all statutory,

contractual or other obligations must relate to and satisfy the criteria of fiduciary obligations. Fiduciary relationships may be confined to a particular act or action and need not manifest itself in entirety in the interaction or relationship between the two parties. What distinguishes a normal contractual or informal relationship from a fiduciary relationship or act is as stated above, the requirement of trust reposed, highest standard of good faith and honesty on the part of the fiduciary with regard to the beneficiaries' general affairs or in a particular transaction, due to moral or personal responsibility as a result of superior knowledge and training of the fiduciary as compared to the beneficiary, resulting in dependence of the beneficiary. In this regard I may quote, the following observations in the decision dated 23rd April, 2007 by five members of the CIC in ***Rakesh Kumar Singh and others versus Harish Chander, Assistant Director and others*** ***MANU/CI/0246/2007.***

> "31. The word "fiduciary is derived from the Latin fiducia meaning "trust, a person (including a juristic person such as Government, University or bank) who has the power and obligation to act for another under circumstances which require total trust, good faith and honesty. The most common example of such a relationship is the trustee of a trust, but fiduciaries can include business advisers, attorneys, guardians, administrators, directors of a company, public servants in relation to a Government and senior managers of a firm/company etc. The fiduciary relationship can also be one of moral or personal responsibility due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling. In short, it is a relationship wherein one person places complete confidence in another in regard to a

> particular transaction or one's general affairs of business. The Black's Law Dictionary also describes a fiduciary relationship as "one founded on trust or confidence reposed by one person in the integrity and fidelity of another. The meaning of the fiduciary relationship may, therefore, include the relationship between the authority conducting the examination and the examiner who are acting as its appointees for the purpose of evaluating the answer sheets"

13. The relationship of a public servant with the Government can be fiduciary in respect of a particular transaction or an act when the law requires that the public servant must act with utmost good faith for the benefit of the Government and confidence is reposed in the integrity of the public servant, who should act in a manner that he shall not profit or take advantage from the said act. However, there should be a clear and specific finding in this regard. Normal, routine or rather many acts, transactions and duties of a public servant cannot be categorized as fiduciary for the purpose of Section 8(1)(e) of the RTI Act and information available relating to fiduciary relationship. (The said reasoning may not be applicable to service law jurisprudence, with which we are not concerned.)

14. Fiduciary relationship in law is ordinarily a confidential relationship; one which is founded on the trust and confidence reposed by one person in the integrity and fidelity of the other and likewise it precludes the idea of profit or advantage resulting from dealings by a person on whom the fiduciary obligation is reposed.

15. The object behind Section 8(1) (e) is to protect the information because it is furnished in confidence and trust reposed. It serves public purpose and ensures that the confidence, trust and the confidentiality attached is not betrayed. Confidences are respected. This is the public interest which the exemption under Section 8(1)(e) is designed to protect. It should not be expanded beyond what is desired to be protected. Keeping in view the object and purpose behind Section 8(1)(e) of the RTI Act, where it is possible to protect the identity and confidentiality of the fiduciary, information can be furnished to the information seeker. This has to be examined in case to case basis, individually. The aforesaid view is in harmony and in consonance with Section 10 of the RTI Act which reads as under:-

> "Section 10. (*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.
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> (*2*) Where access is granted to a part of the record under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing—
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> *(a)* that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
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> *(b)* the reasons for the decision, including any findings on any material question of fact,

> referring to the material on which those findings were based;
>
> *(c)* the name and designation of the person giving the decision;
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> *(d)* the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
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> *(e)* his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (*1*) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access."

16. Thus, where information can be furnished without compromising or affecting the confidentiality and identity of the fiduciary, information should be supplied and the bar under Section 8(1)(e) of the Act cannot be invoked. In some cases principle of severability can be applied and thereafter information can be furnished. A purposive interpretation to effectuate the intention of the legislation has to be applied while applying Section 8(1)(e) of the RTI Act and the prohibition should not be extended beyond what is required to be protected. In cases where it is not possible to protect the identity and confidentiality of the fiduciary, the privileged information is protected under Section 8(1)(e) of the RTI Act. In other cases, there is no jeopardy and the fiduciary relationship is not affected or can be protected by applying doctrine of severability.

17. Even when Section 8(1)(e) applies, the competent authority where larger public interest requires, can pass an order directing disclosure of information. The term “competent authority” is defined in Section 2(e) of the RTI Act and reads as under:-

> (*e*) "competent authority" means—
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> *(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;
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> *(ii)* the Chief Justice of India in the case of the Supreme Court;
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> *(iii)* the Chief Justice of the High Court in the case of a High Court;
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> *(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;
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> *(v)* the administrator appointed under article 239 of the Constitution;”

18. The term “competent authority” is therefore distinct and does not have the same meaning as “public authority” or Public Information Officer (hereinafter also referred to as PIO, for short) which are defined in Section 2(e) and (h) of the RTI Act.

19. The term “competent authority” is a term of art which has been coined and defined for the purposes of the RTI Act and therefore wherever the term appears, normally the definition clause i.e. Section 2(e) should be applied, unless the context requires a different interpretation. Under Section 8(1)(e) of the RTI Act, the competent authority is entitled to examine the question whether in view of the

larger public interest information protected under the Sub-clause should be disclosed. The jurisdiction of PIO is restricted and confined to deciding the question whether information was made available to the public authority in fiduciary relationship. The competent authority can direct disclosure of information, if it comes to the conclusion that larger public interest warrants disclosure. The question whether the decision of the competent authority can be made subject matter of appeal before the First Appellate Authority or the CIC has been examined separately. A decision of the PIO on the question whether information was furnished/available to a public authority in fiduciary relationship or not, can be made subject matter of appeal before the Appellate Authorities including the CIC.

SECTION 8(1)(i) OF THE RTI ACT

20. The said sub-clause protects Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. The first proviso however stipulates that the prohibition in respect of the decision of the Council of Ministers, the reasons thereof and the material on the basis of which decisions were taken shall be made public after the decision is taken and the matter is complete or over. Thus, a limited prohibition for a specified time is granted. Prohibition is not for an unlimited duration or infinite period but lasts till a decision is taken by the Council of Ministers and the matter is complete or over.

21. The main clause to Section 8(1)(i) uses the term Cabinet Papers which include records or deliberations, but the first proviso refers to the decision of the Council of Ministers, reasons thereof and the material on the basis of which the decisions were taken. The term "Council of Minsters" is wider than and includes Cabinet Ministers. It is not possible to accept the contention of Mr. A.S. Chandhiok , Learned Addl. Solicitor General that cabinet papers are excluded from the operation of the first proviso. The legal position has been succulently expounded in the order dated 23.10.2008 passed by the CIC in Appeal No.CIC/WA/A/2008/00081:

> "The Constitution of India, per se, did not include the term "Cabinet", when it was drafted and later on adopted and enacted by the Constituent Assembly. The term "Cabinet" was, however, not unknown at the time when the Constitution was drafted. Lot of literature was available during that period about "Cabinet", "Cabinet System" and "Cabinet Government". Sir Ivor Jennings in his "Cabinet Government", stated that the Cabinet is the supreme directing authority. It has to decide policy matters. It is a policy formulating body. When the Cabinet has determined on policy, the appropriate Department executes it either by administrative action within the law, or by drafting a Bill to be submitted to Parliament so as to change the law. The Cabinet is a general controlling body. It neither desires, nor is able to deal with all the numerous details of the Government. It expects a Minister to take all decisions that are of political importance. Every Minister must, therefore, exercise his own discretion as to what matters arising in his department ought to receive Cabinet sanction.
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> 3. In the Indian context, the Cabinet is an inner body within the Council of Ministers, which is responsible for formulating the policy of the Government. It is the Council of Ministers that is collectively responsible to

the Lok Sabha. The Prime Minster heads the Council of Ministers and it is he, *primus inter pares* who determines which of the Ministers should be Members of the Cabinet.

4. It is a matter of common knowledge that the Council of Ministers consist of the Prime Minister, Cabinet Ministers, Ministers of State and the Civil Services. The 44th Amendment to the Constitution of India for the first time not only used the term "Cabinet" but also literally defined it. Clause 3 of Article 352, which was inserted by 44th Amendment, reads as under:-

"The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing."

5. As per Section 8 of the Right to Information Act, 2005 a "Public Authority" is not obliged to disclose Cabinet papers including records of deliberations of the Council of Ministers, secretaries and other officers. Section 8(1) subjects this general exemption in regard to Cabinet papers to two provisos, which are as under:-

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 public after the decision has been taken, and the matter is complete, or over.

6. From a plain reading of the above provisos, the following may be inferred:-

i) Cabinet papers, which include the records of deliberations of the Council of Ministers, Secretaries and other officers shall be disclosed after the decision has been taken and the matter is complete or over.

ii) The matters which are otherwise exempted under Section 8 shall not be disclosed even after the decision has been taken and the matter is complete or over.

iii) Every decision of the Council of Ministers is a decision of the Cabinet as all Cabinet Ministers are also a part of the Council of Ministers. The Ministers of State are also a part of the Council of Ministers, but they are not Cabinet Ministers.

As we have observed above, the plea taken by the First Appellate Authority, the decision of the Council of Ministers are disclosable but Cabinet papers are not, is totally untenable. Every decision of the Council of Ministers is a decision of the Cabinet and, as such, all records concerning such decision or related thereto shall fall within the category of "Cabinet papers" and, as such, disclosable under Section 8(1) sub-section (i) after the decision is taken and the matter is complete, and over."

22. However, there is merit in the contention of Mr.A.S. Chandhiok, Learned Addl. Solicitor General relying upon Article 74(2) of the Constitution of India, which reads as under:-

"**74. Council of Ministers to aid and advise President**.-(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advise tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."

23. Seven Judges of the Supreme Court in ***S.P. Gupta and others versus President of India and others*** AIR 1982 SC 149 have examined and interpreted Article 74(2) of the Constitution of India.

The majority view of six Judges is elucidated in the judgment of Bhagwati, J. (as his lordship then was) in para 55 onwards. It was observed that the Court cannot embark upon an inquiry as to whether any and if so what advice was tendered by the Council of Ministers to the President. It was further observed that the reasons which prevailed with the Council of Ministers, would form part of the advice tendered to the President and therefore they would be beyond the scope/ambit of judicial inquiry. However, if the Government chooses to disclose these reasons or it may be possible to gather the reasons from other circumstances, the Court would be entitled to examine whether the reasons bear reasonable nexus [See, para 58 at p.228, ***S.P. Gupta*** (supra)]. Views expressed by authorities/persons which precede the formation of advice tendered or merely because these views are referred to in the advice which is ultimately tendered by the Council of Ministers, do not necessarily become part of the advice protected against disclosure under Article 74(2) of the Constitution of India. Accordingly, the material on which the reasons of the Council of Ministers are based and the advice is given do not form part of the advice. This has been lucidly explained in para 60 of the judgment as under:

> "60. …..But the material on which the reasoning of the Council of Ministers is based and the advice is given cannot be said to form the part of advice. The point we are making may be illustrated by taking the analogy of a judgment given by a Court of Law. The judgment would undoubtedly be based on the

> evidence led before the Court and it would refer to such evidence and discuss it but on that account can it be said that the evidence forms part of the Judgment? The judgment would consist only of the decision and the reasons in support of it and the evidence on which the reasoning and the decision are based would not be part of the judgment. Similarly, the material on which the advice tendered by the Council of Ministers is based cannot be said to be part of the advice and the correspondence exchanged between the Law Minister, the Chief Justice of Delhi and the Chief Justice of India which constituted the material forming the basis of the decision of the Central Government must accordingly be held to be outside the exclusionary rule enacted in cl.(2) of Art. 74."

24. Certain observations relied upon by the Union of India in the judgment of the Supreme Court in ***State of Punjab versus Sodhi Sukhdev Singh*** AIR 1961 SC 493, were held to be mere general observations and not ratio which constitutes a binding precedent. Even otherwise, it was held that report of Public Service Commission which formed material on the basis of which the Council of Ministers had taken a decision, did not form part of the advice tendered by the Council of Ministers. When Article 74(2) of the Constitution applies and bars disclosure, information cannot be furnished. RTI Act cannot and does not have the ability and mandate to negate the constitutional protection under Article 74(2). The said Article refers to inquiry by courts but will equally apply to CIC.

25. Bhagwati, J. (as his Lordship then was), has proceeded to examine and interpret Section 123 of the Evidence Act, 1872 and the protection on the basis of State privilege or public interest immunity.

Section 22 of the RTI Act is a non-obstante provision and therefore overrides Section 123 of the Evidence Act, 1872. Protection under Section 123 of the Evidence Act, 1872 cannot be a ground to deny information under the RTI Act. However, the question of public interest immunity has been examined in detail and the same is of relevance while interpreting Section 8(1)(j) of the RTI Act and this aspect has been discussed below.

26. The second proviso to Section 8(1)(i) of the RTI Act explains and clarifies the first proviso. As held above, the first proviso removes the ban on disclosure of the material on the basis of which decisions were taken by the Council of Ministers, after the decision has been taken and the matter is complete or over. The second proviso clarifies that even when the first proviso applies, information which is protected under Clauses (a) to (h) and (j) of Section 8(1) of the RTI Act, is not required to be furnished. The second proviso is added as a matter of abundant caution *exabudent catulia*. Sub-clauses (a) to (j) of Section 8(1) of the RTI Act are independent and information can be denied under Clauses 8(1)(a) to (h) and (j),even when the first proviso is applicable.

SECTION 8(1)(j) OF THE RTI ACT

27. The said clause has been examined in depth by Ravindra Bhat, J. in ***Subash Chand Agarwal*** (supra) under the heading point 5.

28. Examination of the said Sub-section shows that it consists of three parts. The first two parts stipulate that personal information which has no relationship with any public activity or interest need not be disclosed. The second part states that any information which should cause unwarranted invasion of a privacy of an individual should not be disclosed unless the third part is satisfied. The third part stipulates that information which causes unwarranted invasion of privacy of an individual will not be disclosed unless public information officer or the appellate authority is satisfied that larger public interest justifies disclosure of such information. As observed by S. Ravindra Bhat, J. the third part of Section 8(1)(j) reconciles two legal interests protected by law i.e. right to access information in possession of the public authorities and the right to privacy. Both rights are not absolute or complete. In case of a clash, larger public interest is the determinative test. Public interest element sweeps through Section 8(1)(j).Unwarranted invasion of privacy of any individual is protected in public interest, but gives way when larger public interest warrants disclosure. This necessarily has to be done on case to case basis taking into consideration many factors having regard to the circumstances of each case.

29. Referring to these factors relevant for determining larger public interest in ***R.K. Jain versus Union of India*** (1993) 4 SCC 120 it was observed :-

"54. The factors to decide the public interest immunity would include (a) where the contents of the documents are relied upon, the interests affected by their disclosure; (b) where the class of documents is invoked, whether the public interest immunity for the class is said to protect; (c) the extent to which the interests referred to have become attenuated by the passage of time or the occurrence of intervening events since the matters contained in the documents themselves came into existence; (d) the seriousness of the issues in relation to which production is sought; (e) the likelihood that production of the documents will affect the outcome of the case; (f) the likelihood of injustice if the documents are not produced……"

55. ……When public interest immunity against disclosure of the State documents in the transaction of business by the Council of Ministers of the affairs of State is made, in the clash of those interests, it is the right and duty of the court to weigh the balance in the scales that harm shall not be done to the nation or the public service and equally to the administration of justice. Each case must be considered on its backdrop. The President has no implied authority under the Constitution to withhold the documents. On the other hand it is his solemn constitutional duty to act in aid of the court to effectuate judicial review. The Cabinet as a narrow centre of the national affairs must be in possession of all relevant information which is secret or confidential. At the cost of repetition it is reiterated that information relating to national security, diplomatic relations, internal security of sensitive diplomatic correspondence per se are class documents and that public interest demands total immunity from disclosure. Even the slightest divulgence would endanger the lives of the personnel engaged in the services etc. The maxim *salus populi est suprema lex* which means that regard to public welfare is the highest law, is the basic postulate for this immunity. Political decisions like declaration of emergency under Article 356 are not open to judicial review but it is for the electorate at the polls to decide the executive wisdom. In other areas every communication which preceded from

> one officer of the State to another or the officers inter se does not necessarily per se relate to the affairs of the State. Whether they so relate has got to be determined by reference to the nature of the consideration the level at which it was considered, the contents of the document of class to which it relates to and their indelible impact on public administration or public service and administration of justice itself. 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 case* this Court held that only the actual advice tendered to the President is immune from enquiry and the immunity does not extend to other documents or records which form part of the advice tendered to the President."

30. In ***S.P. Gupta*** (supra), the Supreme Court held that democratic form of Government necessarily requires accountability which is possible only when there is openness, transparency and knowledge. Greater exposure about functioning of the Government ensures better and more efficient administration, promotes and encourages honesty and discourages corruption, misuse or abuse of authority, Transparency is a powerful safeguard against political and administrative aberrations and antithesis of inefficiency resulting from a totalitarian government which maintains secrecy and denies information. Reference was again made to ***Sodhi Sukhdev Singh*** (supra) and it was observed that there was no conflict between 'public

interest and non-disclosure' and 'private interest and disclosure' rather Sections 123 and 162 of the Evidence Act, 1872 balances public interest in fair administration of justice, when it comes into conflict with public interest sought to be protected by non-disclosure and in such situations the court balances these two aspects of public interest and decides which aspect predominates. It was held that the State or the Government can object to disclosure of a document on the ground of greater public interest as it relates to affairs of the State but the courts are competent and indeed bound to hold a preliminary enquiry and determine the validity of the objection to its production and this necessarily involves an enquiry into the question whether the evidence relates to affairs of the State. Where a document does not relate to affairs of the State or its disclosure is in public interest, for the administration of justice, the objection to disclosure of such document can be rejected. It was observed :

> "The court would allow the objection if it finds that the document relates to affairs of State and its disclosure would be injurious to public interest, but on the other hand, if it reaches the conclusion that the document does not relate to affairs of State or that the public interest does not compel its non-disclosure or that the public interest in the administration of justice in the particular case before it overrides all other aspects of public interest, it will overrule the objection and order disclosure of the document."

31. A statement or defence to non-disclosure is not binding on the courts and the courts retain the power to have a prima facie enquiry and balance the two public interest and affairs of the State. The same

is equally true and applies to CIC, who can examine the documents/information to decide the question of larger public interest. Section 18(4) of the RTI Act empowers CIC to examine any record under the control of a public authority, while inquiring into a complaint. The said power and right cannot be denied to CIC when they decide an appeal. Section 18 is wider and broader, yet jurisdiction under section 18 and 19 of the RTI Act is not water-tight and in some areas overlap.

32. The Supreme Court in **S.P Gupta**'s case considered the question whether there may be classes of documents which the public interest requires not to be disclosed or which should in absolute terms be regarded as immune from disclosure. In other words, we may examine the contention whether there can be class of documents which can be granted immunity from disclosure not because of their contents but because of their class to which they belong. Learned Additional Solicitor General in this regard made pointed reference to the following observations in ***S.P.Gupta*** (supra) :

> "69. …. The claim put forward by the learned Solicitor General on behalf of the Union of India is that these documents are entitled to immunity from disclosure because they belong to a class of documents which it would be against national interest or the interest of the judiciary to disclose…….. This class includes cabinet minutes, minutes of discussions between heads of departments, high level inter-departmental communications and dispatches from ambassadors abroad (vide : Conway v. Rimmer, 1968 AC 910 at pp. 952, 973, 979, 987 and 993 and Reg v. Lewes

> J.K. Ex parte Home Secy., 1973 AC 388 at p.412). Papers brought into existence for the purpose of preparing a submission to cabinet (vide Commonwealth Lanyon property Ltd v. Commonwealth, 129 LR 650) and indeed any documents which relate to the framing of government policy at a high level (vide : Re Grosvenor Hotel, London). It would seem that according to the decision in Sodhi Sukhdev Singh's case (AIR 1961 SC 493) (supra) this class may also extend to "notes and minutes made by the respective officers on the relevant files, information expressed or reports made and gist of official decisions reached" in the course of determination of questions of policy. Lord Reid in Conway v. Rimmer (supra) at page 952 proceeded also to include in this class "all documents concerned with policy-making within departments including, it may be minutes and the like by quite junior officials and correspondence with outside bodies". It is this case to consider what documents legitimately belong to this class so as to be entitled to immunity from disclosure, irrespective of what they contain. But it does appear that cabinet papers, minutes of discussions of heads of departments and high level documents relating to the inner working of the government machine or concerned with the framing of government policies belong to this class which in the public interest must be regarded as protected against disclosure."

33. The aforesaid observations have to be read along with the ratio laid down by the Supreme Court in subsequent paras of the said judgment. In para 71, it was observed that the object of granting immunity to documents of this kind is to ensure proper working of the Government and not to protect Ministers or other government servants from criticism, however intemperate and unfairly biased they may be. It was further observed that this reasoning can have little validity in democratic society which believes in open government. It was accordingly observed as under:-

> "The reasons given for protection the secrecy of government at the level of policy making are two. The first is the need for candour in the advice offered to Minister; the second is that disclosure 'would create or fan ill-informed or captious public or political criticism.' Lord Reid in Conway v. Rimmer thought the second 'the most important reason'. Indeed, he was inclined to discount the candour argument.

I think both reasons are factors legitimately to be put into the balance which has to be struck between the public interest in the proper functioning of the public service (i.e. the executive arm of the government) and the public interest in the administration of justice. 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.

The same view was expressed by Gibbs A.C.J. in Sankey v. Whitlam (supra) where the learned acting Chief Justice said:

> "I consider that although there is a class of documents whose members are entitled to protection from disclosure irrespective of their contents, the protection is not absolute, and it does not endure for ever. The fundamental and governing principle is that documents in the class may be withheld from production only when this is necessary in the public interest. In a particular case the court must balance the general desirability that documents of that kind should not be disclosed against the need to produce them in the interests of justice. The court will of course examine the question with special care, giving full weight to the reasons for preserving the secrecy of documents of this class, but it will not treat all such documents as entitled to the same measure of protection – the extent of protection required will depend to some extent on the general subject matter with which the documents are concerned."

There is nothing sacrosanct about the immunity which is granted to documents because they belong to a certain class. Class immunity is not absolute or

> inviolable in all circumstances. It is not a rule of law to be applied mechanically in all cases. The principle upon which class immunity is founded is that it would be contrary to public interest to disclose documents belonging to that class, because such disclosure would impair the proper functioning of the public service and this aspect of public interest which requires that justice shall not be denied to any one by withholding relevant evidence. This is a balancing task which has to be performed by the Court in all cases."

34. Possibly the only class of documents which are granted immunity from disclosure is those mentioned under Article 74(2) of the Constitution. These are documents or information which are granted immunity from disclosure not because of their contents but because of the class to which they belong. Other documents and information which do not fall under Article 74(2) of the Constitution cannot be held back on the ground that they belong to a particular class which is granted absolute protection against disclosure. All other documents/information is not granted absolute or total immunity. Protection from disclosure is decided by balancing the two competing aspects of public interest i.e. when disclosure would cause injury or unwarranted invasion of privacy and on the other hand if non-disclosure would throttle the administration of justice or in this case, the public interest in disclosure of information. In such cases, the Court/CIC has to decide, which of the two public interests pre-dominates.

35. Same view has been taken by the Supreme Court in its subsequent judgment in the case of ***R.K. Jain*** (supra). It was observed as under:-

"43. It would, therefore, be concluded that it would be going too far to lay down that no document in any particular class or one of the categories of cabinet papers or decisions or contents thereof should never, in any circumstances, be ordered to be produced. Lord Keith in *Burmah Oil case* considered that it would be going too far to lay down a total protection to Cabinet minutes. The learned Law Lord at p.1134 stated that "something must turn upon the subject-matter, the persons who dealt with it, and the manner in which they did so. Insofar as a matter of government policy is concerned, it may be relevant to know the extent to which the policy remains unfulfilled, so that its success might be prejudiced by disclosure of the considerations which led to it. In that context the time element enters into the equation. Details of an affair which is stale and no longer of topical significance might be capable of disclosure without risk of damage to the public interest….. The nature of the litigation and the apparent importance to it of the documents in question may in extreme cases demand production even of the most sensitive communications to the highest level". Lord Scarman also objected to total immunity to Cabinet documents on the plea of candour. In *Air Canada case* Lord Fraser lifted Cabinet minutes from the total immunity to disclose, although same were "entitled to a high degree of protection…."

44. x x x x x

45. In a clash of public interest that harm shall be done to the nation or the public service by disclosure of certain documents and the administration of justice shall not be frustrated by withholding the document which must be produced if justice is to be done, it is the courts duty to balance the competing interests by weighing in scales, the effect of disclosure on the public interest or injury to administration of justice, which would do greater harm. Some of the important considerations in the balancing act are thus: "in the interest of national security some information which is so secret that it cannot be disclosed except to a very few for instance the State or its own spies or agents just as other countries have. Their very lives may be endangered if there is the slightest hint of what they are doing." In *R. v. Secretary of State for Home Affairs, ex p Hosenball* in the interest of national security Lord Denning, M.R. did not permit disclosure of the

> information furnished by the security service to the Home Secretary holding it highly confidential. The public interest in the security of the realm was held so great that the sources of the information must not be disclosed nor should the nature of information itself be disclosed."

36. Reference in this regard may also be made to the judgment of the Supreme Court in ***Dinesh Trivedi M.P. and others versus U.O.I*** (1997) 4 SCC 306 and ***Peoples' Union for Civil Liberties versus Union of India*** (2004) 2 SCC 476.

37. Considerable emphasis and arguments were made on the question of 'candour argument' and the observations of the Supreme Court in the case of ***S.P. Gupta*** (supra). It will be incorrect to state that candour argument has been wholly rejected or wholly accepted in the said case. The ratio has been expressed in the following words:

> "70. ….. We agree with these learned Judges that the need for candour and frankness cannot justify granting of complete immunity against disclosure of documents of this class, but as pointed out by Gibbs A.C.J. in Sankey v. Whitlam (supra), it would not be altogether unreal to suppose "that in some matters at least communications between ministers and servants of the Grown may be more frank and candid if these concerned believe that they are protected from disclosure" because not all Crown servants can be expected to be made of "sterner stuff". The need for candour and frankness must therefore certainly be regarded as a factor to be taken into account in determining whether, on balance, the public interest lies in favour of disclosure or against it (vide : the observations of Lord Denning in Neilson v. Lougharre, (1981) 1 All ER at p. 835.
>
> 71. There was also one other reason suggested by Lord Reid in *Conway* v. *Rimmer* for according protection against disclosure to documents

> belonging to this case: “To my mind,” said the learned Law Lord: “the most important reason is that such disclosure would create or fan ill-informed or captious public or political criticism. The business of Government is difficult enough as it is, and no Government could contemplate with equanimity the inner workings of the Government machine being exposed to the gaze of those ready to criticise without adequate knowledge of the background and perhaps with some axe to grind.” But this reason does not commend itself to us. The object of granting immunity to documents of this kind is to ensure the proper working of the Government and not to protect the ministers and other Government servants from criticism however intemperate and unfairly based. Moreover, this reason can have little validity in a democratic society which believes in an open Government. It is only through exposure of its functioning that a democratic Government can hope to win the trust of the people. If full information is made available to the people and every action of the Government is bona fide and actuated only by public interest, there need be no fear of “ill-informed or captious public or political criticism”. But at the same time it must be conceded that even in a democracy, Government at a high level cannot function without some degree of secrecy. No minister or senior public servant can effectively discharge the responsibility of his office if every document prepared to enable policies to be formulated was liable to be made public. It is therefore in the interest of the State and necessary for the proper functioning of the public service that some protection be afforded by law to documents belonging to this class. What is the measure of this protection is a matter which we shall immediately proceed to discuss.”

38. This becomes clear when we examine the test prescribed by the Supreme Court on how to determine which aspect of public interest predominates. In other words, whether public interest requires disclosure and outweighs the public interest which denies access. Reference was made with approval to a passage from the

judgment of Lord Reid in ***Conway vs Rimmer*** 1968 AC 910. The Court thereafter elucidated:-

> "72. …..The court has to decide which aspect of the public interest predominates or in other words, whether the public interest which requires that the document should not be produced, outweighs the public interest that a court of justice in performing its function should not be denied access to relevant evidence. The court has thus to perform a balancing exercise and after weighing the one competing aspect of public interest against the other, decide where the balance lies. If the court comes to the conclusion that, on the balance, the disclosure of the document would cause greater injury to public interest than its non-disclosure, the could would uphold the objection and not allow the document to be disclosed but if, on the other hand, the court finds that the balance between competing public interests lies the other way, the court would order the disclosure of the document. This balancing between two competing aspects of public interest has to be performed by the court even where an objection to the disclosure of the document is taken on the ground that it belongs to a class of documents which are protected irrespective of their contents, because there is no absolute immunity for documents belonging to such class."

39. Again reference was made to the following observations of Lord Scarman in ***Burmah Oil versus Bank of England*** 1979-3 All ER 700:

> "But, is the secrecy of the inner workings of the government at the level of policy making are two. The first is the need for candour in the advice offered to Ministers; the second is that disclosure 'would create or fan ill-informed or captious public or political criticism.' Lord Reid in Conway v. Rimmer thought the second 'the most important reason'. Indeed, he was inclined to discount the candour argument."

40. However, the said observations have to be read and understood in the context and the year in which they were made. In the **S.P Gupta's** case, the Supreme Court observed that interpretation of every statutory provision must keep pace with the changing concepts and values and to the extent the language permits or rather does not prohibit sufficient adjustments to judicial interpretations in accord with the requirements of fast changing society which is indicating rapid social and economic transformation. The language of the provision is not a static vehicle of ideas and as institutional development and democratic structures gain strength, a more liberal approach may only be in larger public interest. In this regard, reference can be made to the factors that have to be taken into consideration to decide public interest immunity as quoted above from ***R.K. Jain case*** (supra).

41. The proviso below Section 8(1)(j) of the RTI Act was subject of arguments. The said proviso was considered by the Bombay High Court in ***Surup Singh Hryanaik versus State of Maharashtra*** AIR 2007 Bom. 121 and it was held that it is proviso to the said sub-section and not to the entire Section 8(1). The punctuation marks support the said interpretation of Bombay High Court. On a careful reading of Section 8(1), it becomes clear that the exemptions contained in the clauses (a) to (i) end with a semi colon ";" after each such clause which indicate that they are independent clauses. Substantive sub section Clause (j) however,

ends with a colon ":"followed by the proviso. Immediately following the colon mark is the proviso in question which ends with a full stop ".". In Principles of Statutory Interpretation, 11th Ed. 2008 (at page No. 169) G.P Singh, has noted that "If a statute in question is found to be carefully punctuated, punctuation, though a minor element, may be resorted to for purposes of construction." Punctuation marks can in some cases serve as a useful guide and can be resorted to for interpreting a statute

42. Referring to the purport of the proviso in ***Surup Singh*** (supra), the Bombay High Court has held that information normally which cannot be denied to Parliament or State Legislature should not be withheld or denied.

43. A proviso can be enacted by the legislature to serve several purposes. In ***Sundaram Pillai versus Patte Birman*** (1985) 1 SCC 591 the scope and purpose of a proviso and an explanation has been examined in detail. Normally, a proviso is meant to be an exception to something in the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. A proviso cannot be torn apart from the main enactment nor can it be used to qualify and set at naught, the object of the main enactment. Sarthi on "Interpretation of Statutes", referred to in the

said judgment, states that a proviso is subordinate to the main section and one of the principles which can be applied in a given case is that a proviso would not enlarge an enactment except for compelling reasons. It is unusual to import legislation from a proviso into the body of the statute. But in exceptional cases a proviso in itself may amount to a substantive provision. The proviso in the present cases is a guiding factor and not a substantive provision which overrides Section 8(1)(j) of the RTI Act. It does not undo or rewrite Section 8(1)(j) of the RTI Act and does not itself create any new right. The purpose is only to clarify that while deciding the question of larger public interest i.e., the question of balance between 'public interest in form of right to privacy' and 'public interest in access to information' is to be balanced.

SECTION 8(2) OF THE RTI ACT

44. Section 8(2) of the RTI Act empowers a public authority to allow access to information even when the Official Secrets Act, 1923 or any of the exemption clauses in Sub-section (1) are applicable. The requirement is that public interest in disclosure should outweigh the harm to protected interest. The question of public interest and when the right to disclosure of information would outweigh rights to secrecy and confidentiality or privacy as has been referred to and considered above. Section 8(2) of the RTI Act empowers the public authority to decide the question whether right to disclosure over-weighs the harm to protected interests. PIO cannot decide this question and cannot

pass an order under Section 8(2) of the RTI Act holding, inter alia, that information is covered by the exemption clauses under Section 8(1) of the RTI Act but public interest in disclosure overweighs and justifies disclosure. Once PIO comes to the conclusion that any of the exemption clauses is applicable, he cannot decide and hold that Section 8(2) of the RTI Act should be invoked and lager public interest requires disclosure of information. Unlike Section 8(1)(j) of the RTI Act, under section 8(2) this power to decide whether larger public interest warrants disclosure of information is not conferred on the PIO.

APPEALS AND COMPLAINTS

45. Chapter V of the RTI Act incorporates powers and functions of Central Information Commissions, appeals and penalties. Section 18 of the RTI Act which defines powers and functions of the Central Information Commission and/or State Information Commissions relates to administrative functions of the said Commissions and their power and authority to ensure general compliance of the provisions of the RTI Act by the PIOs. The said Section ensures that the Central or the State Information Commissions have superintendence and can issue directions to PIOs so that there is effective and proper compliance of the provisions of the RTI Act in letter and spirit. For this purpose, Information Commissions have been vested with powers under the Code of Civil Procedure, 1908 and right to inspect any

record during the pendency of in respect of any decision made under this Act. No record can be withheld from the Central or the State Information Commissions on any ground. This power to inspect the records, etc., will equally apply when CIC decides appeals under Section 19 of the RTI Act.

46. Section 19 of the RTI Act relates to appellate power of the first appellate authority and the Central or the State Information Commissions.

47. Appeal can be filed before the first appellate authority when the information seeker does not receive any decision within the time specified in Section 7(1) or if the information seeker is aggrieved from the quantum of cost demanded for furnishing of information under Section 7(3)(a) of the RTI Act or against the decision of the PIO. Under Section 19(1) of the RTI Act, appeal before the first Appellate Authority cannot be filed against an order or a decision of the competent authority or the public authority or the appropriate government.

48. Under Section 19(3) of the RTI Act, second appeal before the Central or the State Information Commissions is maintainable against the decision under Sub-section (1) of the first Appellate Authority. The scope of appeal therefore before the second Appellate Authority is restricted to subject matters that are appealable before the first Appellate Authority under Sub-section (1) of Section 19 of RTI Act.

Second Appellate Authority cannot therefore go into the questions which cannot be raised and made subject of appeal before the first Appellate Authority. As a necessary corollary, the second Appellate Authority i.e. the Central of the State Information Commissions can examine the decision of the PIO or their failure to decide under Section 7(1) or the quantum of cost under Section 7(3)(a) of the RTI Act. They can also go into third party rights and interests under Section 19(4) of the RTI Act. Central or the State Information Commissions cannot examine the correctness of the decisions/directions of the Public Authority or the competent authority or the appropriate government under the RTI Act, unless under Section 18 the Central/State Information Commission can take cognizance. The information seeker is however not remediless and where there is a lapse by the competent authority, the public authority or the appropriate government, writ jurisdiction can be invoked. It is always open to a citizen to make a representation to public authority, appropriate government or the competent authority whenever required and on getting an unfavourable response, take recourse to constitutional rights under Article 226/227 of the Constitution of India. In a given case, the Central or the State Information Commissions can recommend to the competent authority, public authority or the appropriate government to exercise their powers but the decision of the competent authority, public authority or the appropriate government cannot be made subject matter of appeal, unless the

right has been conferred under Section 18 or 19 of the RTI Act. Central and State Information commissions have been created under the statute and have to exercise their powers within four corners of the statute. They are not substitute or alternative adjudicators of all legal rights and cannot decide and adjudicate claims and disputes other than matters specified in Sections 18 and 19 of the RTI Act.

49. It was urged by Mr.A.S. Chandhiok, learned Additional Solicitor General of India that Section 8(1) of the RTI Act is not the complete code or the grounds under which information can be refused and public information officers/appellate authorities can deny information for other justifiable reasons and grounds not mentioned. It is not possible to accept the said contention. Section 22 of the RTI Act gives supremacy to the said Act and stipulates that the provisions of the RTI Act will override notwithstanding anything to the contrary contained in the Official Secrets Act or any other enactment for the time being in force. This non-obstante clause has to be given full effect to, in compliance with the legislative intent. Wherever there is a conflict between the provisions of the RTI Act and another enactment already in force on the date when the RTI Act was enacted, the provisions of the RTI Act will prevail. It is a different matter in case RTI Act itself protects a third enactment, in which case there is no conflict. Once an applicant seeks information as defined in Section 2(f) of the RTI Act, the same cannot be denied to the information seeker except on any of the grounds mentioned in Sections 8 or 9 of

the RTI Act. The Public Information Officer or the appellate authorities cannot add and introduced new reasons or grounds for rejecting furnishing of information. It is a different matter in case what is asked for by the applicant is not 'information' as defined in Section 2(f) of the RTI Act. (See, Writ Petition (Civil) No.4715/2008 titled ***Election Commission of India versus Central Information Commission and others***, decided on 4th November, 2009 and Writ Petition (Civil) No. 7265/2007 titled ***Poorna Prajna Public School versus Central Information Commission & others*** decided on 25th September, 2009).

50. There is one exception, to the aforesaid principle. Dissemination of information which is prohibited under the Constitution of India cannot be furnished under RTI. Constitution of India being the fountainhead and the RTI Act being a subordinate Act cannot be used as a tool to access information which is prohibited under the Constitution of India or can be furnished only on satisfaction of certain conditions under the Constitution of India.

51. Learned Additional Solicitor General had urged that Section 8(1) of the RTI Act empowers and authorizes public information officers to deny information but the decision on merits cannot be questioned in appeal before the Central/State Information Commission. It was submitted that the decision of the public information officers and the first appellate authority cannot be made

subject matter of second appeal before the CIC except when under Section 8(1) of the RTI Act the Central/State Information Commission has been empowered to examine the correctness or merit of the decision of the public information officer. In this connection, my attention was drawn to the language of Section 8(1)(j) of the RTI Act. This contention cannot be accepted. Power of the CIC as observed above, under Sections 18 and 19 includes power to go into the question whether provisions in any clause of Section 8(1) of the RTI Act, have been rightly interpreted and applied in a given case. The power of the CIC is that of an appellate authority which can go into all questions of law and fact and is not circumscribed or limited power. Indeed the argument will go against the very object and purpose of the RTI Act and negates the power of general superintendence vested with the Central/State Information Commissions under Section 18 of the RTI Act.

(1) <u>WRIT PETITION (CIVIL) NO. 8396 OF 2009</u>

52. Respondent no.2-P.D. Khandelwal by his application dated 26th April, 2007 had asked for inspection of the file/records of Appointments Committee of the Cabinet mentioned in letter no. 18/12/99-EO(SM-II) in which the following directions were issued:

> "There shall be no supersession inter-se seniority among all officers considered fit for promotion will be maintained as before. Department of Revenue should expeditiously undertaken amendment to Recruitment Rules to bring it on part with All India Services to avoid supersession."

53. The request was declined by the CPIO as exempt under Section 8(1)(i) of the RTI Act. On first appeal a detailed order was passed inter alia holding that records of Appointments Committee of the Cabinet are Cabinet Papers and distinct from decision of Council of Ministers, reasons thereof and materials on the basis of which decisions are taken. It was accordingly held that the first proviso to Section 8(1)(i) of the RTI Act is not applicable. Reference was made to Article 74 of the Constitution of India which refers to Council of Ministers and it was held that Cabinet is a creature of rule making power under Article 77(3) of the President of India. In the words of the first Appellate Authority it was held:

> "…….This rule-making power (for conduct of the Government business) of the President of India is his supreme power, in his capacity as the supreme executive of India. This power is unencumbered even by the Acts of Parliament, as this rule-making power flows from the direct constitutional mandate and they are not product of any legislative authorization. In view of the fact that the "separation of powers" is one of the fundamental feature of the our Constitution, these rules, promulgated by the President of India, for regulation of conduct of Government's business (Transaction of business and allocation of business) cannot be fettered by any act or by any Judicial decision of any Court, Commission, Tribunal, etc. Since ACC is a product of the rules framed under Article 77(3) of the Constitution of India, its business (deliberations including the decision whether they are to be made public) are not the subject-matter of the decisions of any other authority other than the President of India himself.
>
> Therefore, unless these rules, framed under Article 77(3) themselves provide for disclosure of

information pertaining to the working of the cabinet and its committees, no disclosure can be made pertaining to them, under the RTI Act. Therefore, the RTI Act has rightly provided for non-disclosure of the information pertaining to "Cabinet Papers."

54. The CIC has rightly rejected the said reasoning.

55. Article 77 of the Constitution reads :

> "**77. Conduct of business of the Government of India.**—(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.
>
> (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.
>
> (3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."

56. In ***Jayanti Lal Amrit Lal Shodan versus Rana,*** (1964) 5 SCR 294 the Supreme Court had drawn a distinction between the Executive power of the Union under Article 53 and the Executive functions vested with the President under specific Articles. It was observed that *the functions specifically vested in the President have to be distinguished from the Executive Power of the Union.* The functions specifically vested with the President cannot be delegated and have to be personally exercised. The aforesaid principle was expanded in ***Sardari Lal versus Union of India*** AIR 1971 SC 1547 holding, inter alia, that Joint Secretary to the Government of India by virtue of power delegated to under Article 77(3) could not on behalf of

President of India pass an order dispensing with an enquiry under Article 311(2) of the Constitution. However the decision in ***Sardari Lal*** *(supra)* has been overruled in ***Shamsher Singh versus State of Punjab*** AIR 1974 SC 2192. It was held that decision in ***Jayanti lal*** (supra) was confined to Article 258 of the Constitution and had no bearing on Articles 74, 75 and 77 of the Constitution. It was held that whatever Executive functions have to be exercised by the President, whether such function is vested in the Union or in the President as President, it is to be exercised with the advice of Council of Ministers. The President being the Constitutional head of the Executive is bound by the said advice except under certain exceptions which relate to extraordinary situations. Even in functions required to be performed by the President on subjective satisfaction could be delegated by rules of business under Article 77(3) to the Minister or Secretary of the Government of India. The satisfaction referred to in the Constitutional sense is the satisfaction of the Council of Ministers who advice the President or the Governor.

57. Article 77 nowhere prohibits or bans furnishing of information. The only prohibition is mentioned in Article 74(2) of the Constitution which has been examined above. The query raised obviously does not fall within the protection granted under Article 74(2) of the Constitution and no reliance can be placed on the said Article in the present case. On the question of distinction between the Cabinet and

the Council of Ministers I entirely agree with the reasoning given by the Chief Information Commissioner which has been quoted above.

Accordingly, the Writ Petition is dismissed.

(2) WRIT PETITION (CIVIL) NO. 16907 OF 2006

58. Respondent no.1-Sweety Kothari had filed an application seeking following information:

> " (a) Copies of the advertisements calling for applications for selection of ITAT members in Calendar Years 2002 and 2003.
>
> (b) Recommendation of Interview/Selection Board regarding selection of the said members.
>
> (C) Names of the person finally selected as ITAT members in the above-mentioned Calendar Years."

59. Information at serial nos. (a) and (c) have been supplied but information at serial no.(b) was denied by the Public Information Officer and the first appellate authority. Central Information Commission by the impugned order dated 7th June, 2006 has directed furnishing of the said information. The contention of the petitioner herein is that the final selection is approved by the Appointment Committee of the Cabinet (ACC) and therefore Section 8(1)(i) of the RTI Act was attracted, was rejected. It was the contention of the public authority that Appointment Committee of the Cabinet functions under the delegated powers of the Cabinet and for all practical purposes it is co-extensive with the Cabinet's powers attracts exemption under Section 8(1)(i) of the RTI Act. To this

extent, the CIC agreed but relying upon the first proviso to Section 8(1)(i) of the RTI Act it was observed that appointments have already been made and therefore information should be disclosed and put in public domain.

60. The recommendations made by the interview/selection board, is one of the material which is before the Appointment Committee of the Cabinet. Therefore the recommendations are not protected under Article 74(2) of the Constitution of India which grants absolute immunity from disclosure of the advice tendered by Ministers and the reasons thereof. After appointments have been made, even if Section 8(1)(i) applies, the first proviso comes into operation.

61. Learned counsel for the petitioner submitted that information should be denied under Section 8(1)(j) of the RTI Act. It appears that no such contention was raised before the Central Information Commission. The order passed by the Public Information Officer also does not rely upon Section 8(1)(j) of the RTI Act. In the grounds reference has been made to Section 8(1)(j) of the RTI Act but without giving any foundation and basis to invoke the said clause. There is no foundation to justify, remand of the matter to CIC to examine exclusion under Section 8(1)(j) of the RTI Act. Information seeker is asking for recommendations made by the selection/interview board and not for comments or observations. List of candidates as per the recommendations of the interview/selection board have to be

furnished. Reference before the CIC was made to Section 123 of the Evidence Act, 1872, and as held above in view of Section 22 of the RTI Act, the said provision cannot be a ground to deny information. In view of the aforesaid, the present Writ Petition is dismissed.

(3) WRIT PETITION (CIVIL) NO. 4788 OF 2008

62. Central Information Commission by the impugned Order dated 6th June, 2008 has directed furnishing of the information under clauses (b) to (e) to the Respondent no.2-Brig.Deepak Grover (retd.):

> "(a)The ACR profiles of all officers of 1972 batch of Engineer Officers who were considered in the Selection Board No.1 held in September 05"
>
> (b) The weightage, if any, given over and above the ACR grading to each of the officers considered in the Selection Board referred to at Para 3(a) above.
>
> (C) The final comparative graded merit of all the Engineer Officers of the 1972 batch placed before the Selection Board referred to at Para 3(a) above.
>
> (d) The recommendations of the Selection Board referred to at Para 3(a) above with respect to all the Engineer officers of the 1972 batch considered by the Board.
>
> (e) The No. of Engineer Officers considered vis-à-vis those approved for promotion by the Selection Board No.1 for the 1968, 1969, 1970, 1971, 1972 and 1973 batches."
>
> [Note; information (a) has been denied.]

63. The public authority had relied upon Section 8(1)(e) and (j) of the RTI Act. Central Information Commission referred to the judgment of the Supreme Court in Civil Appeal No. 7631/2002 titled ***Dev Dutt versus Union Public Service Commission and others***

(decided on 12th May, 2008) but it was observed that this decision was not applicable as the information seeker had asked for third party ACRs. Thus information (a) was denied. CIC made reference to their decision dated 13th July, 2006 in the case of ***Gopal Kumar versus Ministry of Defence*** (Case No. CIC/AT/A/2006/00069) and it was observed that disclosure of contents of ACR is not exempted under Section 8(1)(j) but the principle of severability under section 10 of the RTI Act should be applied. Informations (b) to (e) were directed to be furnished. The Central Information Commission did not permit the petitioner herein to rely upon Section 8(1)(a) of the RTI Act as the said Section was not invoked by the Public Information Officer or the first appellate authority. The said approach and reasoning is not acceptable. Public authority is entitled to raise any of the defences mentioned in Section 8(1) of the RTI Act before the Central Information Commission and not merely rely upon the provision referred to by the Public Information Officer or the first appellate authority to deny information. An error or mistake made by the Public Information Officer or the first appellate authority cannot be a ground to stop and prevent a public authority from raising a justiciable and valid objection to disclosure of information under Section 8(1) of the RTI Act. The subject matter of appeal before the Central Information Commission is whether or not the information can be denied under Section 8(1) of the RTI Act. While deciding the said question it is open to the public authority to rely upon any of the Sub-sections to

Section 8(1) of the RTI Act, whether or not referred to by the public information officer or the first appellate authority. Under Section 19(9) notice of the decision is to be given to a public authority.

64. Decision in ***Dev Dutt case*** (supra) holds that public servant has a right to know the annual grading given to him and the same must be communicated to him within a reasonable period. However, the said ratio as per para 41 of the said judgment is not applicable to military officers in view of the decision of the Supreme Court in ***Union of India versus Maj. Bahadur Singh*** (2006) 1 SCC 368. The present case is one of a military officer. Further, the information seeker wants to know observations in and contents of his ACR and not merely his gradings. The petitioners herein have also relied upon Section 8(1)(e) and (j) of the RTI Act in addition to Section 8(1)(a) of the RTI Act.

65. CIC has partly allowed the appeal but did not notice that under queries (b) to (e) the respondent no. 2 had also asked for ACR grading of other officers and comparative grade/merit charge of all officers of 1972 batch. Thus information mentioned in (a) and (b) to (e) were some-what similar. Information (a) has been denied but (b) to (e) have been allowed. There is no discussion and reasoning given in the order with reference to either Section 8(1)(e) or (j) of the RTI Act. In ***R.K. Jain's*** case (supra) it was observed

> **"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 Government when transacted by bureaucrats, even in personal level, it would be difficult to have equanimity if the inner working of the Government machinery is needlessly exposed to the public. On such sensitive issues it would hamper the expression of frank and forthright views or opinions. Therefore, it may be that at that level the deliberations and in exceptional cases that class or category of 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."

66. It cannot be said that comments in ACRs in all cases have to be furnished as a matter of right and in no case Section 8(1)(e) or (j) of the RTI Act will apply. Each case has to individually examined keeping in mind the factual matrix. While applying Section 8(1)(j) the two interests have to be balanced. As the matter is remanded back on the question of applicability of Section 8(1)(a) of the RTI Act, the petitioners herein will be entitled to raise objection under Sub-section (e) and (j) of the RTI Act before the Central Information Commission.

67. However, as noticed above, in view of Section 22 of the RTI Act reference to the provisions of the Army Act and the subordinate legislation made thereunder is irrelevant. Whether or not information should be furnished has to be examined in the light of Section 8(1) of the RTI Act.

(4) WRIT PETITION (CIVIL) NO. 9914 OF 2009

68. Respondent no.2-Maj. Rajpal (retd) was invalidated from army service on medical grounds on 26th August, 1992. On 14th May, 2007 he asked for the following information:-

> " (i) List of senior service officers who formed the "selection panel".
>
> (ii) List of affected service officers placed before the "selection board".
>
> (iii) My medical category listed and placed before the "selection board".
>
> (iv) Board proceedings and its subsequent disposal duly enclosing the relevant AO/AI's on the subject.
>
> (v) A copy of Military Seecretary-14 (MS-14) Branch letter No. 55821/Gen/MS-14/B dated 21 August, 1992 addressed to 664 Coy ASC Tk tptr type 'C', C/O 56 APO, Subject : Photograph Officers, The said letter has been signed by Sh B.R. Sharma, ACSO, Offg AMS-14 for MS."

69. Information was partly denied by the Public Information Officer and the first appellate authority. On second appeal by the impugned Order dated 12th February, 2009 the Central Information Commission has directed furnishing of following information :-

> "(i) A list of senior officers who constituted the Selection Board.
>
> (ii) A copy of the Board proceedings of the Selection Board including the copy of the record in the recommendation of the Board was subsequently dealt with."

70. Union of India objects and has filed the present Writ Petition.

71. It is mentioned in the writ petition that the respondent no.2 was considered for promotion to the rank of Lt. Colonel (Time Scale) in June 1990 but because of low medical category he was not granted the said grade.

72. The period in question admittedly relates to the year 1990. The respondent no.2 has been adversely affected and was denied promotion as a result of the said board proceedings. As held above the test of larger public interest cannot be put in any strait jacket but is flexible and depends upon factual matrix of each case. It is difficult to comprehend and accept that any public interest would be served by denying information to the respondent no.2 with regard to selection board proceedings and record of how the recommendations of the selection board was subsequently dealt in an old matter relating to the year 1990. The matter is already stale and of no interest and concern to others, except respondent no.2. Reference can be made to para 54 of the decision of the Supreme Court in ***R.K. Jain*** (supra) that the extent to which the interests referred to have become attenuated by passage of time or occurrence of intervening events is

a relevant circumstance. Passage of time since the creation of information may have an important bearing on the balancing of interest under section 8(1)(j) of the RTI Act. The general rule is that maintaining exemption under the said clause diminishes with passage of time. The test of larger public interest merits disclosure and not denial of the said information. However, direction to disclose names of the officers who constituted the said panel could not have been issued without complying with provisions of Section 11 and Section 19(4) of the RTI Act. The said procedure has not been followed by the CIC. I am however not inclined to remand the matter back on the said question as disclosure of the said names would result in unwanted invasion of privacy of the said persons and there is no ground to believe that larger public interest would justify disclosure of said names. The impugned order passed by the CIC dated 12th February, 2009 is non-speaking and no-reasoned and does not take the said aspects into consideration. Even the written submissions of the respondent no.2 do not disclose any larger public interest which would justify disclosure of the name of the officers. This will also take care of objection under section 8(1)(e) of the RTI Act.

73. The Writ Petition is accordingly partly allowed and the petitioner need not disclose the name of the officers who constituted the selection panel and applying the doctrine of severability, copy of the board minutes and subsequent record of recommendation should be supplied without disclosing the names of the officers.

(5) WRIT PETITION (CIVIL) NO. 6085 OF 2008

74. Col. H.C. Goswami (retd.)-respondent no.2 is a retired Army officer of 1963 batch officer. He was charge sheeted on the ground of misconduct and general court martial was convened and he was sentenced to be cashiered and directed to serve rigorous imprisonment of two years. The court martial proceedings and subsequent orders were quashed in Crl. Writ Petition No.675/1989. The respondent no.2 was held entitled to all benefits as if he was not tried and punished and the said judgment was upheld by the Supreme Court. Consequent upon the judgment, the respondent no.2's case was put up for consideration for promotion to the rank of Brigadier on 7th September, 1999 before selection board-II. By letter dated 25th October, 1999 respondent no.2 was informed that he was not found fit for promotion. This order was successfully challenged in W.P.(C) 7391/2000 decided on 7th August, 2008. The Division Bench held that the selection board-II could not have directly or indirectly relied upon or discussed respondent no.2's trial and punishment in the court martial proceedings while evaluating his performance and considering his case for promotion. Reference was made to Master Data sheets and CR dossiers in which the details of CRs earned since commissioned and court certificates, awards, citations in respect of honours, details of disciplinary cases are mentioned. It was noticed that evaluation of merits of the officers was not based upon

any quantification of marks or aggregation of marks. There was no cut off discernible from the record to justify or deny promotion to any one falling below the cut off. Accordingly, the recommendations made by the selection board II denying promotion was set aside with a direction to reconvene a selection board to consider the case of the respondent no.2 afresh. It was in these circumstances that the respondent no.2 had filed an application under the RTI Act seeking the following information :-

> " Regarding the proceedings of No.2 Selection Board held in August/September 1999 and the proceedings of no.2 selection Board held in Aug/Sep 1990 of 1963 batch for promotion to the rank of Brigadier:
>
> 1. The extracts of all my ACRs which were considered for his promotion to the rank of Brigadier
>
> 2. The OAP (Overall Performance) Grading/Pointing of his promotion to the rank of Brigadier of the batch 1999 with whom my name was considered.
>
> 3. The OAP of the last officer who was approved and promoted to the rank of Brigadier of the batch 1999 with whom my name was considered.
>
> 4. The OAP Grading/Points of the last officer of 1963 batch who was approved by the No.2 Selection Board held in Aug/Sep 1990 for promotion to the rank of Brigadier."

75. Before the CIC it was submitted that there was no appraisal known as OAP (Overall Performance) with the Ministry of Defence and there was no figurative assessment of officers. However, it was admitted that an overall profile was considered by the senior officers to determine whether the officer was entitled to promotion. A sample

of the said profile was placed on record before the CIC and consists of the following heads :

> "Agenda No:
> Arm/Service:
> Member Data Sheet:
> Date
> PFH:
> Page
> Year birth:
> Med cat:
> Hons/Awd:
> Civil Qual:
> DOC:
> DOS:
> Disc.
> BPR:
> Prev Bd Res-"

76. It was stated before the CIC that the grading in the overall profile proforma was done on the basis of the information in the ACRs and thereafter the selection board decided whether or not the officer was fit for promotion in his turn to the next rank or should not be empanelled, etc.

77. Learned CIC in the impugned order has quoted several paragraphs from the judgment in the case of ***Dev Dutt*** (supra) but has held that the said judgment is not intended to be applicable to the military officers. However, the appeal filed by the respondent no.2 has been allowed on the ground that the said respondent No.2 has now retired and the effect of disclosure at best would lead to readjustment of pension benefits without seriously compromising any

public interest. In these circumstances, the overall profile of respondent no.2 has been directed to be disclosed.

78. The disclosure directed by CIC does not require interference except that names of the officers who were members of the selection committee II need not be revealed. Information asked for is personal to the respondent No.2 and if names of members of selection Committee II are not revealed, there will be no unwarranted invasion of privacy. Even otherwise the facts disclosed above, repeated judgments in favour of the respondent no.2 and his frustration is not difficult to understand. Blanket denial of information would be contrary to public interest and disclosure of information without names would serve public cause and justice.

Writ Petition is accordingly disposed of.

(6) WRIT PETITION (CIVIL) NO. 7304 OF 2007

79. Central Information Commission has allowed the appeal of Respondent no.1-Bhabaranjan Ray vide the impugned Order dated 26th April, 2007 and has directed that he should be shown his ACRs together with those of third parties who had been promoted to Senior Administrative Grade (SAG). The impugned Order is extremely brief and cryptic and directs that openness and transparency requires that every public authority should provide reasons to the affected persons by showing him all papers/documents. The reasoning given is as under:

> "12. As for the contents of the application, the Appellant desires to see the files/records/documents which led to his being denied promotion to SAG grade from Selection Grade. The Commission feels that in the interest of transparency, the Appellant must be allowed access to all such records. The Commission also pointed out that this particular case attracted Section 4(1)(d) of the RTI Act which reads : "every public authority shall provide reasons for its administrative and quasi judicial decisions to the affected persons." Since in the present case, the Appellant, without doubt, is an affected party, it is incumbent upon the Respondents to show him all the papers and documents relating to this issue. In his application, the Appellant has also desired to see the copies of ACRs of his own together with those who had been promoted to the SAG in the DPC held on 23 July 1998. The Commission sees no reason as to why these ACRs should not be shown to him. Granted that ACRs by their nature are confidential but on the other hand they are also in the public domain and through an ACR no public authority should unjustifiably either favour or deny justice to a concerned employee. The Commission directs the Respondents, therefore, to show call the relevant documents to the Appellant by 10 May 2007."

80. There is no examination or consideration of the relevant provisions of Section 8(1) of the Act and it may be noticed that disclosure of information relating to third parties requires compliance of procedure under Sections 11 and 19(4) of the RTI Act. Grades in ACRs must be disclosed in the light of the judgment of the Supreme Court in ***Dev Dutt*** (supra) but the question of disclosure of internal comments on the officers has to be decided in each case depending on the factual background. No universal applicable rule as such can be laid down. In some cases it is possible that the records may be

denied or may be made available after erasing the name of the officer who have given the comments. Reference can also be made to passages from the decision in the case of R.K.Jain(supra) quoted above.

81. Respondent no.1 in his counter affidavit has pointed out several facts on the basis of which it was submitted that larger public interest demands disclosure of the said information. He has referred to the Order dated 25th Feb., 2005 passed by the Central Administrative Tribunal, Calcutta directing the petitioner herein to hold a review DPC without taking into consideration the un-communicated adverse entries below the bench mark. He has also referred to the order passed by the Calcutta High Court dated 7th October, 2005 upholding the said decision and has submitted that the petitioners inspite of the said orders have even in the review DPC rejected his case for promotion to Sr. Administrative Grade without recording any reasons. It is stated that this had compelled the respondent no.1 to file another petition before the Central Administrative Tribunal.

82. Accordingly, the matter is remanded back to the Central Information Commission for fresh adjudication keeping in view the above discussion.

(7) <u>WRIT PETITION (CIVIL) NO. 7930 OF 2009</u>

83. By the impugned order dated 9.3.2009 CIC has directed furnishing of copy of the FIR registered by the officers of the Special

Cell with Jamia Nagar P.S. regarding encounter at Batla House on 19th September, 2008 and furnishing of post mortem reports of inspector Mr. Mohan Chand Sharma, Mr. Atif Ameen and Mr. Sajid after erasing the name of the person who had filed the FIR and details of doctors who have conducted the post mortem by applying principle of severability under Section 10 of the RTI Act. It was held that disclosing names of the said persons would impede process of investigation under Section 8(1)(h) and the non-disclosure of the said names was justified under Section 8(1)(g) of the RTI Act as it could endanger life and physical safety of the said persons.

84. Addl. Commissioner of Police has filed the present writ petition aggrieved by the direction given by the CIC in the impugned order dated 9.3.2009 directing furnishing of the FIR without the name of the complainant and copy of the post mortem report without disclosing of the doctors. Reliance is placed by the petitioner on Section 8(1)(h) of the RTI Act.

85. Mere pendency of investigation, or apprehension or prosecution of offenders is not a good ground to deny information. Information, however, can be denied when furnishing of the same would impede process of investigation, apprehension or prosecution of offenders. The word “impede” indicates that furnishing of information can be denied when disclosure would jeopardize or would hamper investigation, apprehension or prosecution of offenders. In Law

Lexicon, Ramanatha Aiyar 2nd Edition 1997 it is observed that "the word "impede" is not synonymous with 'obstruct'. An obstacle which renders access to an inclosure inconvenient, impedes the entrance thereto, but does not obstruct it, if sufficient room be left to pass in and out. 'Obstruct' means to prevent, to close up."

86. The word "impede" therefore does not mean total obstruction and compared to the word 'obstruction' or 'prevention', the word 'impede' requires hindrance of a lesser degree. It is less injurious than prevention or an absolute obstacle. Contextually in Section 8(1)(h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said Sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. Onus under Section 19(5) of the RTI Act is on the public authority. The Section does not provide for a blanket exemption covering all information relating to investigation process and even partial information wherever justified can be granted. Exemption under Section 8(1)(h) necessarily is for a limited period and has a end point i.e. when process of investigation is complete or offender has been apprehended and prosecution ends. Protection from disclosure will also come to an end when disclosure of

information no longer causes impediment to prosecution of offenders, apprehension of offenders or further investigation.

87. FIR and post mortem reports are information as defined under Section 2(f) of the RTI Act as they are material in form of record, documents or reports which are held by the public authority.

88. First Information Report as per Section 154 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Code, for short) is the first information recorded in writing by an officer in-charge of a police station and read over to the informant. The substance of the said information is entered in a book/register required to be maintained as per the form prescribed by the State Government. Copy of the First Information has to be furnished forthwith and free of cost to the informant and under section 157 of the Code the same has to be sent forthwith to the Magistrate empowered to take cognizance of the said offence. There are judicial decisions in which FIR has been held to be a public document under the Evidence Act, 1872. Under Sections 74 and 76 of the Evidence Act, 1872 a person who has right to inspect a public document also has a right to demand copy of the same. Right to inspect a public document is not an absolute right but subject to Section 123 of the Evidence Act,1872. Inspection can be refused for reasons of the State or on account of injury to public interest. Under Section 363(5) of the Code any person affected by a judgment or an order passed by a criminal court, on an

application and payment of prescribed charges is entitled to copy of such judgment, order, deposition or part of record. Under Sub-section (6) any third person who is not affected by a judgment or order can also on payment of a fee and subject to such conditions prescribed by the High Court can apply for copies of any judgment or order of the criminal court.

89. In the present writ petition the Asst. Commissioner of Police has not been able to point out and give any specific reason how and why disclosure of the first information report even when the name of the informant is erased would impede process of investigation, apprehension of offenders or prosecution of offenders. In fact both the Public Information Officer as well as the first Appellate Authority have stated that the first information report has to be furnished to the accused and the informant. It is also not denied that a copy of the first information report has been sent to the concerned Magistrate and forms part of the record of the criminal court. It is not pleaded or stated that the first information report has been kept under sealed cover. It may be also noticed that the respondent no.2 in the counter affidavit has stated that one of the persons who has been detained is the son of the caretaker of the flat at Batla House. In these circumstances I do not see any reason to interfere with and modify the order passed by CIC directing furnishing copy of FIR minus the name of the informant. The contention of the petitioner that copy of the FIR cannot be furnished to the respondent no.2 under the Code is

without merit as the said information has been asked for under the RTI Act and whether or not the information can be furnished has to be examined by applying the provisions of the RTI Act. As per Section 22 of the RTI Act, the said Act overrides any contrary provision in any other earlier enactment including the Code.

90. However, disclosure of post mortem reports at this stage when investigation is in progress even without names of the doctors falls in a different category. It has been explained that post mortem reports contains various details with regard to nature and type of injuries/wounds, time of death, nature of weapons used, etc. Furnishing of these details when investigation is still in progress is likely to impede investigation and also prosecution of offenders. It is the case of the petitioners that enquiries/investigation are in progress and further arrests can be made. Furnishing of post mortem report at this stage would jeopardize and create hurdles in apprehension and prosecution of offenders who may once information is made available take steps which may make it difficult and prevent the State from effective and proper investigation and prosecution.

Writ petition is accordingly disposed off.

(8) WRIT PETITION (CIVIL) NO. 3607 OF 2007

91. Respondent no.2 herein-Mr. Y.N. Thakkar had made a complaint alleging professional misconduct against a member of the Institute of Chartered Accountants of India. The complaint was

examined by the Central Council in its 244th meeting held in July 2004 and was directed to be filed as the council was prima facie of the opinion that the member concerned was not guilty of any professional or other misconduct. The council did not inform or give any reasons for reaching the prima facie conclusion. In fact it is stated in the writ petition filed by the Institute of Chartered Accountant that the council was not required to pass a speaking order while forming a prima facie opinion.

92. On 7th January, 2006 respondent no.2 filed an application seeking details of reasons recorded by the council while disposing of the complaint. The information was not furnished and was denied by the PIO and the first Appellate Authority on the ground that the opinion expressed by the members of the council was confidential.

93. By the impugned order dated 31st January, 2007 CIC has directed furnishing of information without disclosing the identity of the individual members.

94. In the writ petition filed, the Institute of Chartered Accountant has projected that respondent no.2 wants, and as per the impugned order, the CIC has directed furnishing of deliberations and comments made by members of the council while considering the complaint, reply and the rejoinder. Respondent no.2 has not asked for copy of deliberations or the discussion and comments of the members of the council. He has asked for reasons recorded by the council while disposing of his complaint. During the course of discussion, members of the council can express different views. Confidentiality has to be

maintained in respect of these deliberations and furnishing of individual statements and comments may not be required in view of Section 8(1)(e) and (j) of the RTI Act. However, I need not decide this question in the present writ petition as the respondent no.2 has not asked for copy of the deliberations and comments. His application is for furnishing of reasons recorded by the council while disposing of the complaint. There is difference between the reasons recorded by the council while disposing of the complaint and comments and deliberations made by individual members when the complaint was examined and considered. Reasons recorded for rejecting the complaint should be disclosed and there is no ground or justification given in the writ petition why the same should not be disclosed. In fact, as per the writ petition it is stated that the council did not pass a speaking order rejecting the complaint and it is the stand of the petitioner that no speaking order is required to be passed while forming a prima facie opinion. It is open to the petitioner to inform respondent no.2 that no specific reasons have been recorded by the council. The consequence and effect of not recording of reasons is not subject matter of the present writ petition and is not required to be examined here. Writ Petition is accordingly disposed of with the observations made above.

(SANJIV KHANNA)
JUDGE

NOVEMBER 30, 2009.
P

REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) NOS.8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 AND 3607 OF 2007,**

Reserved on : 12th August,2009/2nd September, 2009.

% **Date of Decision** : 30th November , 2009.

(1) **WRIT PETITION (CIVIL) NO. 8396 OF 2009**

UNION OF INDIA THR. DIRECTOR,
MINISTRY OF PERSONNEL, PG & PENSION ….Petitioner
Through Mr.S.K.Dubey, Mr.Deepak Kumar, advocates.

versus

CENTRAL INFORMATION COMMISSION &
SHRI P.D. KHANDELWAL ….Respondents
Through Prof. K.K. Nigam, advocate for CIC.
Respondent no.2, in person.

(2) **WRIT PETITION (CIVIL) NO.16907 OF 2006**

UNION OF INDIA ..... Petitioner
Through Mr. A.S. Chandhiok, ASG with Mr. Ritesh Kumar, Ms. Vibha Dhawan & Mr. Sandeep Bajaj, Advocates.

versus

SWEETY KOTHARI ..... Respondent
Through Mr. Bhakti Pasrija, Advocate.

(3) **WRIT PETITION (CIVIL) NO. 4788 OF 2008**

UNION OF INDIA THR. SECRETARY,
MINISTRY OF DEFENCE & ANOTHER .... Petitioners
Through Mr. A.S. Chandhiok, ASG with Mr. R. Balasubramanian, Advocate.

versus

THE CENTRAL INFORMATION COMMISSION

THR. ITS REGISTRAR & ANOTHER ..... Respondents
Through Prof. K.K. Nigam, Advocate for respondent No. 1.

(4) **WRIT PETITION (CIVIL) NO. 9914 OF 2009**

UNION OF INDIA THR. SECRETARY,
MINISTRY OF DEFENCE & ANOTHER .... Petitioners
Through Mr. A.S. Chandhiok, ASG with Mr. R. Balasubramanian, Advocate.

versus

THE CENTRAL INFORMATION COMMISSION
THR. ITS REGISTRAR &
MAJ.RAJ PAL (RETD.) ..... Respondents
Through Prof. K.K. Nigam, Advocate for respondent No. 1.
Maj. Raj Pal, in person.

(5) **WRIT PETITION (CIVIL) NO. 6085 OF 2008**

UNION OFINDIA & ANOTHER ..... Petitioners
Through Mr. A.S. Chandhiok, ASG with Mr. R. Balasubramanian, Advocate.

versus

CENTRAL INFORMATION COMMISSION
& ANOTHER ..... Respondents
Through Prof. K.K. Nigam, Advocate for respondent No. 1.

(6) **WRIT PETITION (CIVIL) NO. 7304 OF 2007**

UNION OF INDIA ..... Petitioner
Through Mr. A.S. Chandhiok, ASG with Mr. Ritesh Kumar, Ms. Vibha Dhawan & Mr. Sandeep Bajaj, Advocates.

Versus

BHABARANJAN RAY & ANOTHER ..... Respondents
Through

(7) **WRIT PETITIION (CIVIL) NO. 7930 OF 2009**

ADDL.COMMISSIONER OF
POLICE (CRIME) ..... Petitioner

Through Mr. A.S. Chandhiok, ASG with Ms. Mukta Gupta , Ms. Anagha, Mr. Ritesh Kumar, Ms. Vibha Dhawan & Mr. Sandeep Bajaj & Mr. Bhagat Singh, Advocates.

versus

CENTRAL INFORMATIONAL COMMISSION
& ANOTHER. ..... Respondents

Through Prof. K.K. Nigam, Advocate for respondent No. 1.
Mr. Prashant Bhushan, Advocate for respondent No. 2 .

(8) **WRIT PETITION (CIVIL) NO. 3607 OF 2007**

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA ..... Petitioner

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Rakesh Agarwal & Mr. Anuj Bhandari, Advocates.

Versus

CENTRAL INFORMATION COMMISSION ..... Respondent

Through Prof. K.K. Nigam, Advocate.

CORAM :
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

SANJIV KHANNA, J.:

1. The petitioners herein have challenged orders passed by the Central Information Commission (hereinafter also referred to as CIC,

for short) under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act, for short).

2. The challenge to the impugned orders involves interpretation of Sections 8(1), 18 and 19 of the RTI Act, which read as under:-

> "**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;
> (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 secretes 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 authority 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. ”

“Section 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-limit 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 court 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 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.

Section 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 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 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.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under Section 11 to disclose third-party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(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.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, 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.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

SECTION 8 OF THE RTI ACT

3. Section 8 (1) of the RTI Act begins with a non-obstante clause and stipulates that notwithstanding any other provision under the RTI Act, information need not be furnished when any of the clauses (a) to (j) apply. Right to information is subject to exceptions or exclusions stated in section 8(1) (a) to (j) of the RTI Act. Sub-clauses (a) to (j) are in the nature of alternative or independent sub clauses. In the present cases, we are primarily concerned with Clauses (e), (h), (i) and (j) of the RTI Act. Each sub-clause has been interpreted separately. Section 8(1)(h) of the RTI Act has been interpreted while examining WP(C) No. 7930/2009, Addl. Commissioner of Police (Crime) Vs. Central Information Commission & Another.

SECTION 8 (1) (e) OF THE RTI ACT

4. Section 8(1)(e) protects information available to a person in his fiduciary relationship. As per Section 3(42) of the General Clauses Act, 1897 the term “person” includes a juristic person, any company or association or body of individuals, whether incorporated or not. Section 8(1)(e) adumbrates that information should be available to a person in his fiduciary relationship. The “person” in Section 8(1)(e) will include the “public authority”. The word “available” used in this Clause will include information held by or under control of a public authority and also information to which the public authority has access to under any other statute or law. The term “information” has been defined in Section 2(f) of the RTI Act as under:

> “(*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; “

5. The information relating to a private body which can be accessed by a public authority under any other law in force is information which may be made available. Information “available” with a public authority can be furnished.

6. The term “fiduciary relationship” has not been defined in the RTI Act. Therefore, we have to interpret the term “fiduciary

relationship" keeping in mind the object and purpose of the RTI Act and the term "fiduciary" as is understood in common parlance. The RTI Act is a progressive and a beneficial legislation enacted to provide a practical regime to secure to the citizen's, right to information; to promote transparency, accountability and efficiency and eradicate corruption. Sub-section 8(1)(e) of the RTI Act permits screening and preservation of confidential and sensitive information made available due to fiduciary relationship. The aforesaid Clause has been interpreted by S. Ravindra Bhat, J. in ***CPIO, Supreme Court of India, New Delhi versus Subhash Chandra Agarwal and another*** (Writ Petition No. 288/200) decided on 2nd September, 2009 as under:-

> "55. It is necessary to first discern what a fiduciary relationship is, since the term has not been defined in the Act. In *Bristol & West Building Society v. Mothew* [1998] Ch 1, the term "fiduciary",was described as under:
>
> > *"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." Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*,(2005) 1 SCC 212 and *Needle Industries (India) Ltd v. Needle Industries (Newey) India Holding Ltd* : 1981 (3) SCC 333 establish that Directors of a company owe fiduciary duties to its shareholders. In *P.V. Sankara Kurup v. Leelavathy Nambiar,* (1994) 6 SCC 68, the Supreme Court held that an agent and power of attorney holder can be said to owe a fiduciary relationship to the principal.
>
> 56. In a recent decision *(Mr. Krishna Gopal Kakani v. Bank of Baroda* 2008 (13) SCALE 160) the Supreme Court had to decide whether a transaction resulted in a fiduciary relationship. Money was sought to be recovered

by the plaintiff, from a bank, who had moved the court for auction of goods imported, and retained the proceeds,; the trail court overruled the objection to maintainability, stating that the bank held the surplus (of the proceeds)in a fiduciary capacity. The High Court upset the trial court 's findings, ruling that the bank did not act in a fiduciary capacity. The Supreme Court affirmed the High Court 's findings. The court noticed Section 88 of the Trusts Act, which reads as follows:

> *"Section 88.Advantage gained by fiduciary.- Where a trustee, executor, partner, agent, director of a company, legal advisor, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained."*

Affirming the High Court 's findings that the bank did not owe a fiduciary responsibility to the appellant, it was held by the Supreme Court, that:

> *"9.An analysis of this Section would show that the Bank, to whom the money had been entrusted, was not in the capacity set out in the provision itself. The question of any fiduciary relationship therefore arising between the two must therefore be ruled out. It bears reiteration that there is no evidence to show that any trust had been created with respect to the suit money.."*

The following kinds of relationships may broadly be categorized as "fiduciary ":

Trustee/beneficiary (Section 88, Indian Trusts Act, 1882);

Legal guardians / wards (Section 20, Guardians and Wards Act, 1890);

Lawyer/client;

Executors and administrators / legatees and heirs;

Board of directors / company;

Liquidator/company;

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

Doctor/patient;

Parent/child.

57. *The Advanced Law Lexico*n, 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 relationship ….Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who is 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 "*

58. From the above discussion, it may be seen that a fiduciary relationship is one whereby a person places complete confidence in another in regard to a particular transaction or his general affairs or business. The relationship need not be "formally "or "legally "ordained, or established, like in the case of a written trust; but can be one of moral or personal responsibility, due to the better or superior knowledge or training, or superior status of the fiduciary as compared to the one whose affairs he handles."

7. In ***Woolf vs Superior Court*** (2003)107 Cal.App. 4th 25**,** the California Court of Appeals defined fiduciary relationship as "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."

8. Fiduciary can be described as an arrangement expressly agreed to or at least consciously undertaken in which one party trusts, relies and depends upon another's judgment or counsel. Fiduciary relationships may be formal, informal, voluntary or involuntary. It is legal acceptance that there are ethical or moral relationships or duties in relationships which create rights and obligations. The fiduciary obligations may be created by a contract but they differ from contractual relationships for they can exist even without payment of consideration by the beneficiaries and unlike contractual duties and obligations, fiduciary obligations may not be readily tailored and modified to suit the parties. In a fiduciary relationship, the principal emphasis is on trust, and reliance, the fiduciary's superior power and corresponding dependence of the beneficiary on the fiduciary. It requires a dominant position, integrity and responsibility of the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself.

9. One basic difference between fiduciary and contractual or any other relationship is the quality and the extent of good faith obligation.

In contractual or in other non fiduciary relationship, the obligation is substantially weaker and qualitatively different as compared to a fiduciary's legal obligation. Fiduciary loyalty and obligation requires complete subordination of self-interest and action exclusively for benefit of the beneficiary. Primary fiduciary duty is duty of loyalty and disloyalty an anathema. Contractual or other non fiduciary relationship may require that a party should not cause harm or damage the other side, but fiduciary relationship casts a positive obligation and demands that the fiduciary should protect the beneficiary and not promote personal self interest. Although, strict liability may not apply to instances of disloyalty, other than in cases of self-dealing, judicial scrutiny is still intense and the level of commitment and loyalty expected is higher in fiduciary relationships than non-fiduciary relationships. In some cases, trustees have been held liable even when there is conflict of interests as the beneficiary relies upon and is dependent upon the fiduciary's discretion. Fiduciary's loyalty obligation is stricter than the morals of the market place. It is not honesty alone, but the *punctilio* of an honour, the most sensitive is the standard of behaviour (Justice Cardozo in ***Meinhard vs Salmon N.Y. (1928) 164, n.e. 545, 546***.

10. In a contractual or other non fiduciary relationship, the relationship between parties is horizontal and parties are required to attend to and take care of their interests. Law of contract does not systematically or formally assign contracting parties to dominant or

subordinate roles. Paradigmatically, image of a contract is a horizontal relationship. Fiduciary relationship defines the fiduciary as a dominant party who has systematically empowered over the subordinate beneficiary.

11. It is not possible to accept the contention of Mr.Prashant Bhushan, advocate that statutory relationships or obligations and fiduciary relationships or obligations cannot co-exit. Statutory relationships as between a Director and a company which is regulated by the Companies Act, 1956, can be fiduciary. Similarly, fiduciary relationships do not get obliterated because a statute requires the fiduciary to act selflessly with integrity and fidelity and the other party depends upon the wisdom and confidence reposed. All features of a fiduciary relationship may be present even when there is a statute, which endorses and ensures compliance with the fiduciary responsibilities and obligations. In such cases the statutory requirements, reiterates the moral and ethical obligation which already exists and does not erase the subsisting fiduciary relationship but reaffirms the said relationship.

12. A contractual or a statutory relationship can cover a very broad field but fiduciary relationship may be confined to a limited area or act, e.g. directors of a company have several statutory obligations to perform. A relationship may have several facets. It may be partly fiduciary and partly non fiduciary. It is not necessary that all statutory,

contractual or other obligations must relate to and satisfy the criteria of fiduciary obligations. Fiduciary relationships may be confined to a particular act or action and need not manifest itself in entirety in the interaction or relationship between the two parties. What distinguishes a normal contractual or informal relationship from a fiduciary relationship or act is as stated above, the requirement of trust reposed, highest standard of good faith and honesty on the part of the fiduciary with regard to the beneficiaries' general affairs or in a particular transaction, due to moral or personal responsibility as a result of superior knowledge and training of the fiduciary as compared to the beneficiary, resulting in dependence of the beneficiary. In this regard I may quote, the following observations in the decision dated 23rd April, 2007 by five members of the CIC in ***Rakesh Kumar Singh and others versus Harish Chander, Assistant Director and others*** ***MANU/CI/0246/2007.***

> "31. The word "fiduciary is derived from the Latin fiducia meaning "trust, a person (including a juristic person such as Government, University or bank) who has the power and obligation to act for another under circumstances which require total trust, good faith and honesty. The most common example of such a relationship is the trustee of a trust, but fiduciaries can include business advisers, attorneys, guardians, administrators, directors of a company, public servants in relation to a Government and senior managers of a firm/company etc. The fiduciary relationship can also be one of moral or personal responsibility due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling. In short, it is a relationship wherein one person places complete confidence in another in regard to a

> particular transaction or one's general affairs of business. The Black's Law Dictionary also describes a fiduciary relationship as "one founded on trust or confidence reposed by one person in the integrity and fidelity of another. The meaning of the fiduciary relationship may, therefore, include the relationship between the authority conducting the examination and the examiner who are acting as its appointees for the purpose of evaluating the answer sheets"

13. The relationship of a public servant with the Government can be fiduciary in respect of a particular transaction or an act when the law requires that the public servant must act with utmost good faith for the benefit of the Government and confidence is reposed in the integrity of the public servant, who should act in a manner that he shall not profit or take advantage from the said act. However, there should be a clear and specific finding in this regard. Normal, routine or rather many acts, transactions and duties of a public servant cannot be categorized as fiduciary for the purpose of Section 8(1)(e) of the RTI Act and information available relating to fiduciary relationship. (The said reasoning may not be applicable to service law jurisprudence, with which we are not concerned.)

14. Fiduciary relationship in law is ordinarily a confidential relationship; one which is founded on the trust and confidence reposed by one person in the integrity and fidelity of the other and likewise it precludes the idea of profit or advantage resulting from dealings by a person on whom the fiduciary obligation is reposed.

15. The object behind Section 8(1) (e) is to protect the information because it is furnished in confidence and trust reposed. It serves public purpose and ensures that the confidence, trust and the confidentiality attached is not betrayed. Confidences are respected. This is the public interest which the exemption under Section 8(1)(e) is designed to protect. It should not be expanded beyond what is desired to be protected. Keeping in view the object and purpose behind Section 8(1)(e) of the RTI Act, where it is possible to protect the identity and confidentiality of the fiduciary, information can be furnished to the information seeker. This has to be examined in case to case basis, individually. The aforesaid view is in harmony and in consonance with Section 10 of the RTI Act which reads as under:-

> "Section 10. (*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.
>
> (*2*) Where access is granted to a part of the record under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing—
>
> *(a)* that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
>
> *(b)* the reasons for the decision, including any findings on any material question of fact,

> referring to the material on which those findings were based;
>
> *(c)* the name and designation of the person giving the decision;
>
> *(d)* the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
>
> *(e)* his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (*1*) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access."

16. Thus, where information can be furnished without compromising or affecting the confidentiality and identity of the fiduciary, information should be supplied and the bar under Section 8(1)(e) of the Act cannot be invoked. In some cases principle of severability can be applied and thereafter information can be furnished. A purposive interpretation to effectuate the intention of the legislation has to be applied while applying Section 8(1)(e) of the RTI Act and the prohibition should not be extended beyond what is required to be protected. In cases where it is not possible to protect the identity and confidentiality of the fiduciary, the privileged information is protected under Section 8(1)(e) of the RTI Act. In other cases, there is no jeopardy and the fiduciary relationship is not affected or can be protected by applying doctrine of severability.

17. Even when Section 8(1)(e) applies, the competent authority where larger public interest requires, can pass an order directing disclosure of information. The term “competent authority” is defined in Section 2(e) of the RTI Act and reads as under:-

> (*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;”

18. The term “competent authority” is therefore distinct and does not have the same meaning as “public authority” or Public Information Officer (hereinafter also referred to as PIO, for short) which are defined in Section 2(e) and (h) of the RTI Act.

19. The term “competent authority” is a term of art which has been coined and defined for the purposes of the RTI Act and therefore wherever the term appears, normally the definition clause i.e. Section 2(e) should be applied, unless the context requires a different interpretation. Under Section 8(1)(e) of the RTI Act, the competent authority is entitled to examine the question whether in view of the

larger public interest information protected under the Sub-clause should be disclosed. The jurisdiction of PIO is restricted and confined to deciding the question whether information was made available to the public authority in fiduciary relationship. The competent authority can direct disclosure of information, if it comes to the conclusion that larger public interest warrants disclosure. The question whether the decision of the competent authority can be made subject matter of appeal before the First Appellate Authority or the CIC has been examined separately. A decision of the PIO on the question whether information was furnished/available to a public authority in fiduciary relationship or not, can be made subject matter of appeal before the Appellate Authorities including the CIC.

SECTION 8(1)(i) OF THE RTI ACT

20. The said sub-clause protects Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. The first proviso however stipulates that the prohibition in respect of the decision of the Council of Ministers, the reasons thereof and the material on the basis of which decisions were taken shall be made public after the decision is taken and the matter is complete or over. Thus, a limited prohibition for a specified time is granted. Prohibition is not for an unlimited duration or infinite period but lasts till a decision is taken by the Council of Ministers and the matter is complete or over.

21. The main clause to Section 8(1)(i) uses the term Cabinet Papers which include records or deliberations, but the first proviso refers to the decision of the Council of Ministers, reasons thereof and the material on the basis of which the decisions were taken. The term "Council of Minsters" is wider than and includes Cabinet Ministers. It is not possible to accept the contention of Mr. A.S. Chandhiok , Learned Addl. Solicitor General that cabinet papers are excluded from the operation of the first proviso. The legal position has been succulently expounded in the order dated 23.10.2008 passed by the CIC in Appeal No.CIC/WA/A/2008/00081:

> "The Constitution of India, per se, did not include the term "Cabinet", when it was drafted and later on adopted and enacted by the Constituent Assembly. The term "Cabinet" was, however, not unknown at the time when the Constitution was drafted. Lot of literature was available during that period about "Cabinet", "Cabinet System" and "Cabinet Government". Sir Ivor Jennings in his "Cabinet Government", stated that the Cabinet is the supreme directing authority. It has to decide policy matters. It is a policy formulating body. When the Cabinet has determined on policy, the appropriate Department executes it either by administrative action within the law, or by drafting a Bill to be submitted to Parliament so as to change the law. The Cabinet is a general controlling body. It neither desires, nor is able to deal with all the numerous details of the Government. It expects a Minister to take all decisions that are of political importance. Every Minister must, therefore, exercise his own discretion as to what matters arising in his department ought to receive Cabinet sanction.
>
> 3. In the Indian context, the Cabinet is an inner body within the Council of Ministers, which is responsible for formulating the policy of the Government. It is the Council of Ministers that is collectively responsible to

the Lok Sabha. The Prime Minster heads the Council of Ministers and it is he, *primus inter pares* who determines which of the Ministers should be Members of the Cabinet.

4. It is a matter of common knowledge that the Council of Ministers consist of the Prime Minister, Cabinet Ministers, Ministers of State and the Civil Services. The 44th Amendment to the Constitution of India for the first time not only used the term "Cabinet" but also literally defined it. Clause 3 of Article 352, which was inserted by 44th Amendment, reads as under:-

"The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing."

5. As per Section 8 of the Right to Information Act, 2005 a "Public Authority" is not obliged to disclose Cabinet papers including records of deliberations of the Council of Ministers, secretaries and other officers. Section 8(1) subjects this general exemption in regard to Cabinet papers to two provisos, which are as under:-

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 public after the decision has been taken, and the matter is complete, or over.

6. From a plain reading of the above provisos, the following may be inferred:-

i) Cabinet papers, which include the records of deliberations of the Council of Ministers, Secretaries and other officers shall be disclosed after the decision has been taken and the matter is complete or over.

ii) The matters which are otherwise exempted under Section 8 shall not be disclosed even after the decision has been taken and the matter is complete or over.

iii) Every decision of the Council of Ministers is a decision of the Cabinet as all Cabinet Ministers are also a part of the Council of Ministers. The Ministers of State are also a part of the Council of Ministers, but they are not Cabinet Ministers.

As we have observed above, the plea taken by the First Appellate Authority, the decision of the Council of Ministers are disclosable but Cabinet papers are not, is totally untenable. Every decision of the Council of Ministers is a decision of the Cabinet and, as such, all records concerning such decision or related thereto shall fall within the category of "Cabinet papers" and, as such, disclosable under Section 8(1) sub-section (i) after the decision is taken and the matter is complete, and over."

22. However, there is merit in the contention of Mr.A.S. Chandhiok, Learned Addl. Solicitor General relying upon Article 74(2) of the Constitution of India, which reads as under:-

"**74. Council of Ministers to aid and advise President**.-(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advise tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."

23. Seven Judges of the Supreme Court in ***S.P. Gupta and others versus President of India and others*** AIR 1982 SC 149 have examined and interpreted Article 74(2) of the Constitution of India.

The majority view of six Judges is elucidated in the judgment of Bhagwati, J. (as his lordship then was) in para 55 onwards. It was observed that the Court cannot embark upon an inquiry as to whether any and if so what advice was tendered by the Council of Ministers to the President. It was further observed that the reasons which prevailed with the Council of Ministers, would form part of the advice tendered to the President and therefore they would be beyond the scope/ambit of judicial inquiry. However, if the Government chooses to disclose these reasons or it may be possible to gather the reasons from other circumstances, the Court would be entitled to examine whether the reasons bear reasonable nexus [See, para 58 at p.228, ***S.P. Gupta*** (supra)]. Views expressed by authorities/persons which precede the formation of advice tendered or merely because these views are referred to in the advice which is ultimately tendered by the Council of Ministers, do not necessarily become part of the advice protected against disclosure under Article 74(2) of the Constitution of India. Accordingly, the material on which the reasons of the Council of Ministers are based and the advice is given do not form part of the advice. This has been lucidly explained in para 60 of the judgment as under:

> "60. …..But the material on which the reasoning of the Council of Ministers is based and the advice is given cannot be said to form the part of advice. The point we are making may be illustrated by taking the analogy of a judgment given by a Court of Law. The judgment would undoubtedly be based on the

> evidence led before the Court and it would refer to such evidence and discuss it but on that account can it be said that the evidence forms part of the Judgment? The judgment would consist only of the decision and the reasons in support of it and the evidence on which the reasoning and the decision are based would not be part of the judgment. Similarly, the material on which the advice tendered by the Council of Ministers is based cannot be said to be part of the advice and the correspondence exchanged between the Law Minister, the Chief Justice of Delhi and the Chief Justice of India which constituted the material forming the basis of the decision of the Central Government must accordingly be held to be outside the exclusionary rule enacted in cl.(2) of Art. 74."

24. Certain observations relied upon by the Union of India in the judgment of the Supreme Court in ***State of Punjab versus Sodhi Sukhdev Singh*** AIR 1961 SC 493, were held to be mere general observations and not ratio which constitutes a binding precedent. Even otherwise, it was held that report of Public Service Commission which formed material on the basis of which the Council of Ministers had taken a decision, did not form part of the advice tendered by the Council of Ministers. When Article 74(2) of the Constitution applies and bars disclosure, information cannot be furnished. RTI Act cannot and does not have the ability and mandate to negate the constitutional protection under Article 74(2). The said Article refers to inquiry by courts but will equally apply to CIC.

25. Bhagwati, J. (as his Lordship then was), has proceeded to examine and interpret Section 123 of the Evidence Act, 1872 and the protection on the basis of State privilege or public interest immunity.

Section 22 of the RTI Act is a non-obstante provision and therefore overrides Section 123 of the Evidence Act, 1872. Protection under Section 123 of the Evidence Act, 1872 cannot be a ground to deny information under the RTI Act. However, the question of public interest immunity has been examined in detail and the same is of relevance while interpreting Section 8(1)(j) of the RTI Act and this aspect has been discussed below.

26. The second proviso to Section 8(1)(i) of the RTI Act explains and clarifies the first proviso. As held above, the first proviso removes the ban on disclosure of the material on the basis of which decisions were taken by the Council of Ministers, after the decision has been taken and the matter is complete or over. The second proviso clarifies that even when the first proviso applies, information which is protected under Clauses (a) to (h) and (j) of Section 8(1) of the RTI Act, is not required to be furnished. The second proviso is added as a matter of abundant caution *exabudent catulia*. Sub-clauses (a) to (j) of Section 8(1) of the RTI Act are independent and information can be denied under Clauses 8(1)(a) to (h) and (j),even when the first proviso is applicable.

SECTION 8(1)(j) OF THE RTI ACT

27. The said clause has been examined in depth by Ravindra Bhat, J. in ***Subash Chand Agarwal*** (supra) under the heading point 5.

28. Examination of the said Sub-section shows that it consists of three parts. The first two parts stipulate that personal information which has no relationship with any public activity or interest need not be disclosed. The second part states that any information which should cause unwarranted invasion of a privacy of an individual should not be disclosed unless the third part is satisfied. The third part stipulates that information which causes unwarranted invasion of privacy of an individual will not be disclosed unless public information officer or the appellate authority is satisfied that larger public interest justifies disclosure of such information. As observed by S. Ravindra Bhat, J. the third part of Section 8(1)(j) reconciles two legal interests protected by law i.e. right to access information in possession of the public authorities and the right to privacy. Both rights are not absolute or complete. In case of a clash, larger public interest is the determinative test. Public interest element sweeps through Section 8(1)(j).Unwarranted invasion of privacy of any individual is protected in public interest, but gives way when larger public interest warrants disclosure. This necessarily has to be done on case to case basis taking into consideration many factors having regard to the circumstances of each case.

29. Referring to these factors relevant for determining larger public interest in ***R.K. Jain versus Union of India*** (1993) 4 SCC 120 it was observed :-

"54. The factors to decide the public interest immunity would include (a) where the contents of the documents are relied upon, the interests affected by their disclosure; (b) where the class of documents is invoked, whether the public interest immunity for the class is said to protect; (c) the extent to which the interests referred to have become attenuated by the passage of time or the occurrence of intervening events since the matters contained in the documents themselves came into existence; (d) the seriousness of the issues in relation to which production is sought; (e) the likelihood that production of the documents will affect the outcome of the case; (f) the likelihood of injustice if the documents are not produced……"

55. ……When public interest immunity against disclosure of the State documents in the transaction of business by the Council of Ministers of the affairs of State is made, in the clash of those interests, it is the right and duty of the court to weigh the balance in the scales that harm shall not be done to the nation or the public service and equally to the administration of justice. Each case must be considered on its backdrop. The President has no implied authority under the Constitution to withhold the documents. On the other hand it is his solemn constitutional duty to act in aid of the court to effectuate judicial review. The Cabinet as a narrow centre of the national affairs must be in possession of all relevant information which is secret or confidential. At the cost of repetition it is reiterated that information relating to national security, diplomatic relations, internal security of sensitive diplomatic correspondence per se are class documents and that public interest demands total immunity from disclosure. Even the slightest divulgence would endanger the lives of the personnel engaged in the services etc. The maxim *salus populi est suprema lex* which means that regard to public welfare is the highest law, is the basic postulate for this immunity. Political decisions like declaration of emergency under Article 356 are not open to judicial review but it is for the electorate at the polls to decide the executive wisdom. In other areas every communication which preceded from

> one officer of the State to another or the officers inter se does not necessarily per se relate to the affairs of the State. Whether they so relate has got to be determined by reference to the nature of the consideration the level at which it was considered, the contents of the document of class to which it relates to and their indelible impact on public administration or public service and administration of justice itself. 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 case* this Court held that only the actual advice tendered to the President is immune from enquiry and the immunity does not extend to other documents or records which form part of the advice tendered to the President."

30. In ***S.P. Gupta*** (supra), the Supreme Court held that democratic form of Government necessarily requires accountability which is possible only when there is openness, transparency and knowledge. Greater exposure about functioning of the Government ensures better and more efficient administration, promotes and encourages honesty and discourages corruption, misuse or abuse of authority, Transparency is a powerful safeguard against political and administrative aberrations and antithesis of inefficiency resulting from a totalitarian government which maintains secrecy and denies information. Reference was again made to ***Sodhi Sukhdev Singh*** (supra) and it was observed that there was no conflict between 'public

interest and non-disclosure' and 'private interest and disclosure' rather Sections 123 and 162 of the Evidence Act, 1872 balances public interest in fair administration of justice, when it comes into conflict with public interest sought to be protected by non-disclosure and in such situations the court balances these two aspects of public interest and decides which aspect predominates. It was held that the State or the Government can object to disclosure of a document on the ground of greater public interest as it relates to affairs of the State but the courts are competent and indeed bound to hold a preliminary enquiry and determine the validity of the objection to its production and this necessarily involves an enquiry into the question whether the evidence relates to affairs of the State. Where a document does not relate to affairs of the State or its disclosure is in public interest, for the administration of justice, the objection to disclosure of such document can be rejected. It was observed :

> "The court would allow the objection if it finds that the document relates to affairs of State and its disclosure would be injurious to public interest, but on the other hand, if it reaches the conclusion that the document does not relate to affairs of State or that the public interest does not compel its non-disclosure or that the public interest in the administration of justice in the particular case before it overrides all other aspects of public interest, it will overrule the objection and order disclosure of the document."

31. A statement or defence to non-disclosure is not binding on the courts and the courts retain the power to have a prima facie enquiry and balance the two public interest and affairs of the State. The same

is equally true and applies to CIC, who can examine the documents/information to decide the question of larger public interest. Section 18(4) of the RTI Act empowers CIC to examine any record under the control of a public authority, while inquiring into a complaint. The said power and right cannot be denied to CIC when they decide an appeal. Section 18 is wider and broader, yet jurisdiction under section 18 and 19 of the RTI Act is not water-tight and in some areas overlap.

32. The Supreme Court in **S.P Gupta**'s case considered the question whether there may be classes of documents which the public interest requires not to be disclosed or which should in absolute terms be regarded as immune from disclosure. In other words, we may examine the contention whether there can be class of documents which can be granted immunity from disclosure not because of their contents but because of their class to which they belong. Learned Additional Solicitor General in this regard made pointed reference to the following observations in ***S.P.Gupta*** (supra) :

> "69. …. The claim put forward by the learned Solicitor General on behalf of the Union of India is that these documents are entitled to immunity from disclosure because they belong to a class of documents which it would be against national interest or the interest of the judiciary to disclose…….. This class includes cabinet minutes, minutes of discussions between heads of departments, high level inter-departmental communications and dispatches from ambassadors abroad (vide : Conway v. Rimmer, 1968 AC 910 at pp. 952, 973, 979, 987 and 993 and Reg v. Lewes

> J.K. Ex parte Home Secy., 1973 AC 388 at p.412). Papers brought into existence for the purpose of preparing a submission to cabinet (vide Commonwealth Lanyon property Ltd v. Commonwealth, 129 LR 650) and indeed any documents which relate to the framing of government policy at a high level (vide : Re Grosvenor Hotel, London). It would seem that according to the decision in Sodhi Sukhdev Singh's case (AIR 1961 SC 493) (supra) this class may also extend to "notes and minutes made by the respective officers on the relevant files, information expressed or reports made and gist of official decisions reached" in the course of determination of questions of policy. Lord Reid in Conway v. Rimmer (supra) at page 952 proceeded also to include in this class "all documents concerned with policy-making within departments including, it may be minutes and the like by quite junior officials and correspondence with outside bodies". It is this case to consider what documents legitimately belong to this class so as to be entitled to immunity from disclosure, irrespective of what they contain. But it does appear that cabinet papers, minutes of discussions of heads of departments and high level documents relating to the inner working of the government machine or concerned with the framing of government policies belong to this class which in the public interest must be regarded as protected against disclosure."

33. The aforesaid observations have to be read along with the ratio laid down by the Supreme Court in subsequent paras of the said judgment. In para 71, it was observed that the object of granting immunity to documents of this kind is to ensure proper working of the Government and not to protect Ministers or other government servants from criticism, however intemperate and unfairly biased they may be. It was further observed that this reasoning can have little validity in democratic society which believes in open government. It was accordingly observed as under:-

> "The reasons given for protection the secrecy of government at the level of policy making are two. The first is the need for candour in the advice offered to Minister; the second is that disclosure 'would create or fan ill-informed or captious public or political criticism.' Lord Reid in Conway v. Rimmer thought the second 'the most important reason'. Indeed, he was inclined to discount the candour argument.

I think both reasons are factors legitimately to be put into the balance which has to be struck between the public interest in the proper functioning of the public service (i.e. the executive arm of the government) and the public interest in the administration of justice. 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.

The same view was expressed by Gibbs A.C.J. in Sankey v. Whitlam (supra) where the learned acting Chief Justice said:

> "I consider that although there is a class of documents whose members are entitled to protection from disclosure irrespective of their contents, the protection is not absolute, and it does not endure for ever. The fundamental and governing principle is that documents in the class may be withheld from production only when this is necessary in the public interest. In a particular case the court must balance the general desirability that documents of that kind should not be disclosed against the need to produce them in the interests of justice. The court will of course examine the question with special care, giving full weight to the reasons for preserving the secrecy of documents of this class, but it will not treat all such documents as entitled to the same measure of protection – the extent of protection required will depend to some extent on the general subject matter with which the documents are concerned."

There is nothing sacrosanct about the immunity which is granted to documents because they belong to a certain class. Class immunity is not absolute or

> inviolable in all circumstances. It is not a rule of law to be applied mechanically in all cases. The principle upon which class immunity is founded is that it would be contrary to public interest to disclose documents belonging to that class, because such disclosure would impair the proper functioning of the public service and this aspect of public interest which requires that justice shall not be denied to any one by withholding relevant evidence. This is a balancing task which has to be performed by the Court in all cases."

34. Possibly the only class of documents which are granted immunity from disclosure is those mentioned under Article 74(2) of the Constitution. These are documents or information which are granted immunity from disclosure not because of their contents but because of the class to which they belong. Other documents and information which do not fall under Article 74(2) of the Constitution cannot be held back on the ground that they belong to a particular class which is granted absolute protection against disclosure. All other documents/information is not granted absolute or total immunity. Protection from disclosure is decided by balancing the two competing aspects of public interest i.e. when disclosure would cause injury or unwarranted invasion of privacy and on the other hand if non-disclosure would throttle the administration of justice or in this case, the public interest in disclosure of information. In such cases, the Court/CIC has to decide, which of the two public interests pre-dominates.

35. Same view has been taken by the Supreme Court in its subsequent judgment in the case of ***R.K. Jain*** (supra). It was observed as under:-

"43. It would, therefore, be concluded that it would be going too far to lay down that no document in any particular class or one of the categories of cabinet papers or decisions or contents thereof should never, in any circumstances, be ordered to be produced. Lord Keith in *Burmah Oil case* considered that it would be going too far to lay down a total protection to Cabinet minutes. The learned Law Lord at p.1134 stated that "something must turn upon the subject-matter, the persons who dealt with it, and the manner in which they did so. Insofar as a matter of government policy is concerned, it may be relevant to know the extent to which the policy remains unfulfilled, so that its success might be prejudiced by disclosure of the considerations which led to it. In that context the time element enters into the equation. Details of an affair which is stale and no longer of topical significance might be capable of disclosure without risk of damage to the public interest….. The nature of the litigation and the apparent importance to it of the documents in question may in extreme cases demand production even of the most sensitive communications to the highest level". Lord Scarman also objected to total immunity to Cabinet documents on the plea of candour. In *Air Canada case* Lord Fraser lifted Cabinet minutes from the total immunity to disclose, although same were "entitled to a high degree of protection…."

44. x x x x x

45. In a clash of public interest that harm shall be done to the nation or the public service by disclosure of certain documents and the administration of justice shall not be frustrated by withholding the document which must be produced if justice is to be done, it is the courts duty to balance the competing interests by weighing in scales, the effect of disclosure on the public interest or injury to administration of justice, which would do greater harm. Some of the important considerations in the balancing act are thus: "in the interest of national security some information which is so secret that it cannot be disclosed except to a very few for instance the State or its own spies or agents just as other countries have. Their very lives may be endangered if there is the slightest hint of what they are doing." In *R. v. Secretary of State for Home Affairs, ex p Hosenball* in the interest of national security Lord Denning, M.R. did not permit disclosure of the

> information furnished by the security service to the Home Secretary holding it highly confidential. The public interest in the security of the realm was held so great that the sources of the information must not be disclosed nor should the nature of information itself be disclosed."

36. Reference in this regard may also be made to the judgment of the Supreme Court in ***Dinesh Trivedi M.P. and others versus U.O.I*** (1997) 4 SCC 306 and ***Peoples' Union for Civil Liberties versus Union of India*** (2004) 2 SCC 476.

37. Considerable emphasis and arguments were made on the question of 'candour argument' and the observations of the Supreme Court in the case of ***S.P. Gupta*** (supra). It will be incorrect to state that candour argument has been wholly rejected or wholly accepted in the said case. The ratio has been expressed in the following words:

> "70. ….. We agree with these learned Judges that the need for candour and frankness cannot justify granting of complete immunity against disclosure of documents of this class, but as pointed out by Gibbs A.C.J. in Sankey v. Whitlam (supra), it would not be altogether unreal to suppose "that in some matters at least communications between ministers and servants of the Grown may be more frank and candid if these concerned believe that they are protected from disclosure" because not all Crown servants can be expected to be made of "sterner stuff". The need for candour and frankness must therefore certainly be regarded as a factor to be taken into account in determining whether, on balance, the public interest lies in favour of disclosure or against it (vide : the observations of Lord Denning in Neilson v. Lougharre, (1981) 1 All ER at p. 835.
>
> 71. There was also one other reason suggested by Lord Reid in *Conway* v. *Rimmer* for according protection against disclosure to documents

> belonging to this case: “To my mind,” said the learned Law Lord: “the most important reason is that such disclosure would create or fan ill-informed or captious public or political criticism. The business of Government is difficult enough as it is, and no Government could contemplate with equanimity the inner workings of the Government machine being exposed to the gaze of those ready to criticise without adequate knowledge of the background and perhaps with some axe to grind.” But this reason does not commend itself to us. The object of granting immunity to documents of this kind is to ensure the proper working of the Government and not to protect the ministers and other Government servants from criticism however intemperate and unfairly based. Moreover, this reason can have little validity in a democratic society which believes in an open Government. It is only through exposure of its functioning that a democratic Government can hope to win the trust of the people. If full information is made available to the people and every action of the Government is bona fide and actuated only by public interest, there need be no fear of “ill-informed or captious public or political criticism”. But at the same time it must be conceded that even in a democracy, Government at a high level cannot function without some degree of secrecy. No minister or senior public servant can effectively discharge the responsibility of his office if every document prepared to enable policies to be formulated was liable to be made public. It is therefore in the interest of the State and necessary for the proper functioning of the public service that some protection be afforded by law to documents belonging to this class. What is the measure of this protection is a matter which we shall immediately proceed to discuss.”

38. This becomes clear when we examine the test prescribed by the Supreme Court on how to determine which aspect of public interest predominates. In other words, whether public interest requires disclosure and outweighs the public interest which denies access. Reference was made with approval to a passage from the

judgment of Lord Reid in ***Conway vs Rimmer*** 1968 AC 910. The Court thereafter elucidated:-

> "72. …..The court has to decide which aspect of the public interest predominates or in other words, whether the public interest which requires that the document should not be produced, outweighs the public interest that a court of justice in performing its function should not be denied access to relevant evidence. The court has thus to perform a balancing exercise and after weighing the one competing aspect of public interest against the other, decide where the balance lies. If the court comes to the conclusion that, on the balance, the disclosure of the document would cause greater injury to public interest than its non-disclosure, the could would uphold the objection and not allow the document to be disclosed but if, on the other hand, the court finds that the balance between competing public interests lies the other way, the court would order the disclosure of the document. This balancing between two competing aspects of public interest has to be performed by the court even where an objection to the disclosure of the document is taken on the ground that it belongs to a class of documents which are protected irrespective of their contents, because there is no absolute immunity for documents belonging to such class."

39. Again reference was made to the following observations of Lord Scarman in ***Burmah Oil versus Bank of England*** 1979-3 All ER 700:

> "But, is the secrecy of the inner workings of the government at the level of policy making are two. The first is the need for candour in the advice offered to Ministers; the second is that disclosure 'would create or fan ill-informed or captious public or political criticism.' Lord Reid in Conway v. Rimmer thought the second 'the most important reason'. Indeed, he was inclined to discount the candour argument."

40. However, the said observations have to be read and understood in the context and the year in which they were made. In the **S.P Gupta's** case, the Supreme Court observed that interpretation of every statutory provision must keep pace with the changing concepts and values and to the extent the language permits or rather does not prohibit sufficient adjustments to judicial interpretations in accord with the requirements of fast changing society which is indicating rapid social and economic transformation. The language of the provision is not a static vehicle of ideas and as institutional development and democratic structures gain strength, a more liberal approach may only be in larger public interest. In this regard, reference can be made to the factors that have to be taken into consideration to decide public interest immunity as quoted above from ***R.K. Jain case*** (supra).

41. The proviso below Section 8(1)(j) of the RTI Act was subject of arguments. The said proviso was considered by the Bombay High Court in ***Surup Singh Hryanaik versus State of Maharashtra*** AIR 2007 Bom. 121 and it was held that it is proviso to the said sub-section and not to the entire Section 8(1). The punctuation marks support the said interpretation of Bombay High Court. On a careful reading of Section 8(1), it becomes clear that the exemptions contained in the clauses (a) to (i) end with a semi colon ";" after each such clause which indicate that they are independent clauses. Substantive sub section Clause (j) however,

ends with a colon ":"followed by the proviso. Immediately following the colon mark is the proviso in question which ends with a full stop ".". In Principles of Statutory Interpretation, 11th Ed. 2008 (at page No. 169) G.P Singh, has noted that "If a statute in question is found to be carefully punctuated, punctuation, though a minor element, may be resorted to for purposes of construction." Punctuation marks can in some cases serve as a useful guide and can be resorted to for interpreting a statute

42. Referring to the purport of the proviso in ***Surup Singh*** (supra), the Bombay High Court has held that information normally which cannot be denied to Parliament or State Legislature should not be withheld or denied.

43. A proviso can be enacted by the legislature to serve several purposes. In ***Sundaram Pillai versus Patte Birman*** (1985) 1 SCC 591 the scope and purpose of a proviso and an explanation has been examined in detail. Normally, a proviso is meant to be an exception to something in the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. A proviso cannot be torn apart from the main enactment nor can it be used to qualify and set at naught, the object of the main enactment. Sarthi on "Interpretation of Statutes", referred to in the

said judgment, states that a proviso is subordinate to the main section and one of the principles which can be applied in a given case is that a proviso would not enlarge an enactment except for compelling reasons. It is unusual to import legislation from a proviso into the body of the statute. But in exceptional cases a proviso in itself may amount to a substantive provision. The proviso in the present cases is a guiding factor and not a substantive provision which overrides Section 8(1)(j) of the RTI Act. It does not undo or rewrite Section 8(1)(j) of the RTI Act and does not itself create any new right. The purpose is only to clarify that while deciding the question of larger public interest i.e., the question of balance between 'public interest in form of right to privacy' and 'public interest in access to information' is to be balanced.

SECTION 8(2) OF THE RTI ACT

44. Section 8(2) of the RTI Act empowers a public authority to allow access to information even when the Official Secrets Act, 1923 or any of the exemption clauses in Sub-section (1) are applicable. The requirement is that public interest in disclosure should outweigh the harm to protected interest. The question of public interest and when the right to disclosure of information would outweigh rights to secrecy and confidentiality or privacy as has been referred to and considered above. Section 8(2) of the RTI Act empowers the public authority to decide the question whether right to disclosure over-weighs the harm to protected interests. PIO cannot decide this question and cannot

pass an order under Section 8(2) of the RTI Act holding, inter alia, that information is covered by the exemption clauses under Section 8(1) of the RTI Act but public interest in disclosure overweighs and justifies disclosure. Once PIO comes to the conclusion that any of the exemption clauses is applicable, he cannot decide and hold that Section 8(2) of the RTI Act should be invoked and lager public interest requires disclosure of information. Unlike Section 8(1)(j) of the RTI Act, under section 8(2) this power to decide whether larger public interest warrants disclosure of information is not conferred on the PIO.

APPEALS AND COMPLAINTS

45. Chapter V of the RTI Act incorporates powers and functions of Central Information Commissions, appeals and penalties. Section 18 of the RTI Act which defines powers and functions of the Central Information Commission and/or State Information Commissions relates to administrative functions of the said Commissions and their power and authority to ensure general compliance of the provisions of the RTI Act by the PIOs. The said Section ensures that the Central or the State Information Commissions have superintendence and can issue directions to PIOs so that there is effective and proper compliance of the provisions of the RTI Act in letter and spirit. For this purpose, Information Commissions have been vested with powers under the Code of Civil Procedure, 1908 and right to inspect any

record during the pendency of in respect of any decision made under this Act. No record can be withheld from the Central or the State Information Commissions on any ground. This power to inspect the records, etc., will equally apply when CIC decides appeals under Section 19 of the RTI Act.

46. Section 19 of the RTI Act relates to appellate power of the first appellate authority and the Central or the State Information Commissions.

47. Appeal can be filed before the first appellate authority when the information seeker does not receive any decision within the time specified in Section 7(1) or if the information seeker is aggrieved from the quantum of cost demanded for furnishing of information under Section 7(3)(a) of the RTI Act or against the decision of the PIO. Under Section 19(1) of the RTI Act, appeal before the first Appellate Authority cannot be filed against an order or a decision of the competent authority or the public authority or the appropriate government.

48. Under Section 19(3) of the RTI Act, second appeal before the Central or the State Information Commissions is maintainable against the decision under Sub-section (1) of the first Appellate Authority. The scope of appeal therefore before the second Appellate Authority is restricted to subject matters that are appealable before the first Appellate Authority under Sub-section (1) of Section 19 of RTI Act.

Second Appellate Authority cannot therefore go into the questions which cannot be raised and made subject of appeal before the first Appellate Authority. As a necessary corollary, the second Appellate Authority i.e. the Central of the State Information Commissions can examine the decision of the PIO or their failure to decide under Section 7(1) or the quantum of cost under Section 7(3)(a) of the RTI Act. They can also go into third party rights and interests under Section 19(4) of the RTI Act. Central or the State Information Commissions cannot examine the correctness of the decisions/directions of the Public Authority or the competent authority or the appropriate government under the RTI Act, unless under Section 18 the Central/State Information Commission can take cognizance. The information seeker is however not remediless and where there is a lapse by the competent authority, the public authority or the appropriate government, writ jurisdiction can be invoked. It is always open to a citizen to make a representation to public authority, appropriate government or the competent authority whenever required and on getting an unfavourable response, take recourse to constitutional rights under Article 226/227 of the Constitution of India. In a given case, the Central or the State Information Commissions can recommend to the competent authority, public authority or the appropriate government to exercise their powers but the decision of the competent authority, public authority or the appropriate government cannot be made subject matter of appeal, unless the

right has been conferred under Section 18 or 19 of the RTI Act. Central and State Information commissions have been created under the statute and have to exercise their powers within four corners of the statute. They are not substitute or alternative adjudicators of all legal rights and cannot decide and adjudicate claims and disputes other than matters specified in Sections 18 and 19 of the RTI Act.

49. It was urged by Mr.A.S. Chandhiok, learned Additional Solicitor General of India that Section 8(1) of the RTI Act is not the complete code or the grounds under which information can be refused and public information officers/appellate authorities can deny information for other justifiable reasons and grounds not mentioned. It is not possible to accept the said contention. Section 22 of the RTI Act gives supremacy to the said Act and stipulates that the provisions of the RTI Act will override notwithstanding anything to the contrary contained in the Official Secrets Act or any other enactment for the time being in force. This non-obstante clause has to be given full effect to, in compliance with the legislative intent. Wherever there is a conflict between the provisions of the RTI Act and another enactment already in force on the date when the RTI Act was enacted, the provisions of the RTI Act will prevail. It is a different matter in case RTI Act itself protects a third enactment, in which case there is no conflict. Once an applicant seeks information as defined in Section 2(f) of the RTI Act, the same cannot be denied to the information seeker except on any of the grounds mentioned in Sections 8 or 9 of

the RTI Act. The Public Information Officer or the appellate authorities cannot add and introduced new reasons or grounds for rejecting furnishing of information. It is a different matter in case what is asked for by the applicant is not 'information' as defined in Section 2(f) of the RTI Act. (See, Writ Petition (Civil) No.4715/2008 titled ***Election Commission of India versus Central Information Commission and others***, decided on 4th November, 2009 and Writ Petition (Civil) No. 7265/2007 titled ***Poorna Prajna Public School versus Central Information Commission & others*** decided on 25th September, 2009).

50. There is one exception, to the aforesaid principle. Dissemination of information which is prohibited under the Constitution of India cannot be furnished under RTI. Constitution of India being the fountainhead and the RTI Act being a subordinate Act cannot be used as a tool to access information which is prohibited under the Constitution of India or can be furnished only on satisfaction of certain conditions under the Constitution of India.

51. Learned Additional Solicitor General had urged that Section 8(1) of the RTI Act empowers and authorizes public information officers to deny information but the decision on merits cannot be questioned in appeal before the Central/State Information Commission. It was submitted that the decision of the public information officers and the first appellate authority cannot be made

subject matter of second appeal before the CIC except when under Section 8(1) of the RTI Act the Central/State Information Commission has been empowered to examine the correctness or merit of the decision of the public information officer. In this connection, my attention was drawn to the language of Section 8(1)(j) of the RTI Act. This contention cannot be accepted. Power of the CIC as observed above, under Sections 18 and 19 includes power to go into the question whether provisions in any clause of Section 8(1) of the RTI Act, have been rightly interpreted and applied in a given case. The power of the CIC is that of an appellate authority which can go into all questions of law and fact and is not circumscribed or limited power. Indeed the argument will go against the very object and purpose of the RTI Act and negates the power of general superintendence vested with the Central/State Information Commissions under Section 18 of the RTI Act.

(1) <u>WRIT PETITION (CIVIL) NO. 8396 OF 2009</u>

52. Respondent no.2-P.D. Khandelwal by his application dated 26th April, 2007 had asked for inspection of the file/records of Appointments Committee of the Cabinet mentioned in letter no. 18/12/99-EO(SM-II) in which the following directions were issued:

> "There shall be no supersession inter-se seniority among all officers considered fit for promotion will be maintained as before. Department of Revenue should expeditiously undertaken amendment to Recruitment Rules to bring it on part with All India Services to avoid supersession."

53. The request was declined by the CPIO as exempt under Section 8(1)(i) of the RTI Act. On first appeal a detailed order was passed inter alia holding that records of Appointments Committee of the Cabinet are Cabinet Papers and distinct from decision of Council of Ministers, reasons thereof and materials on the basis of which decisions are taken. It was accordingly held that the first proviso to Section 8(1)(i) of the RTI Act is not applicable. Reference was made to Article 74 of the Constitution of India which refers to Council of Ministers and it was held that Cabinet is a creature of rule making power under Article 77(3) of the President of India. In the words of the first Appellate Authority it was held:

> "…….This rule-making power (for conduct of the Government business) of the President of India is his supreme power, in his capacity as the supreme executive of India. This power is unencumbered even by the Acts of Parliament, as this rule-making power flows from the direct constitutional mandate and they are not product of any legislative authorization. In view of the fact that the "separation of powers" is one of the fundamental feature of the our Constitution, these rules, promulgated by the President of India, for regulation of conduct of Government's business (Transaction of business and allocation of business) cannot be fettered by any act or by any Judicial decision of any Court, Commission, Tribunal, etc. Since ACC is a product of the rules framed under Article 77(3) of the Constitution of India, its business (deliberations including the decision whether they are to be made public) are not the subject-matter of the decisions of any other authority other than the President of India himself.
>
> Therefore, unless these rules, framed under Article 77(3) themselves provide for disclosure of

information pertaining to the working of the cabinet and its committees, no disclosure can be made pertaining to them, under the RTI Act. Therefore, the RTI Act has rightly provided for non-disclosure of the information pertaining to "Cabinet Papers."

54. The CIC has rightly rejected the said reasoning.

55. Article 77 of the Constitution reads :

> "**77. Conduct of business of the Government of India.**—(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.
>
> (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.
>
> (3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."

56. In ***Jayanti Lal Amrit Lal Shodan versus Rana,*** (1964) 5 SCR 294 the Supreme Court had drawn a distinction between the Executive power of the Union under Article 53 and the Executive functions vested with the President under specific Articles. It was observed that *the functions specifically vested in the President have to be distinguished from the Executive Power of the Union.* The functions specifically vested with the President cannot be delegated and have to be personally exercised. The aforesaid principle was expanded in ***Sardari Lal versus Union of India*** AIR 1971 SC 1547 holding, inter alia, that Joint Secretary to the Government of India by virtue of power delegated to under Article 77(3) could not on behalf of

President of India pass an order dispensing with an enquiry under Article 311(2) of the Constitution. However the decision in ***Sardari Lal*** *(supra)* has been overruled in ***Shamsher Singh versus State of Punjab*** AIR 1974 SC 2192. It was held that decision in ***Jayanti lal*** (supra) was confined to Article 258 of the Constitution and had no bearing on Articles 74, 75 and 77 of the Constitution. It was held that whatever Executive functions have to be exercised by the President, whether such function is vested in the Union or in the President as President, it is to be exercised with the advice of Council of Ministers. The President being the Constitutional head of the Executive is bound by the said advice except under certain exceptions which relate to extraordinary situations. Even in functions required to be performed by the President on subjective satisfaction could be delegated by rules of business under Article 77(3) to the Minister or Secretary of the Government of India. The satisfaction referred to in the Constitutional sense is the satisfaction of the Council of Ministers who advice the President or the Governor.

57. Article 77 nowhere prohibits or bans furnishing of information. The only prohibition is mentioned in Article 74(2) of the Constitution which has been examined above. The query raised obviously does not fall within the protection granted under Article 74(2) of the Constitution and no reliance can be placed on the said Article in the present case. On the question of distinction between the Cabinet and

the Council of Ministers I entirely agree with the reasoning given by the Chief Information Commissioner which has been quoted above.

Accordingly, the Writ Petition is dismissed.

(2) WRIT PETITION (CIVIL) NO. 16907 OF 2006

58. Respondent no.1-Sweety Kothari had filed an application seeking following information:

> " (a) Copies of the advertisements calling for applications for selection of ITAT members in Calendar Years 2002 and 2003.
>
> (b) Recommendation of Interview/Selection Board regarding selection of the said members.
>
> (C) Names of the person finally selected as ITAT members in the above-mentioned Calendar Years."

59. Information at serial nos. (a) and (c) have been supplied but information at serial no.(b) was denied by the Public Information Officer and the first appellate authority. Central Information Commission by the impugned order dated 7th June, 2006 has directed furnishing of the said information. The contention of the petitioner herein is that the final selection is approved by the Appointment Committee of the Cabinet (ACC) and therefore Section 8(1)(i) of the RTI Act was attracted, was rejected. It was the contention of the public authority that Appointment Committee of the Cabinet functions under the delegated powers of the Cabinet and for all practical purposes it is co-extensive with the Cabinet's powers attracts exemption under Section 8(1)(i) of the RTI Act. To this

extent, the CIC agreed but relying upon the first proviso to Section 8(1)(i) of the RTI Act it was observed that appointments have already been made and therefore information should be disclosed and put in public domain.

60. The recommendations made by the interview/selection board, is one of the material which is before the Appointment Committee of the Cabinet. Therefore the recommendations are not protected under Article 74(2) of the Constitution of India which grants absolute immunity from disclosure of the advice tendered by Ministers and the reasons thereof. After appointments have been made, even if Section 8(1)(i) applies, the first proviso comes into operation.

61. Learned counsel for the petitioner submitted that information should be denied under Section 8(1)(j) of the RTI Act. It appears that no such contention was raised before the Central Information Commission. The order passed by the Public Information Officer also does not rely upon Section 8(1)(j) of the RTI Act. In the grounds reference has been made to Section 8(1)(j) of the RTI Act but without giving any foundation and basis to invoke the said clause. There is no foundation to justify, remand of the matter to CIC to examine exclusion under Section 8(1)(j) of the RTI Act. Information seeker is asking for recommendations made by the selection/interview board and not for comments or observations. List of candidates as per the recommendations of the interview/selection board have to be

furnished. Reference before the CIC was made to Section 123 of the Evidence Act, 1872, and as held above in view of Section 22 of the RTI Act, the said provision cannot be a ground to deny information. In view of the aforesaid, the present Writ Petition is dismissed.

(3) WRIT PETITION (CIVIL) NO. 4788 OF 2008

62. Central Information Commission by the impugned Order dated 6th June, 2008 has directed furnishing of the information under clauses (b) to (e) to the Respondent no.2-Brig.Deepak Grover (retd.):

> "(a)The ACR profiles of all officers of 1972 batch of Engineer Officers who were considered in the Selection Board No.1 held in September 05"
>
> (b) The weightage, if any, given over and above the ACR grading to each of the officers considered in the Selection Board referred to at Para 3(a) above.
>
> (C) The final comparative graded merit of all the Engineer Officers of the 1972 batch placed before the Selection Board referred to at Para 3(a) above.
>
> (d) The recommendations of the Selection Board referred to at Para 3(a) above with respect to all the Engineer officers of the 1972 batch considered by the Board.
>
> (e) The No. of Engineer Officers considered vis-à-vis those approved for promotion by the Selection Board No.1 for the 1968, 1969, 1970, 1971, 1972 and 1973 batches."
>
> [Note; information (a) has been denied.]

63. The public authority had relied upon Section 8(1)(e) and (j) of the RTI Act. Central Information Commission referred to the judgment of the Supreme Court in Civil Appeal No. 7631/2002 titled ***Dev Dutt versus Union Public Service Commission and others***

(decided on 12th May, 2008) but it was observed that this decision was not applicable as the information seeker had asked for third party ACRs. Thus information (a) was denied. CIC made reference to their decision dated 13th July, 2006 in the case of ***Gopal Kumar versus Ministry of Defence*** (Case No. CIC/AT/A/2006/00069) and it was observed that disclosure of contents of ACR is not exempted under Section 8(1)(j) but the principle of severability under section 10 of the RTI Act should be applied. Informations (b) to (e) were directed to be furnished. The Central Information Commission did not permit the petitioner herein to rely upon Section 8(1)(a) of the RTI Act as the said Section was not invoked by the Public Information Officer or the first appellate authority. The said approach and reasoning is not acceptable. Public authority is entitled to raise any of the defences mentioned in Section 8(1) of the RTI Act before the Central Information Commission and not merely rely upon the provision referred to by the Public Information Officer or the first appellate authority to deny information. An error or mistake made by the Public Information Officer or the first appellate authority cannot be a ground to stop and prevent a public authority from raising a justiciable and valid objection to disclosure of information under Section 8(1) of the RTI Act. The subject matter of appeal before the Central Information Commission is whether or not the information can be denied under Section 8(1) of the RTI Act. While deciding the said question it is open to the public authority to rely upon any of the Sub-sections to

Section 8(1) of the RTI Act, whether or not referred to by the public information officer or the first appellate authority. Under Section 19(9) notice of the decision is to be given to a public authority.

64. Decision in ***Dev Dutt case*** (supra) holds that public servant has a right to know the annual grading given to him and the same must be communicated to him within a reasonable period. However, the said ratio as per para 41 of the said judgment is not applicable to military officers in view of the decision of the Supreme Court in ***Union of India versus Maj. Bahadur Singh*** (2006) 1 SCC 368. The present case is one of a military officer. Further, the information seeker wants to know observations in and contents of his ACR and not merely his gradings. The petitioners herein have also relied upon Section 8(1)(e) and (j) of the RTI Act in addition to Section 8(1)(a) of the RTI Act.

65. CIC has partly allowed the appeal but did not notice that under queries (b) to (e) the respondent no. 2 had also asked for ACR grading of other officers and comparative grade/merit charge of all officers of 1972 batch. Thus information mentioned in (a) and (b) to (e) were some-what similar. Information (a) has been denied but (b) to (e) have been allowed. There is no discussion and reasoning given in the order with reference to either Section 8(1)(e) or (j) of the RTI Act. In ***R.K. Jain's*** case (supra) it was observed

> **"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 Government when transacted by bureaucrats, even in personal level, it would be difficult to have equanimity if the inner working of the Government machinery is needlessly exposed to the public. On such sensitive issues it would hamper the expression of frank and forthright views or opinions. Therefore, it may be that at that level the deliberations and in exceptional cases that class or category of 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."

66. It cannot be said that comments in ACRs in all cases have to be furnished as a matter of right and in no case Section 8(1)(e) or (j) of the RTI Act will apply. Each case has to individually examined keeping in mind the factual matrix. While applying Section 8(1)(j) the two interests have to be balanced. As the matter is remanded back on the question of applicability of Section 8(1)(a) of the RTI Act, the petitioners herein will be entitled to raise objection under Sub-section (e) and (j) of the RTI Act before the Central Information Commission.

67. However, as noticed above, in view of Section 22 of the RTI Act reference to the provisions of the Army Act and the subordinate legislation made thereunder is irrelevant. Whether or not information should be furnished has to be examined in the light of Section 8(1) of the RTI Act.

(4) WRIT PETITION (CIVIL) NO. 9914 OF 2009

68. Respondent no.2-Maj. Rajpal (retd) was invalidated from army service on medical grounds on 26th August, 1992. On 14th May, 2007 he asked for the following information:-

> " (i) List of senior service officers who formed the "selection panel".
>
> (ii) List of affected service officers placed before the "selection board".
>
> (iii) My medical category listed and placed before the "selection board".
>
> (iv) Board proceedings and its subsequent disposal duly enclosing the relevant AO/AI's on the subject.
>
> (v) A copy of Military Seecretary-14 (MS-14) Branch letter No. 55821/Gen/MS-14/B dated 21 August, 1992 addressed to 664 Coy ASC Tk tptr type 'C', C/O 56 APO, Subject : Photograph Officers, The said letter has been signed by Sh B.R. Sharma, ACSO, Offg AMS-14 for MS."

69. Information was partly denied by the Public Information Officer and the first appellate authority. On second appeal by the impugned Order dated 12th February, 2009 the Central Information Commission has directed furnishing of following information :-

> "(i) A list of senior officers who constituted the Selection Board.
>
> (ii) A copy of the Board proceedings of the Selection Board including the copy of the record in the recommendation of the Board was subsequently dealt with."

70. Union of India objects and has filed the present Writ Petition.

71. It is mentioned in the writ petition that the respondent no.2 was considered for promotion to the rank of Lt. Colonel (Time Scale) in June 1990 but because of low medical category he was not granted the said grade.

72. The period in question admittedly relates to the year 1990. The respondent no.2 has been adversely affected and was denied promotion as a result of the said board proceedings. As held above the test of larger public interest cannot be put in any strait jacket but is flexible and depends upon factual matrix of each case. It is difficult to comprehend and accept that any public interest would be served by denying information to the respondent no.2 with regard to selection board proceedings and record of how the recommendations of the selection board was subsequently dealt in an old matter relating to the year 1990. The matter is already stale and of no interest and concern to others, except respondent no.2. Reference can be made to para 54 of the decision of the Supreme Court in ***R.K. Jain*** (supra) that the extent to which the interests referred to have become attenuated by passage of time or occurrence of intervening events is

a relevant circumstance. Passage of time since the creation of information may have an important bearing on the balancing of interest under section 8(1)(j) of the RTI Act. The general rule is that maintaining exemption under the said clause diminishes with passage of time. The test of larger public interest merits disclosure and not denial of the said information. However, direction to disclose names of the officers who constituted the said panel could not have been issued without complying with provisions of Section 11 and Section 19(4) of the RTI Act. The said procedure has not been followed by the CIC. I am however not inclined to remand the matter back on the said question as disclosure of the said names would result in unwanted invasion of privacy of the said persons and there is no ground to believe that larger public interest would justify disclosure of said names. The impugned order passed by the CIC dated 12th February, 2009 is non-speaking and no-reasoned and does not take the said aspects into consideration. Even the written submissions of the respondent no.2 do not disclose any larger public interest which would justify disclosure of the name of the officers. This will also take care of objection under section 8(1)(e) of the RTI Act.

73. The Writ Petition is accordingly partly allowed and the petitioner need not disclose the name of the officers who constituted the selection panel and applying the doctrine of severability, copy of the board minutes and subsequent record of recommendation should be supplied without disclosing the names of the officers.

(5) WRIT PETITION (CIVIL) NO. 6085 OF 2008

74. Col. H.C. Goswami (retd.)-respondent no.2 is a retired Army officer of 1963 batch officer. He was charge sheeted on the ground of misconduct and general court martial was convened and he was sentenced to be cashiered and directed to serve rigorous imprisonment of two years. The court martial proceedings and subsequent orders were quashed in Crl. Writ Petition No.675/1989. The respondent no.2 was held entitled to all benefits as if he was not tried and punished and the said judgment was upheld by the Supreme Court. Consequent upon the judgment, the respondent no.2's case was put up for consideration for promotion to the rank of Brigadier on 7th September, 1999 before selection board-II. By letter dated 25th October, 1999 respondent no.2 was informed that he was not found fit for promotion. This order was successfully challenged in W.P.(C) 7391/2000 decided on 7th August, 2008. The Division Bench held that the selection board-II could not have directly or indirectly relied upon or discussed respondent no.2's trial and punishment in the court martial proceedings while evaluating his performance and considering his case for promotion. Reference was made to Master Data sheets and CR dossiers in which the details of CRs earned since commissioned and court certificates, awards, citations in respect of honours, details of disciplinary cases are mentioned. It was noticed that evaluation of merits of the officers was not based upon

any quantification of marks or aggregation of marks. There was no cut off discernible from the record to justify or deny promotion to any one falling below the cut off. Accordingly, the recommendations made by the selection board II denying promotion was set aside with a direction to reconvene a selection board to consider the case of the respondent no.2 afresh. It was in these circumstances that the respondent no.2 had filed an application under the RTI Act seeking the following information :-

> " Regarding the proceedings of No.2 Selection Board held in August/September 1999 and the proceedings of no.2 selection Board held in Aug/Sep 1990 of 1963 batch for promotion to the rank of Brigadier:
>
> 1. The extracts of all my ACRs which were considered for his promotion to the rank of Brigadier
>
> 2. The OAP (Overall Performance) Grading/Pointing of his promotion to the rank of Brigadier of the batch 1999 with whom my name was considered.
>
> 3. The OAP of the last officer who was approved and promoted to the rank of Brigadier of the batch 1999 with whom my name was considered.
>
> 4. The OAP Grading/Points of the last officer of 1963 batch who was approved by the No.2 Selection Board held in Aug/Sep 1990 for promotion to the rank of Brigadier."

75. Before the CIC it was submitted that there was no appraisal known as OAP (Overall Performance) with the Ministry of Defence and there was no figurative assessment of officers. However, it was admitted that an overall profile was considered by the senior officers to determine whether the officer was entitled to promotion. A sample

of the said profile was placed on record before the CIC and consists of the following heads :

> "Agenda No:
> Arm/Service:
> Member Data Sheet:
> Date
> PFH:
> Page
> Year birth:
> Med cat:
> Hons/Awd:
> Civil Qual:
> DOC:
> DOS:
> Disc.
> BPR:
> Prev Bd Res-"

76. It was stated before the CIC that the grading in the overall profile proforma was done on the basis of the information in the ACRs and thereafter the selection board decided whether or not the officer was fit for promotion in his turn to the next rank or should not be empanelled, etc.

77. Learned CIC in the impugned order has quoted several paragraphs from the judgment in the case of ***Dev Dutt*** (supra) but has held that the said judgment is not intended to be applicable to the military officers. However, the appeal filed by the respondent no.2 has been allowed on the ground that the said respondent No.2 has now retired and the effect of disclosure at best would lead to readjustment of pension benefits without seriously compromising any

public interest. In these circumstances, the overall profile of respondent no.2 has been directed to be disclosed.

78. The disclosure directed by CIC does not require interference except that names of the officers who were members of the selection committee II need not be revealed. Information asked for is personal to the respondent No.2 and if names of members of selection Committee II are not revealed, there will be no unwarranted invasion of privacy. Even otherwise the facts disclosed above, repeated judgments in favour of the respondent no.2 and his frustration is not difficult to understand. Blanket denial of information would be contrary to public interest and disclosure of information without names would serve public cause and justice.

Writ Petition is accordingly disposed of.

(6) WRIT PETITION (CIVIL) NO. 7304 OF 2007

79. Central Information Commission has allowed the appeal of Respondent no.1-Bhabaranjan Ray vide the impugned Order dated 26th April, 2007 and has directed that he should be shown his ACRs together with those of third parties who had been promoted to Senior Administrative Grade (SAG). The impugned Order is extremely brief and cryptic and directs that openness and transparency requires that every public authority should provide reasons to the affected persons by showing him all papers/documents. The reasoning given is as under:

> "12. As for the contents of the application, the Appellant desires to see the files/records/documents which led to his being denied promotion to SAG grade from Selection Grade. The Commission feels that in the interest of transparency, the Appellant must be allowed access to all such records. The Commission also pointed out that this particular case attracted Section 4(1)(d) of the RTI Act which reads : "every public authority shall provide reasons for its administrative and quasi judicial decisions to the affected persons." Since in the present case, the Appellant, without doubt, is an affected party, it is incumbent upon the Respondents to show him all the papers and documents relating to this issue. In his application, the Appellant has also desired to see the copies of ACRs of his own together with those who had been promoted to the SAG in the DPC held on 23 July 1998. The Commission sees no reason as to why these ACRs should not be shown to him. Granted that ACRs by their nature are confidential but on the other hand they are also in the public domain and through an ACR no public authority should unjustifiably either favour or deny justice to a concerned employee. The Commission directs the Respondents, therefore, to show call the relevant documents to the Appellant by 10 May 2007."

80. There is no examination or consideration of the relevant provisions of Section 8(1) of the Act and it may be noticed that disclosure of information relating to third parties requires compliance of procedure under Sections 11 and 19(4) of the RTI Act. Grades in ACRs must be disclosed in the light of the judgment of the Supreme Court in ***Dev Dutt*** (supra) but the question of disclosure of internal comments on the officers has to be decided in each case depending on the factual background. No universal applicable rule as such can be laid down. In some cases it is possible that the records may be

denied or may be made available after erasing the name of the officer who have given the comments. Reference can also be made to passages from the decision in the case of R.K.Jain(supra) quoted above.

81. Respondent no.1 in his counter affidavit has pointed out several facts on the basis of which it was submitted that larger public interest demands disclosure of the said information. He has referred to the Order dated 25th Feb., 2005 passed by the Central Administrative Tribunal, Calcutta directing the petitioner herein to hold a review DPC without taking into consideration the un-communicated adverse entries below the bench mark. He has also referred to the order passed by the Calcutta High Court dated 7th October, 2005 upholding the said decision and has submitted that the petitioners inspite of the said orders have even in the review DPC rejected his case for promotion to Sr. Administrative Grade without recording any reasons. It is stated that this had compelled the respondent no.1 to file another petition before the Central Administrative Tribunal.

82. Accordingly, the matter is remanded back to the Central Information Commission for fresh adjudication keeping in view the above discussion.

(7) <u>WRIT PETITION (CIVIL) NO. 7930 OF 2009</u>

83. By the impugned order dated 9.3.2009 CIC has directed furnishing of copy of the FIR registered by the officers of the Special

Cell with Jamia Nagar P.S. regarding encounter at Batla House on 19th September, 2008 and furnishing of post mortem reports of inspector Mr. Mohan Chand Sharma, Mr. Atif Ameen and Mr. Sajid after erasing the name of the person who had filed the FIR and details of doctors who have conducted the post mortem by applying principle of severability under Section 10 of the RTI Act. It was held that disclosing names of the said persons would impede process of investigation under Section 8(1)(h) and the non-disclosure of the said names was justified under Section 8(1)(g) of the RTI Act as it could endanger life and physical safety of the said persons.

84. Addl. Commissioner of Police has filed the present writ petition aggrieved by the direction given by the CIC in the impugned order dated 9.3.2009 directing furnishing of the FIR without the name of the complainant and copy of the post mortem report without disclosing of the doctors. Reliance is placed by the petitioner on Section 8(1)(h) of the RTI Act.

85. Mere pendency of investigation, or apprehension or prosecution of offenders is not a good ground to deny information. Information, however, can be denied when furnishing of the same would impede process of investigation, apprehension or prosecution of offenders. The word “impede” indicates that furnishing of information can be denied when disclosure would jeopardize or would hamper investigation, apprehension or prosecution of offenders. In Law

Lexicon, Ramanatha Aiyar 2nd Edition 1997 it is observed that "the word "impede" is not synonymous with 'obstruct'. An obstacle which renders access to an inclosure inconvenient, impedes the entrance thereto, but does not obstruct it, if sufficient room be left to pass in and out. 'Obstruct' means to prevent, to close up."

86. The word "impede" therefore does not mean total obstruction and compared to the word 'obstruction' or 'prevention', the word 'impede' requires hindrance of a lesser degree. It is less injurious than prevention or an absolute obstacle. Contextually in Section 8(1)(h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said Sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. Onus under Section 19(5) of the RTI Act is on the public authority. The Section does not provide for a blanket exemption covering all information relating to investigation process and even partial information wherever justified can be granted. Exemption under Section 8(1)(h) necessarily is for a limited period and has a end point i.e. when process of investigation is complete or offender has been apprehended and prosecution ends. Protection from disclosure will also come to an end when disclosure of

information no longer causes impediment to prosecution of offenders, apprehension of offenders or further investigation.

87. FIR and post mortem reports are information as defined under Section 2(f) of the RTI Act as they are material in form of record, documents or reports which are held by the public authority.

88. First Information Report as per Section 154 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Code, for short) is the first information recorded in writing by an officer in-charge of a police station and read over to the informant. The substance of the said information is entered in a book/register required to be maintained as per the form prescribed by the State Government. Copy of the First Information has to be furnished forthwith and free of cost to the informant and under section 157 of the Code the same has to be sent forthwith to the Magistrate empowered to take cognizance of the said offence. There are judicial decisions in which FIR has been held to be a public document under the Evidence Act, 1872. Under Sections 74 and 76 of the Evidence Act, 1872 a person who has right to inspect a public document also has a right to demand copy of the same. Right to inspect a public document is not an absolute right but subject to Section 123 of the Evidence Act,1872. Inspection can be refused for reasons of the State or on account of injury to public interest. Under Section 363(5) of the Code any person affected by a judgment or an order passed by a criminal court, on an

application and payment of prescribed charges is entitled to copy of such judgment, order, deposition or part of record. Under Sub-section (6) any third person who is not affected by a judgment or order can also on payment of a fee and subject to such conditions prescribed by the High Court can apply for copies of any judgment or order of the criminal court.

89. In the present writ petition the Asst. Commissioner of Police has not been able to point out and give any specific reason how and why disclosure of the first information report even when the name of the informant is erased would impede process of investigation, apprehension of offenders or prosecution of offenders. In fact both the Public Information Officer as well as the first Appellate Authority have stated that the first information report has to be furnished to the accused and the informant. It is also not denied that a copy of the first information report has been sent to the concerned Magistrate and forms part of the record of the criminal court. It is not pleaded or stated that the first information report has been kept under sealed cover. It may be also noticed that the respondent no.2 in the counter affidavit has stated that one of the persons who has been detained is the son of the caretaker of the flat at Batla House. In these circumstances I do not see any reason to interfere with and modify the order passed by CIC directing furnishing copy of FIR minus the name of the informant. The contention of the petitioner that copy of the FIR cannot be furnished to the respondent no.2 under the Code is

without merit as the said information has been asked for under the RTI Act and whether or not the information can be furnished has to be examined by applying the provisions of the RTI Act. As per Section 22 of the RTI Act, the said Act overrides any contrary provision in any other earlier enactment including the Code.

90. However, disclosure of post mortem reports at this stage when investigation is in progress even without names of the doctors falls in a different category. It has been explained that post mortem reports contains various details with regard to nature and type of injuries/wounds, time of death, nature of weapons used, etc. Furnishing of these details when investigation is still in progress is likely to impede investigation and also prosecution of offenders. It is the case of the petitioners that enquiries/investigation are in progress and further arrests can be made. Furnishing of post mortem report at this stage would jeopardize and create hurdles in apprehension and prosecution of offenders who may once information is made available take steps which may make it difficult and prevent the State from effective and proper investigation and prosecution.

Writ petition is accordingly disposed off.

(8) WRIT PETITION (CIVIL) NO. 3607 OF 2007

91. Respondent no.2 herein-Mr. Y.N. Thakkar had made a complaint alleging professional misconduct against a member of the Institute of Chartered Accountants of India. The complaint was

examined by the Central Council in its 244th meeting held in July 2004 and was directed to be filed as the council was prima facie of the opinion that the member concerned was not guilty of any professional or other misconduct. The council did not inform or give any reasons for reaching the prima facie conclusion. In fact it is stated in the writ petition filed by the Institute of Chartered Accountant that the council was not required to pass a speaking order while forming a prima facie opinion.

92. On 7th January, 2006 respondent no.2 filed an application seeking details of reasons recorded by the council while disposing of the complaint. The information was not furnished and was denied by the PIO and the first Appellate Authority on the ground that the opinion expressed by the members of the council was confidential.

93. By the impugned order dated 31st January, 2007 CIC has directed furnishing of information without disclosing the identity of the individual members.

94. In the writ petition filed, the Institute of Chartered Accountant has projected that respondent no.2 wants, and as per the impugned order, the CIC has directed furnishing of deliberations and comments made by members of the council while considering the complaint, reply and the rejoinder. Respondent no.2 has not asked for copy of deliberations or the discussion and comments of the members of the council. He has asked for reasons recorded by the council while disposing of his complaint. During the course of discussion, members of the council can express different views. Confidentiality has to be

maintained in respect of these deliberations and furnishing of individual statements and comments may not be required in view of Section 8(1)(e) and (j) of the RTI Act. However, I need not decide this question in the present writ petition as the respondent no.2 has not asked for copy of the deliberations and comments. His application is for furnishing of reasons recorded by the council while disposing of the complaint. There is difference between the reasons recorded by the council while disposing of the complaint and comments and deliberations made by individual members when the complaint was examined and considered. Reasons recorded for rejecting the complaint should be disclosed and there is no ground or justification given in the writ petition why the same should not be disclosed. In fact, as per the writ petition it is stated that the council did not pass a speaking order rejecting the complaint and it is the stand of the petitioner that no speaking order is required to be passed while forming a prima facie opinion. It is open to the petitioner to inform respondent no.2 that no specific reasons have been recorded by the council. The consequence and effect of not recording of reasons is not subject matter of the present writ petition and is not required to be examined here. Writ Petition is accordingly disposed of with the observations made above.

(SANJIV KHANNA)
JUDGE

NOVEMBER 30, 2009.
P

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 19.11.2013

\+ WP(C) No.14069 of 2009

UNION OF INDIA ..... Petitioner
Through: Mr. Sanjeev Kumar Dubey &
Mr. Rajmangal Kumar, Advs.

Versus

PRAMOD KUMAR JAIN ..... Respondent
Through: Nemo.

\+ WP(C) No.14084 of 2009

UNION OF INDIA ..... Petitioner
Through: Mr. Sanjeev Kumar Dubey &
Mr. Rajmangal Kumar, Advs.

Versus

RAJESH KUMAR TYAGI ..... Respondent
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGEMENT

V.K.JAIN, J. (Oral)

Both the above-referred petitions involve interpretation of Section 8 (1) (i) of the Right to Information Act, 2005, which reads as under:

> "**8. Exemption from disclosure of information. –** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
> ….

(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;"

2. In the present petitions, the respondents before this Court by way of separate applications sought the following information from the CPIO of the Department of Personnel & Training:

"(a) Copies of DPC proceeding and nothings of DPC proceedings from the stage of DPC held on 28th March, 2007, approval by ACC and up to the stage of issue of panel bringing out the cause of omission of certain names including mine from the approved panel in respect of promotion of Additional Chief Engineer to the grade of Chief Engineer in MES of the Ministry of Defence against the vacancies for the year 2007-08 for which approved panel for promotion has been issued by E-in-C's branch vide letter No.B/41021/DPC/CE/2007-08/E1 (DCP-1) dated 27 Jun 2007.

(b) Why the main panel is only for 07 (Seven) officers where as the vacancies existed was 10 (Ten) at the time of holding DPC on 28th March 2007.

(c) Out of the 07 officers included in the main panel, only 3 officers are retiring during the year 2007-08 then why the extended panel is for 05 officers."

3. The aforesaid information was declined by the CPIO on the ground that the information sought by them formed part of Cabinet papers including record of deliberations of Secretaries and other officers

which was exempt under Section 8 (1) (i) of the Act. Being aggrieved from the denial of the information, the respondents preferred separate appeals before the first appellate authority, which *inter alia* held as under:

> "It is observed that Section 8 (1) (j) of the RTI Act clearly lays down that "Cabinet papers" including "records of deliberations of the Council of Ministers, Secretaries and other officers" are exempted from disclosure. There is no obligation on the part of the CPIO go give above mentioned information.
>
> There is, however, a provision, under the section 8 (1) (i) which lays down that the "Decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decision were taken "shall be made public" after "the decision has been taken, and the matter is complete, or over".
>
> Obviously, "Cabinet Papers" have a wider meaning in the Act. It includes all the papers pertaining to deliberations of the various Committees of the Cabinet, apart from including the papers pertaining to "Records of deliberations of the Council of Ministers", "records of deliberations of the Secretaries" and "Records of deliberations of other officers". "Decisions of the council of Ministers" and "material on the basis of which the decisions were taken" are a just a sub-set of the larger set of documents encompassed under the larger term "Cabinet Papers".
>
> Out of these type of documents only one set of documents is mandated to be made public after "the decision has been taken, and the matter is complete, or over." The use of the terms "Shall be made public" in the Act obviously makes it a duty for the Public Authorities to make public the "decisions of the Council of Ministers" and "material on the basis of which the decisions were taken." Naturally, there should be no occasion or need for any info-seeker to ask for this class of information, as these are mandated, in any case, to be made public. But this stipulation (making them mandatorily public) is attracted, specifically, only in cases of "Decisions of Council of

Ministers" and, definitely, not in respect of any other class of "Cabinet Papers."

The papers (pertaining to Shri P. K. Jain's request) being held by the DOPT's CPIO Shri Ravindra Kumar, Under Secretary are, essentially, the papers pertaining to the deliberations of the "Appointments Committee of the Cabinet" pertaining to promotion to the post of Chief Engineer in MES, and hence, they fall under the definition of "Cabinet Papers". They cannot be treated as "materials" for decision of "council of Ministers"

The papers (pertaining to Shri P. K. Jain's request) being held by the DOPT's CPIO Shri Ravindra Kumar, Under Secretary are, essentially, the papers pertaining to the deliberations of the "Appointments Committee of the Cabinet" pertaining to promotion to the post of Chief Engineer in MES, and hence, they fall under the definition of "Cabinet Papers". They cannot be treated as "materials" for decision of "council of Ministers" (As envisaged and understood under proviso to Section 8 (1) (i) of the RTI Act 2005). As already brought out earlier, as far as "Cabinet papers" are concerned, it is a separate class of papers, distinct from "material on the basis of which decision of Council of Ministers are "taken" and cannot be made public even after the decisions have been taken and the matter is complete or over. This is because of the simple reason that the enabling proviso under section 8talks only about the "decisions of the Council of Ministers". Hence, the proviso, under section 8 (1) (i), cannot travel beyond the legislative intent as reflected in the main Section 8 (1) (i) and the proviso cannot be read to enable disclosure of all class of the Cabinet Papers."

4. Being aggrieved from the order of the First Appellate Authority, the respondent preferred a second appeal before the Central Information Commission, which vide impugned order dated 3.2.2009, relying upon its earlier order in Appeal No.CIC/WB/A/2008/00081 dated 23.10.2008 P.D. Khandelwal Vs. DoPT, directed disclosure of the desired

information to the respondent. Being aggrieved from the order of the Commission, the petitioner-Union of India is before this Court.

5. Section 8 (1) (i) came up for consideration by this Court in WP (C) No.16907/2006 titled Union of India Vs. Sweety Kothari & connected matters decided on 30.11.2009. In the said case, the following information was sought by the applicant:

> "(a) Copies of the advertisements calling for applications for selection of ITAT members in Calendar Years 2002 and 2003.
>
> (b) Recommendation of Interview/Selection Board regarding selection of the said members.
>
> (c) Names of the person finally selected as ITAT members in the above-mentioned Calendar Years."

The information sought for at serial Nos.(a) & (c) was supplied but the information sought for at serial No.(b) was denied. The contention of the petitioner that since final selection was approved by ACC, Section 8 (1) (i) of the Act was attracted was, however, rejected by the Commission, which directed the disclosure of the aforesaid information to the applicant. Rejecting the writ petition, this Court held that the recommendations made by the Interview/Selection Board being one of the material before the Appointment Committee of the Cabinet (ACC), the said information are not protected under Article 74 (2) of the Constitution of India which grants absolute immunity from disclosure of the advice tendered by the Ministers and the reasons thereof and after appointments had been made even if Section 8 (1) (i) of the Act applies, the first proviso comes into operation. During the course of judgment, the Court interpreting clause (i) of sub-section (1) of Section 8 of the Act *inter alia* observed as under:

"20. The said sub-clause protects Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. The first proviso however stipulates that the prohibition in respect of the decision of the Council of Ministers, the reasons thereof and the material on the basis of which decisions were taken shall be made public after the decision is taken and the matter is complete or over. Thus, a limited prohibition for a specified time is granted. Prohibition is not for an unlimited duration or infinite period but lasts till a decision is taken by the Council of Ministers and the matter is complete or over.

21. The main clause to Section 8(1)(i) uses the term Cabinet Papers which include records or deliberations, but the first proviso refers to the decision of the Council of Ministers, reasons thereof and the material on the basis of which the decisions were taken. The term "Council of Ministers" is wider than and includes Cabinet Ministers. It is not possible to accept the contention of Mr. A.S. Chandhiok, learned Addl. Solicitor General that cabinet papers are excluded from the operation of the first proviso….."

…. …. …. …. ….

"23. Views expressed by authorities/persons which precede the formation of advice tendered or merely because these views are referred to in the advice which is ultimately tendered by the Council of Ministers, do not necessarily become part of the advice protected against disclosure under Article 74(2) of the Constitution of India. Accordingly, the material on which the reasons of the Council of Ministers are based and the advice is given do not form part of the advice…."

"24. ….When Article 74(2) of the Constitution applies and bars disclosure, information cannot be furnished. RTI Act cannot and does not have the ability and mandate to negate the constitutional protection under Article 74(2). The said Article refers to inquiry by courts but will equally apply to CIC."

…. …. …. …. ….

> "26. …. As held above, the first proviso removes the ban on disclosure of the material on the basis of which decisions were taken by the Council of Ministers, after the decision has been taken and the matter is complete or over….."

6. It would be seen from a conjoint reading of the main Clause (i) and the first proviso to the said Clause, that though there is a prohibition against disclosure of Cabinet papers, which would include record of deliberations of the Council of Ministers, Secretaries and other officers, such prohibition as far as RTI Act is concerned, is not for all times to come and has a limited duration till the Council of Ministers takes a decision in a matter and the matter is complete or over in all respects. Considering the context in which the words "the matter is complete or over" have been used it appears to me that once the decision taken by the Council of Ministers has been given effect, by implementing the same, the prohibition contained in Clause (i) is lifted and the decision taken by the Council of Ministers, the reasons on which the decision is based as also the material on the basis of which the said decision was taken can be accessed under the Right to Information Act. Mr. Dubey, the learned counsel for the petitioner-Union of India has drawn my attention to the fact that the expression used in the main Clause is 'cabinet papers' whereas the first proviso refers only to the decision of the Council of Ministers, the reasons thereof and the material on which such decisions are based. The Cabinet comprises of the Prime Minister and the Cabinet Ministers whereas the Council of Ministers comprises not only the Prime Minister and the Cabinet Ministers, but also the Ministers of State and the Deputy Ministers. Therefore, the Council of Ministers is a larger body as compared to the Cabinet. Hence, once the

decision taken by the Council of Ministers/Cabinet has been implemented, the decision taken by the said Council/Cabinet as well as the reason for such decision and the material on the basis of which the decision was taken cannot be withheld by the concerned CPIO.

7. Mr. Dubey points out that in Clause (i), Cabinet papers include record of deliberations not only of the Council of Ministers but also of the Secretaries and other officers but the proviso does not apply to the deliberations of the Secretaries and other officers, meaning thereby that even after a decision has been implemented, the deliberations of the Secretaries and other officers cannot be disclosed. A careful perusal of the proviso would show that not only the decisions of the Council of Ministers and the reasons on which the said decisions are based but also the material on the basis of which the decisions are taken by the Council of Ministers are also required to be disclosed, once the decision has been implemented. Therefore, in case the deliberations of the Secretaries and/or other officers constitute the material which formed the basis for the decision of the Council of Ministers, the said deliberations of the Secretaries and/or other officers also cannot be withheld.

8. Mr. Dubey also draws my attention to Article 74 (2) of the Constitution of India which provides that the question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any Court and submits that in view of the said prohibition, the decision taken by the Cabinet Committee on Appointments (ACC), the same being advice tendered to the President, cannot be directed to be disclosed. The question which arises for consideration from the submission made by Mr. Dubey is as to whether the decision taken by the Cabinet Committee on Appointments (ACC)

on promotion of Additional Chief Engineers to the grade of Chief Engineers in MES of the Ministry of Defence amounts to "advice tendered by Ministers to the President" within the meaning of Article 74 of the Constitution or not. A similar issue came up for consideration before a Division Bench of this Court in Waris Rashid Kidwai Vs. Union of India & Ors. (1998) ILR Delhi 589. The petitioner in that case filed a petition challenging the mode and manner of appointment to the post of the Chairman and Managing Director of Minerals & Metals Trading Corporation (MMTC). The procedure for filling up the said post was that the Public Enterprises Selection Board (PESB) used to lay down job descriptions, qualifications and experience for eligible candidates, shortlist candidates out of the eligible officers, hold interviews, make a panel of candidates selected as suitable for the posts and forward the same to the concerned Ministry for processing the case for approval of Appointments Committee of the Cabinet (ACC). The concerned Ministry would then process the case and forward the proposal to the Establishment Officer, Ministry of Personnel, Public Grievances and Pension who was the Secretary of the ACC for obtaining and conveying the ACC decision on the proposal. The ACC comprises the Prime Minister, the Home Minister and the Minister In-charge of the concerned Ministry. The Secretary, ACC would submit the proposal to the Home Minister and the Prime Minister through the Cabinet Secretary and the decision was finally approved/taken at the level of the Prime Minister and conveyed to the Ministry concerned by the Secretary, ACC. Mr. Arun Jaitley, counsel for the respondent contended before this Court that it cannot enquire into the respective opinion which the Members of the ACC may have expressed while

considering cases of such appointments. In this regard, he contended that the decision of ACC was in the nature of advice tendered by the Council of Ministers to the President and, therefore, the Court cannot enquire the question as to what advice was tendered. He also contended that ACC was constituted to conduct business of the Government as stipulated by Article 77 and its business was deemed to be a decision of the Council of Ministers and was in the nature of aid and advice to the President. Rejecting the contention, this Court *inter alia* held as under:

> "20. ….It has, however, to be borne in mind that what is debarred to be enquired into is the aid and advise and not the material on which the advise is tendered by the Council of Ministers. That material cannot be said to be part of the advise and it is thus outside the exclusionary rule enacted in Article 74(2) of the Constitution (See: S.P. Gupta & others Vs. Union of India & Ors, and R.K. Jain Vs. Union of India & others,). Further, such an appointment does not call for any aid and advise to the President as contemplated by Article 74(1). It is only an appointment in the name of the President which is altogether a different matter. Such appointments cannot be said to be based on the advise of the Council of Ministers to the President and thus these appointments cannot be said to be protected under Article 74(2)….."

In view of the pronouncement of the Division Bench, there is no escape from the conclusion that the decision of the ACC in the matter of promotion of a Government servant does not constitute advice of the Ministers to the President within the meaning of Article 74 of the Constitution and, therefore, cannot be withheld if it is otherwise accessible under the provisions of the Right to Information Act.

9. For the reasons stated hereinabove, the writ petition is disposed of with a direction that the petitioner shall disclose the approval by ACC to the respondents in terms of the prayer made in the application submitted by them to the CPIO. The information to be made available to the respondents shall also include the reasons for the decision taken by the ACC. The material on the basis of which the said decision was taken, however, need not be disclosed, if it was not sought by the respondents. If, however, they seek such material, it cannot be withheld, after a decision taken by the Council of Ministers is implemented. It is, however, made clear that a Cabinet decision, wherever such decision constitutes advice of Ministers to the President in terms of Article 74 of the Constitution, cannot be accessed under the provisions of the Right to Information Act.

The writ petitions stand disposed of accordingly.

November 19, 2013 V.K. JAIN, J.
b'nesh

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 18.11.2011

% Judgment delivered on: 22.11.2011

\+ **W.P.(C.) No. 5677/2011**

JAMIA MILLIA ISLAMIA ..... Petitioner
Through: Mr. M. Atyab Siddiqui, Advocate.

versus

SH. IKRAMUDDIN ..... Respondent
Through: Mr. Zafar Sadique, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? : **Yes**
2. To be referred to the Reporters or not? : **Yes**
3. Whether the judgment should be reported in the Digest? : **Yes**

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner, Jamia Millia Islamia, a statutory public central institution regulated by Jamia Millia Islamia Act, 1988, assails the order dated 21.06.2011 passed by the Central Information Commission (in short referred to as "CIC") in the respondent's appeal No.CIC/SG/A/2010/001106, whereby the CIC has allowed the appeal preferred by the respondent and directed the Public Information Officer (PIO) of the petitioner to provide the complete information available as on record in relation to query No.1 of the respondent.

2. The respondent had sought information vide query No.1 as follows: *"Copies of Agreement/settlement between Jamia and Abdul Sattar S/o Abdul Latif & mania and Kammu Chaudhary in Ghaffar Manzil land".* Two other queries were also raised, however, I am not concerned with them in this petition as the impugned order directs disclosure of information raised in query No.1 only, as aforesaid.

3. The PIO vide reply dated 18.03.2010 rejected the application of the respondent under the Right to Information Act, 2005 (the Act for short) by stating that the information sought had no relationship to any public activity or interest and, as such, the same could not be disclosed under Section 8(1)(j) of the Act. The first appellate authority also affirmed the order of the PIO on the same grounds. The CIC, as aforesaid, has allowed the appeal insofar as query No.1 is concerned.

4. Before the CIC, the submission of the petitioner was, and even before me is, that the disclosure of the title documents of the petitioner/public authority/institution is exempted under Section 8(1)(j) of the Act. It was argued that the information sought by the respondent was an invasion of the privacy of the institution and had no relationship with any public activity or interest. It was argued that in case the title documents of the petitioner fall in wrong hands, it could be highly prejudicial to the cause of the petitioner-Institution, as there was a possibility that the said title documents may be misused.

5. On the other hand, the argument of the respondent herein was that since the petitioner is a University, it had no right to withhold the information about it.

6. The CIC held that to qualify for the exemption contained in Section 8(1)(j) of the Act, the information sought must satisfy the following criteria:-

- "The information sought must be personal in nature. Words in a law should normally be given the meanings given in common language. In common language, we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an Institution or a Corporate. From this, it flows that 'personal' cannot be related to Institutions, Organisations or Corporates. Hence, Section 8(1)(j) of the RTI Act cannot be applied when the information concerns Institutions, Organisations or Corporates.

- The phrase 'disclosure of which has no relationship to any public activity or interest' means that the information must have been given in the course of a public activity. Various public authorities while performing their functions routinely ask for 'personal' information from citizens, and this is clearly a public activity. Public activities would typically include situations wherein a person applies for a job, or gives information about himself to a public authority as an employee, or asks for a permission, license or authorization, or provides information in discharge of a statutory obligation.

- The disclosure of the information would lead to unwarranted invasion of the privacy of the individual. The State has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade the privacy of a citizen. In those circumstances special provisions of the law apply usually with certain safeguards. Therefore where the State routinely obtains information from citizens, this information is in relationship to a public activity and will not be an intrusion on privacy."

7. The CIC held that for exemption under Section 8(1)(j) of the Act to apply, the information sought must be personal in nature, that it must pertain to an individual and not an Institution/Organization/Corporate. It was further held that whether

the information sought had a relationship with any public activity or interest is not a consideration, while interpreting Section 8(1)(j) of the Act. Consequently, the defence of the petitioner herein was rejected and the appeal was allowed.

8. The submission of Mr. Siddiqui, learned counsel for the petitioner, is that the petitioner – a statutory body, is a juristic entity. It is a "person" in law. He relies on the meaning of the expression "person" as defined in the *Black's Law Dictionary* which, *inter alia*, means *"an entity (such as a corporation) that is recognized by law as having the rights and duties of a human being".*

9. He submits that Article 14 of the Constitution of India also uses the expression "person" and reads:

> *"**14. Equality before law.-** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."*

He submits that the fundamental right guaranteed by Article 14 of the Constitution of India is available not only to an individual, that is a living person, but also to a juristic person. He also relies on Section 3(42) of the General Clauses Act which defines a person to *"include any company or association or body of individuals, whether incorporated or not".*

10. He submits that the expression "personal information" used in Section 8(1)(j) of the Act means the information in relation to any "person", whether an individual or a juristic entity. He submits that the CIC is wrong in its conclusion that "personal information" can only relate to an individual. He further submits that Clause (j) of Section

8(1) of the Act uses both expressions “personal information” and “individual”. He submits that this itself shows that the expression “personal information” has a wider connotation than information relating to an “individual”.

11. Mr. Siddiqui further submits that Section 8, which provides the exemptions from disclosure of information, begins with a non obstante clause by stating *“Notwithstanding anything contained in this Act……..”.* Therefore, the exemptions contained in Section 8(1) of the Act override the right granted to a querist to seek information under Section 3 of the Act.

12. He submits that the disclosure of the information as allowed by the CIC can lead to serious consequences, inasmuch as, armed with the said information, the querist or any other person in whose hands the said information may fall, may misuse the same by resorting to forgery and fabrication.

13. On the other hand, the submission of learned counsel for the respondent is that the petitioner University, a statutory Corporation, is a public authority within the meaning of Section 2(h) of the Act. He submits that the CIC has only directed the disclosure of the copies of the Agreement/settlement arrived at between the petitioner and one Abdul Sattar in relation to Gaffar Manzil land. He submits that the petitioner being a public authority, every citizen is entitled to seek information in relation to its public activities and conduct. It is argued by the learned counsel for the respondent that under the Act, the rule is in favour of disclosure of information. He submits that even in relation to an individual, there is no absolute bar against disclosure of

his personal information. The disclosure of personal information in relation to an individual could be withheld by the public authority only where the disclosure of the information is either not in relation to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. However, even in such cases, the Central Public Information Officer (CPIO) or the State Public Information Officer (SPIO) or the appellate authority, on being satisfied, in larger public interest would disclose even such personal information.

14. I have given my due consideration to the issue raised. The preamble of the Act provides an aid to interpret clause (j) of Section 8(1) of the Act. The preamble of the Act, inter alia, 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, ...*
>
> *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 paramountancy of the democratic ideal;"*

15. The thrust of the legislation is to secure access of information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. The access to information is considered vital to the

functioning of a democracy, as it creates an informed citizenry. Transparency of information is considered vital to contain corruption and to hold Government and its instrumentalities accountable to the governed citizens of this country. No doubt, a "person" as legally defined includes a juristic person and, therefore, the petitioner is also a "person" in law. This is amply clear from the definition of the expression "person" contained in Section 3(42) of the General Clauses Act. That is how the expression is also understood in Article 14 of the Constitution of India.

16. However, in my view the expression "personal information" used in Section 8(1)(j) of the Act, does not relate to information pertaining to the public authority to whom the query for disclosure of information is directed.

17. No public authority can claim that any information held by it is "personal". There is nothing "personal" about any information, or thing held by a public authority in relation to itself. The expression "personal information" used in Section 8(1)(j) means information personal to any other "person", that the public authority may hold. That other "person" may or may not be a juristic person, and may or may not be an individual. For instance, a public authority may, in connection with its functioning require any other person – whether a juristic person or an individual, to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if it satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e., if such information has no relationship to any public activity or interest vis-à-

vis the public authority, or which would cause unwarranted invasion of the privacy of the individual, under clause (j) of Section 8(1) of the Act. The use of the words “invasion of the privacy of **the** individual” instead of “an individual” shows that the legislative intent was to connect the expression “personal information” with “individual”. In the scheme of things as they exist, in my view, the expression “individual” has to be and understood as “person”, i.e., the juristic person as well as an individual.

18. The whole purpose of the Act is to bring about as much transparency, as possible, in relation to the activities and affairs of public authorities, that is, bodies or institutions of self governance established or constituted: by or under the Constitution; by any other law made by Parliament; by any other law may by State legislature; any body owned or controlled or substantially financed directly or indirectly by the funds provided by the appropriate Government; any non-government organization substantially financed directly or indirectly by the funds provided by the appropriate Government; or any authority or body or institution constituted by a notification issued or by order made by the appropriate Government.

19. If the interpretation as suggested by the petitioner were to be adopted, it would completely destroy the very purpose of this Act, as every public authority would claim information relating to it and relating to its affairs as “personal information” and deny its disclosure. If the disclosure of the said information has no relationship to any public activity or interest.

20. Alternatively, even if, for the sake of argument it were to be accepted that a public authority may hold "personal information" in relation to itself, it cannot be said that the information that the petitioner has been called upon to disclose has no relationship to any public activity or interest.

21. The information directed to be disclosed by the CIC in its impugned order is the copies of the Agreement/settlement arrived at between the petitioner and one Abdul Sattar pertaining to Gaffar Manzil land. The petitioner University is a statutory body and a public authority. The act of entering into an agreement with any other person/entity by a public authority would be a public activity, and as it would involve giving or taking of consideration, which would entail involvement of public funds, the agreement would also involve public interest. Every citizen is entitled to know on what terms the Agreement/settlement has been reached by the petitioner public authority with any other entity or individual. The petitioner cannot be permitted to keep the said information under wraps.

22. In the light of the aforesaid discussion, I do not find any merit in this petition and dismiss the same as such.

(VIPIN SANGHI)
JUDGE

NOVEMBER 22, 2011
vk

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 29.05.2012

% Judgment delivered on: 14.06.2012

\+ **W.P.(C) 3382/2012**

PRESIDENT'S SECRETARIAT .... Petitioner
Through: Mr. A.S. Chandhiok,ASG, along with Mr. Ravinder Agarwal, CGSC.

versus

NITISH KUMAR TRIPATHI .... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner President's Secretariat, through its Secretary, has preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 4th May, 2012 passed by the Central Information Commission, New Delhi (CIC), whereby the appeal preferred before it by the respondent has been allowed, and directions have been issued to the petitioner to provide information under the Right to Information Act (the Act) sought by the respondent in relation to the donations made by the President from time to time.

A direction has also been issued to the petitioner to take steps to publish the details regarding the donations made i.e. the names of the recipients of the donations, their addresses and the amount of donation in each case, on the website of the President's Secretariat at the earliest.

2. Nine RTI applications had been moved by the respondent before the petitioner. Most of the information had been provided. However, information in relation to the donations made by the President from time to timer was not disclosed by invoking Section 8 (1) (j) of the Act i.e. by treating the information as personal information, the disclosure of which was stated to be not in the public interest. The Ld. CIC has, however, rejected the said defence of the petitioner, and has directed disclosure of the information.

3. The submission of learned ASG Sh. A.S. Chandhiok, firstly, is that a perusal of the impugned order shows that the CIC has equated donations made by the President with subsidy, which is not the case. It is also submitted that the learned CIC has not dealt with the petitioner's submissions founded upon Section 8 (1) (j) of the Act. It is also argued that the right to privacy of third parties would be breached, in case such disclosure is made. In any event, the right of third parties/recipients of the donation, to oppose disclosure by resort to Section 11 has not been dealt with. It is argued that the matter

requires consideration, and the petition should be admitted for further hearing by the court. Mr. Chandhiok submits that the CIC has not followed its earlier decision rendered in Appeal No. CIC/WB/A/2009/000217 dated 18.12.2009, wherein it had been held that the queriest had no right to seek information in relation to donations made from out of the Prime Minister's Relief Fund.

4. Having heard the learned ASG, perused the impugned order as well as the Provisions of the Act, I do not find any merit in either of the submissions of Mr. Chandihok, and in my view the impugned order is perfectly legal and does not call for interference by this court in exercise of its writ jurisdiction.

5. A perusal of the impugned order shows that the donations made by the President are out of public funds. Public funds are those funds which are collected by the state from the citizens by imposition of taxes, duties, cess, services charges, etc. These funds are held by the state in trust for being utilized for the benefit of the general public. During the course of arguments, I repeatedly raised a specific query to the learned ASG. It was enquired whether the donations have been made from a separate fund created from out of voluntary contributions/donations made by the people, and placed at the hands of the President for being further disbursed by him/her, in his/her discretion, to the deserving and needy people. However, I did not get

an answer in the affirmative. It was also enquired whether the President is disbursing the donations from out of a public fund as noted by the learned CIC in his order. Even to this, there was no denial.

6. The aforesaid being the position, the reliance placed by the petitioner on the earlier decision of the CIC dated 18.12.2009, pertaining to the disclosure of information under the Act in relation to the Prime Minister's Relief Fund, would have no application to the facts of the present case, assuming for the sake of arguments that the said decision of the CIC takes the correct view. Since this Court is not concerned with the disclosures vis-à-vis the Prime Ministers Relief Fund, the said issue is not being dealt with herein. In any event, unlike in the case of the Prime Minister's Relief Fund, in the present case, the donations have been made by the Hon'ble President of India from the tax payers money. Every citizen is entitled to know as to how the money, which is collected by the State from him by exaction has been utilized. Merely because the person making the donations happens to be the President of India, is no ground to withhold the said information. The Hon'ble President of India is not immune from the application of the Act. What is important is, that it is a public fund which is being donated by the President, and not his/her private fund placed at his/her disposal for being distributed/donated amongst the needy and deserving persons.

7. The learned ASG has submitted that the disclosure of information with regard to the donations made by the President would impinge on the privacy of the persons receiving the donations, as their financial distress, other circumstances, and need would become public.

8. I do not find any merit in the aforesaid submission of the learned ASG. Firstly, I may note that the learned CIC has directed disclosure of some basic information, such as the names of the recipients of the donations, their addresses and the amount of donation made in each case. Further details i.e. the facts of each case, and the justification for making the donation have not been directed to be provided. Even if further details are sought by a querist in relation to any specific instance of donation made by the President, the same would have to be dealt with in terms of the Act. There could be instances where the entire details may not be disclosed by resort to Sections 8, 10 and 11 of the Act. However, it cannot be said that mere disclosure of the names, addresses and the amounts disbursed to each of the donees would infringe the protection provided to them Under Section 8 (1) (j) of the Act.

9. The donations made by the President of India cannot said to relate to personal information of the President. It cannot be said that the disclosure of the information would cause unwarranted invasion of the privacy of, either the President of India, or the recipient of the

donation. A person who approaches the President, seeking a donation, can have no qualms in the disclosure of his/her name, address, the amount received by him/her as donation or even the circumstance which compelled him or her to approach the First Citizen of the country to seek a donation. Such acts of generosity and magnanimity done by the President should be placed in the public domain as they would enhance the stature of the office of the President of India. In that sense, the disclosure of the information would be in the public interest as well.

10. The submission of Mr. Chandihok that the learned CIC has confused donations with subsidy is not correct. The CIC has consciously noted that donations are being made by the President from the public fund. It is this feature which has led the learned CIC to observe that donations from out of public fund cannot be treated differently from subsidy given by the Government to the citizens under various welfare schemes. It cannot be said that the CIC has misunderstood donations as subsidies. The relevant extract from the order of the CIC reads as follows:-

> *"We do not find the decision of the CPIO in conformity with the provisions of the RTI Act. In fact, every public authority is mandated under Section 4 (1) (b) (xii) of the RTI Act to publish on its own the details of the beneficiaries of any kind of subsidy given by the government. The donations given by the President of India out of the public*

funds cannot be treated differently from the subsidy given by the government given to the citizens under various welfare schemes. The people of India have a right to know about such donations. Some minimum details, such as, the names of the receivers of the donations, their address and the amount of donation in each case should be published from time to time in the website of the President Secretariat itself. Therefore, we not only direct the CPIO to provide this information to the Appellant within 15 working days of receiving this order, we also direct him to take steps to publish such details in the website of the President Secretariat at the earliest."

11. For all the aforesaid reasons, I find no merit in this petition and dismiss the same. The interim order stands vacated.

VIPIN SANGHI, J

JUNE 14, 2012
pkv

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 3057/2012

MR. BRIJ LAL ..... Petitioner

Through: Mr. Moni Cinmoy, Adv.

versus

THE CENTRAL INFORMATION COMMISSION AND ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

21.05.2012

C.M. No. 6593/2012 (exemption)

Allowed subject to just exceptions.

The application stands disposed of.

W.P. (C) 3057/2012

The petitioner by this writ petition under Article 226 of the Constitution of India assails the order dated 01.07.2011 passed by the Central Information Commissioner in Appeal No. CIC/DS/A/2010/002004.

The petitioner moved a RTI application to the Commissioner of Income Tax, ITO, Aayakar Bhawan, Sanjay Place, Agra on 03.02.2010. In this application the petitioner stated that he had moved a Tax Evasion Petition (TEP), and sought the conduct of an enquiry on the known sources of income of one Shri M. P. Singh. He stated that despite passage of seven months, he had not received any response. Therefore, under the Right to Information Act, he sought information with regard to the action taken on the said complaint.

This query was responded to on 09.03.2010 by the Assistant Commissioner of Income Tax/CPIO, Agra. The CPIO declined the application of the petitioner seeking direct information with regard to the sources of income of Shri M. P. Singh by placing reliance on Section 8(1)(j) on the ground that it related to a third party and disclosure of the said information was not in public interest. It appears that before disposing of the application, the CPIO also issued notice to Shri M. P. Singh and Shri M. P. Singh objected to disclosure of the information.

The petitioner then preferred an appeal before the first appellate authority. The first appellate authority rejected the appeal on 29/30.04.2010, again placing reliance on Section 8(1)(j) of the Act. The petitioner then preferred a further appeal to the CIC, which has been disposed of by the impugned order.

Learned counsel for the petitioner submits that the Joint Commissioner of Income Tax Range-5, Forozabad has declined to act on the tax revision petition of the petitioner on the ground that the information desired by the petitioner is six years old and is barred by limitation as per the provisions of Income Tax Act. It is stated that the information is not in custody of the CPIO. He also observed that Shri M. P. Singh, against whom the complaint was lodged by the petitioner, is presently assessed with ITO 3(iv), Mathura and the jurisdiction does not lie with the Joint Commissioner of Income Tax, Range-5, Firozabad. He held that since no larger public interest is involved in the matter, the petitioner?s appeal is disposed of.

The submission of counsel for the petitioner is that since the TEP of the petitioner has not been actioned on account of the same being barred by limitation, effectively, the information sought by the petitioner has not been provided.

Learned counsel for the petitioner places reliance on the decision

of this Court in W.P.(C) No. 3114/2007 in support of his submission that the respondent was neither provided information with regard to the sources of income of Shri M. P. Singh nor conducted an enquiry/investigation on the TEP of the petitioner.

A perusal of the decision in Bhagat Singh vs. Chief Information Commissioner and Ors. W.P.(C) No. 3114/2007 decided on 03.12.2007 shows that in that case on the TEP action was taken, but the TEP investigation report was not provided under the Right to Information Act. All that the Court held was that the queriest was entitled to receive a copy of the said TEP investigation report. In the present case, the Joint Commissioner of Income Tax has held that the said TEP cannot be actioned as it is barred by limitation. That, in my view, is sufficient disclosure so far as the action taken on the TEP is concerned.

So far as the petitioner?s grievance with regard to non supply of information with regard to sources of income of Shri M. P. Singh is concerned, in my view, the CPIO correctly relied upon Section 8(1)(j) of the Act to deny information to the petitioner. Section 8(1)(j) reads as follows:-

?8(1)(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:?

The information sought by the petitioner in relation to the sources of income of Shri M. P. Singh is undoubtedly personal information, disclosure of which has no relationship to any public activity or public interest of, or in relation to, Shri M. P. Singh. I, therefore, find no merit in this petition. The same is dismissed.

VIPIN SANGHI, J

MAY 21, 2012

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 17.01.2012

% Judgment delivered on: 13.07.2012

+ W.P.(C) 1243/2011 & C.M. No. 2618/2011 (for stay)

UPSC ..... Petitioner
Through: Mr. Naresh Kaushik & Ms. Aditi Gupta, Advs.

Versus

RK JAIN ..... Respondent
Through: Mr. Prashant Bhushan & Mr.Pranav Sachdeva, Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition is directed against the decision of the Central Information Commission (hereinafter referred to as the "CIC") dated 12.01.2011 passed in Appeal No. CIC/WB/A/2009/001004- SM, preferred under Section 19 of the Right to Information Act, 2005, (hereinafter referred to as the "Act") whereby the petitioner has been directed to provide the relevant records in its possession as sought by the Respondent herein.

2. The respondent by an application filed under Section 6 of the Act, sought the following Information from the petitioner:

> "A. *Please provide inspection of the records, documents, note sheets, manuscripts, records, reports, office memorandum, part files and files relating to the proposed disciplinary action and/or imposition of penalty against Shri G.S. Narang, IRS, Central Excise and customs Officer of 1974 Batch and also inspection of records, files, etc., relating to the decision of the UPSC thereof. Shri G.S. Narang is presently posted as Director General of Inspection Customs and Central Excise.*
>
> *B. Please provide copies of all the note sheets and the final decision taken regarding imposition of penalty/ disciplinary action and decision of the UPSC thereof.*"

3. The Central Public Information Officer (CPIO) of the petitioner, however, declined to provide the same on the ground that the information sought pertained to the disciplinary case of Shri G. S. Narang, which was of personal nature, disclosure of which has no relationship to any public activity or interest. It further stated that the disclosure of the same may infringe upon the privacy of the individual and that it may not be in the larger interest. The petitioner, therefore, claimed exemption from disclosing the information under Section 8(1)(j) of the Act.

4. The Respondent, consequently, filed an appeal under Section 19 of the Act, before the 1st Appellate Authority of the Petitioner. The Appellate Authority dismissed the Appeal on the same ground that the information sought was exempted from disclosure under Section 8(1)(j) of the Act.

5. Being aggrieved by the said decision, the Respondent preferred an appeal before the CIC. Setting aside the decision of the 'First Appellate Authority', the CIC held as follows:

> "*4. After carefully considering the facts of the case and the submissions made by both parties, we are of the view that the CPIO was not right in denying this information.* ***As far as the UPSC is concerned, the Respondent informed, it receives references from the Ministries and Departments in disciplinary matters to give its comments and recommendations on individual cases. In this case too, the UPSC had been consulted and that it had offered its comments and views to the Government. Whatever records it holds in regard to this case will have to be disclosed because this cannot be classified as personal information merely on the ground that it concerns some particular officer****. Our attention was drawn to a Division Bench ruling by the High Court of Kerala in the WA No. 2781/2009 in which the Court had held that the information sought by an employee, from his employer, in respect of domestic enquiry and confidential reports of his colleagues would not amount to personal information as provided under Section 8(1)(j) of the Right to Information (RTI) Act. In other words, information regarding the disciplinary matters against any employee cannot be withheld by claiming it to be personal Information.*
>
> *5. In the light of the above,* ***we direct the CPIO to invite the Appellant on any mutually convenient date within 15 working days from the receipt of this order and to show him the relevant records in the possession of the UPSC for his inspection.*** *After Inspection, if the Appellant chooses to get the photocopies of some of those records, the CPIO shall provide the same free of cost.*" (emphasis supplied)

Petitioner's Submissions

6. The Petitioner assails the decision of the CIC, in the present writ petition, on several grounds. The Petitioner submits that the information sought by the Respondent at point 'A' of his RTI application

is not with the Petitioner. It is stated by the Petitioner that the said information relates to the actions of the concerned Ministry/ Department and as such no record thereof is available or held with the Petitioner. As regards rest of the Information sought by the Respondent, it is submitted that the same is exempt from disclosure under Section 8(1)(e), 8(1)(g) and 8(1)(j) of the Act. The relevant extract of Section 8 of the Act 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,--*
>
> *x x x x x x x x x*
>
> *(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;*
>
> *x x x x x x x x x*
>
> *(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;*
>
> *x x x x x x x x x*
>
> *(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;*
>
> *x x x x x x x x x*"

7. The Petitioner claims exemption under Section 8 (1)(j) of the Act on the basis that the disclosure of the information sought would cause unwarranted invasion of the privacy of the concerned charged officer. The Petitioner also submits that disclosure would not serve any larger public interest and would rather expose and make public- vulnerable and sensitive information relating to third party(s). The petitioner submits that the CIC erred in relying upon the decision of the Kerala High Court in WA No. 2781/2009 titled ***Centre for Earth Science Studies vs. Dr. Mrs. Anson Sebastian & the State Information Commission***.

8. It is submitted by the Petitioner that the information sought for by the Respondent includes not only information that is personal to a third party i.e. the charged officer, but also contains information relating to the particular views and opinions of persons/ officers who contributed to the disciplinary proceedings against the charged officer. This opinion was given in trust and confidence and as such is held by the Petitioner in its fiduciary capacity, and is thereby exempt under Section 8(1)(e) of the Act. It is submitted that file notings pertaining to disciplinary cases are exempt from disclosure under the aforesaid section. To further his submission, the petitioner has placed reliance upon the judgment of this Court in *W.P. (C) No. 12367/2009 and LPA No. 418/2010 titled* ***Ravinder Kumar vs. Central Information Commission & Ors.,*** the judgment of the Supreme Court in ***Institute of Chartered Accountants of India vs. Shaunak H. Satya and***

others, *(2011) 8 SCC 781,* and; the decision of the CIC in ***Shri K.L. Balbani vs. Directorate General of Vigilance, Customs & Central Excise*** *dt. 16.09.2009*.

9. Further, it is submitted that the disclosure of such information besides endangering the life and safety of the persons concerned, will also disclose the assistance that was given by the officers during the Disciplinary proceeding for enforcement of law. Consequently, it is argued, that the disclosure of the information sought would be exempt under Section 8(1)(g) of the Act.

10. The Petitioner contends that order of the CIC is unsustainable in law in as much, as, it is contrary to the decisions of the concurrent Benches of the CIC. Moreover, it has rendered its decision while this Court is seized of a similar issue in *W.P. (C) No. 13205/2009 titled* ***UPSC vs. C.L. Sharma***.

Respondent's Submissions

11. The Respondent, on the other hand, has at the outset submitted that the CIC has merely directed the disclosure of the records in possession of the UPSC. It has not directed the Petitioner to procure records from the concerned Ministries or Departments and then to make them available to the Respondent for inspection.

12. The Respondent submits that the information directed to be disclosed to the Respondent, by the Impugned order, is not exempted

under Section 8 (1)(e), 8(1)(g), or 8(1)(j) of the Act. It is further submitted that the CPIO and the first Appellate Authority had merely claimed exemption under Section 8(1)(j) of the Act, and that the Petitioner cannot, at this stage, be permitted to introduce new grounds by claiming exemption under Section 8(1)(g) and 8(1)(e) of the Act. It is also contented that there is no fiduciary relationship involved in the present case and the disclosure of information would not endanger the life and safety of anyone. Hence, the information sought is not exempt under Section 8(1)(e) and 8(1)(g) of the Act. It is also submitted that the exemption under Section 8(1)(e) and (j) is not available as it would be in the larger public interest to disclose the same.

13. As regards the exemption under Section 8(1)(j), it is submitted by the Respondent that disclosure of the information permitted by the impugned order relates to the public activity of public servants. It can, by no stretch of imagination, be treated as personal information of a Public Servant. The information sought is not personal information relating to a third party, but is contained in the records of the UPSC itself. It is further submitted that the disclosure of the information sought is in the larger public interest, since the case not only relates to serious irregularities committed in the administration of taxation cases and adjudication of offence, but also involves different opinions given by two public authorities, i.e. the Central Vigilance Commission and the Petitioner on the basis of the same records, thereby making it necessary to see whether same or different records were produced or

any part of the records were withheld from or by the Petitioner, and also whether a proper method and procedure was adopted by the Petitioner. It is contented that the disclosure would promote transparency and accountability, thereby adding to the credibility to the Petitioner itself.

14. The Respondent submits that the judgment of this Court in **Ravinder Kumar** (Supra), relied upon by the petitioner, have no applicability to the present case and that the CIC has rightly followed the judgment of the Kerala High Court in **Centre for Earth Science Studies** (Supra). It is also submitted that the mere pendency of some similar matter before this Court would not preclude the CIC to decide the appeal pending before it.

Discussion

15. The principal contention of the Petitioner, right from the stage when the RTI application was considered by the CPIO up till the stage of consideration of the Second Appeal before the CIC, was that the information sought for by the Respondent is exempted from disclosure under Section 8(1)(j) of the Act. Therefore, I proceed to deal with it first.

16. The exemption under Section 8(1)(j) is available in respect of '**personal information**' of an individual. For the exemption to come into operation, the personal information sought:

(i) Should not have relation to any public activity, or to public interest OR,

(ii) Should be such as to cause unwarranted invasion of the privacy of the individual. However, the exemption is not available in a case where larger public interest justifies such disclosure.

17. The word 'personal' means appertaining to the person; belonging to an individual; limited to the person; having the nature or partaking of the qualities of human beings, or of movable property. [***See Black's Law Dictionary, Sixth Edition***].

18. The word 'information' is defined in Section 2(f) of the Act as meaning:

> "*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*".

19. Therefore, "personal information" under the Act, would be information, as set forth above, that pertains to a person. As such it takes into its fold possibly every kind of information relating to the person. Now, such personal information of the person may, or may not, have relation to any public activity, or to public interest. At the same time, such personal information may, or may not, be private to the person.

20. The term “personal information” under section 8(1)(j) does not mean information relating to the information seeker, or the public authority, but about a third party. The section exempts from disclosure personal information, including that which would cause *“unwarranted invasion of the privacy of the individual”.* If one were to seek information about himself, the question of invasion of his own privacy would not arise. It would only arise where the information sought relates to a third party. Consequently, the exemption under Section 8(1)(j) is as regards third party personal information only.

21. Further, the personal information cannot be that of a “public authority”. No public authority can claim that any information held by it is personal to it. There is nothing “personal” about any information held by a public authority in relation to itself. The expression “personal information” used in Section 8(1)(j) means information personal to any “person”, that the public authority may hold. For instance, a public authority may in connection with its functioning require any other person to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if the information sought satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e., if such information has no relationship to any public activity (of the person who has provided the information, or who is the source of the information, or to whom that information pertains), or to public

interest, or which would cause unwarranted invasion of the privacy of the individual (unless larger public interest justifies disclosure). The use of the words “invasion of the privacy of **the** individual”, instead of “an individual”, shows that the legislative intent was to connect the expression “personal information” with the word “individual”.

22. Merely because information that may be personal to a third party is held by a public authority, a querist does not become entitled to access it, unless the said personal information has a relationship to a public activity of the third person (to whom it relates), or to public interest. If it is private informtaion (i.e. it is personal information which impinges on the privacy of the third party), its disclosure would not be made unless larger public interest dictates it. Therefore, for example, a querist cannot seek the personal or private particulars provided by a third party in his application made to the passport authorities in his application to obtain a passport, merely because such information is available with the passport authorities, which is a public authority under the Act. The querist must make out a case (in his application under Section 6 of the Act) justifying the disclosure of the information sought on the touchstone of clause (j) of Section 8(1) of the Act.

23. Proceeding further, I now examine the expressions ‘Public activity’, ‘Public interest’ and ‘Privacy of the individual’ used in Section 8(1)(j) of the Act.

24. ‘Public activity’ qua a person are those activities which are performed by the person in discharge of a public duty, i.e. in the public domain. There is an inherent public interest involved in the discharge of such activities, as all public duties are expected to be discharged in public interest. Consequently, information of a person which is related to, or has a bearing on his public activities, is not exempt from disclosure under the scheme and provisions of the Act, whose primary object is to ensure an informed citizenry and transparency of information and also to contain corruption. For example, take the case of a surgeon employed in a Government Hospital who performs surgeries on his patients who are coming to the government hospital. His personal information, relating to discharge of his public duty, i.e. his public activity, is not exempt from disclosure under the Act. Such information could include information relating to his physical and mental health, his qualifications etc., as the said information has a bearing on the discharge of his public duty, but would not include his other personal information such as, his taste in music, sport, art, his family, his family background etc., which has no bearing/relation to his act of performing his duties as a surgeon.

25. “Public interest” is also a ground for taking away the exemption from disclosure of personal information. Therefore, a querist may seek personal information of a person from a public authority in public interest. The second half of the first part of clause (j) of Section 8(1) shows that when personal information in respect of a person is sought,

the authority concerned shall weigh the competing claims i.e., the claim for the protection of personal information of the concerned person on the one hand, and the claim of public interest on the other, and if "public interest" justifies disclosure, i.e., the public interest outweighs the need for protection of personal information, the concerned authority shall disclose the information.

26. For example, a querist may seek from the income tax authorities- the details of the income tax returns filed by private individual/juristic entity - if the querist can justify the disclosure of such personal information on the anvil of public interest. The authorities would, in such cases, be cautious to ensure that the ground of "public interest" is not routinely used as a garb by busy bodies to pry on the personal affairs of individual private citizens/entities, as it would be against public interest (and not in public interest) to permit such personal information of third parties to fall into the hands of anybody or everybody.

27. At this stage, I may digress a little and observe that whenever the querist applicant wishes to seek information, the disclosure of which can be made only upon existence of certain special circumstances, for example- the existence of public interest, the querist should in the application (moved under Section 6 of the Act) disclose/ plead the special circumstance, so that the PIO concerned can apply his mind to it, and, in case he decides to issue notice to the

concerned third party under Section 11 of the Act, the third party is able to effectively deal with the same. Only then the PIO/appellate authority/CIC would be able to come to an informed decision whether, or not, the special circumstances exist in a given case.

28. I may also observe that public interest does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their rights or liabilities are affected. The expression "public interest" is not capable of a precise definition and has not a rigid meaning and is elastic and takes its colors from the statute in which it occurs, the concept varying with the time and the state of the society and its needs. [***See Advanced Law Lexicon, Third Edition***].

29. The second part of clause (j) of Section 8(1) appears to deal with the scope of defence founded on the right of privacy of an individual. The tussle between the right of privacy of an individual and the right of others to seek information which may impinge on the said right of privacy, is what the said clause seeks to address.

30. The right to privacy means the right to be left alone and the right of a person to be free from unwarranted publicity. Black's Law Dictionary says that the terms 'right to privacy' is a generic term encompassing various rights recognized to be inherent in concept of ordered liberty, and such rights prevent government interference in

intimate personal relationship's or activities, freedoms of individual to make fundamental choices involving himself, his family, and his relationship with others. A man has the right to pass through this world, if he wills, without having his picture published, his business enterprises discussed, his successful experiments written for the benefit of others, or his eccentricities commented upon by any means or mode. It is based on the theory that everyone has the right of inviolability of the person.

31. The "right to privacy", even though by itself has not been defined by our Constitution and though, as a concept, it may be too broad to define judicially, the Supreme Court has recognised by its liberal interpretation that "right to privacy" is an integral part of the right to personal liberty under Article 21 of the Constitution of India.

32. In ***Rajagopal vs. State of Tamil Nadu,*** *AIR 1995 SC 264*, the Supreme Court had the occasion to comment on the origin, basis, nature and scope of the right to privacy in India. Mr. Justice B.P. Jeevan Reddy, referred to the earlier decision of the Supreme Court in ***Kharak Singh and Ors. v. State of Uttar Pradesh and Ors.,*** *1964 (1) SCR 332: AIR 1963 SC 129* and the decision in ***Gobind v. State of Madhya Pradesh,*** *1975 (2) SCC 148: AIR 1975 SC 1378*. In the later case, Mathew, J., speaking for himself, Krishna Iyer and Goswami, JJ. traced the origins of this right and also pointed out how the said right has been dealt with by the United States Supreme Court in two of its

well-known decisions in ***Griswold v. Connecticut,*** *[1965] 385 U.S. 479 : 14 L.Ed. 2d. 510* and ***Roe v. Wade,*** *[1973] 410 U.S. 113*. After referring to ***Kharak Singh*** (supra) and the said American decisions, the learned Judge stated the law in the following words:

> *"...privacy-dignity claims deserve to be examined with care and to be denied only when an important countervailing interest is shown to be superior. If the Court does find that a claimed right is entitled to protection as a fundamental privacy right, a law infringing it must satisfy the compelling State interest test....*
>
> ***...privacy primarily concerns the individual. It therefore relates to and overlaps with the concept of liberty. The most serious advocate of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values.***
>
> ***Any right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. This catalogue approach to the question is obviously not as instructive as it does not give analytical picture of the distinctive characterstics of the right of privacy. Perhaps, the only suggestion that can be offered as unifying principle underlying the concept has been the assertion that a claimed right must be a fundamental right implicit in the concept of ordered liberty....***
>
> ***There are two possible theories for protecting privacy of home. The first is that activities in the home harm others only to the extent that they cause offence resulting from the mere thought that individuals might be engaging in such activities and that such 'harm' is not constitutionally protectible by the State. The second is that individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted as themselves, an image that***

may reflect the values of their peers rather than the realities of their natures. [See 26 Stanford Law Rev. 1161, 1187]

The right to privacy in any event will necessarily have to go through a process of case-by-case development. Therefore, even assuming that the right to personal liberty, the right to move freely throughout the territory of India and the freedom of speech create an independent right of privacy as an emanation from them which one can characterize as a fundamental right, we do not think that the right is absolute.

The European Convention on Human Rights, which came into force on September 3, 1953, represents a valiant attempt to tackle the new problem. Article 8 of the Convention is worth citing [See "Privacy and Human Rights", Ed. AH robertson, p. 176]:

1. Every one has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others." (emphasis supplied)

33. Mr. Justice B.P. Jeevan Reddy, summarized the concept of right to privacy as under:

"*(1)* ***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.*** *None can publish anything concerning the above matters without his consent - whether truthful or otherwise and whether laudatory or critical. If he does so, he would be*

violating the right to privacy of the person concerned and would be liable in an action for damages. ***Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.***

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media among others. ***We are, however, of the opinion that in the interest of decency [Article 19 (2)] an exception must be carved out to this rule, viz., a female who is the victim of a sexual assault, kidnap, abduction or a like offence should not further be subjected to the indignity of her name and the incident being publicised in press/media.***

(3) There is yet another exception to the Rule in (1) above - indeed, this is not an exception but an independent rule. ***In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties.*** *This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages.* ***It is equally obvious that in matters not relevant to the discharge of his duties, the public official enjoys the same protection as any other citizen, as explained in (1) and (2) above.*** *It needs no reiteration that judiciary, which is protected by the power to punish for contempt of court and the Parliament and Legislatures protected as their privileges are by Articles 105 and 104 respectively of the Constitution of India, represent exceptions to this rule.*" (Emphasis supplied)

34. It follows that the 'privacy' of a person, or in other words his 'private information', encompasses the personal intimacies of the home, the family, marriage, motherhood, procreation, child rearing and of the like nature. 'Personal information', on the other hand, as aforesaid, would be information, in any form, that pertains to an individual. Therefore, 'private information' is a part of 'personal information'. All that is private is personal, but all that is personal may not be private. A person has a right to keep his private information, or in other words, his privacy guarded from disclosure. It is this right which has come to be recognised as fundamental to a person's life and liberty, and is accordingly protected from unwarranted/unauthorised invasion under the Act, and can be overridden only in 'larger' public interest.

35. The use of the expression "*unwarranted*" before "*invasion of the privacy of the individual*" and the expression "*larger*" before "*public interest*" needs attention. The use of "unwarranted", as aforesaid, shows that the PIO, Appellate Authority or the CIC, as the case may be, should come to a definite finding upon application of mind to all the relevant considerations and submissions of the querist and the third party – whose privacy is at stake, that the disclosure of the information, which would cause invasion of the privacy of the individual is warranted, in the facts of the case. He should, therefore, come to the conclusion that even after application of the principle of severability (contained in Section 10 of the Act), it is necessary to

disclose the personal and private information in larger public interest. The expression "larger public interest" connotes that the public interest that is sought to be addressed by the disclosure of the private information, serves a large section of the public, and not just a small section thereof. Therefore, if the information has a bearing on the state of the economy; the moral values in the society; the environment; national safety, or the like, the same would qualify as "larger public interest".

36. Take for instance, a case where a person is employed to work in an orphanage or a children's home having small children as inmates. The employer may or may not be a public authority under the Act. That person, i.e. the employee, has a background of child abuse, for which he has undergone psychiatric treatment in a government hospital. A querist could seek information regarding the medical and psychiatric treatment undergone by the person concerned from the government hospital where the person has undergone treatment, in larger public interest, even though the said information is not only personal, but private, vis-à-vis. the employee. The larger public interest in such a case would lay in protecting the children living in the orphanage/ children's home from possible child abuse.

37. In light of the above discussion, the following principles emerge for the exemption under Section 8(1)(j) to apply:

(i) The information sought must relate to 'Personal information' as understood above of a third party. Therefore, if the information sought does not qualify as personal information, the exemption would not apply;

(ii) Such personal information should relate to a third person, i.e., a person other than the information seeker or the public authority; AND

(iii) (a) The information sought should not have a relation to any public activity qua such third person, or to public interest. If the information sought relates to public activity of the third party, i.e. to his activities falling within the public domain, the exemption would not apply. Similarly, if the disclosure of the personal information is found justified in public interest, the exemption would be lifted, otherwise not;

OR

(iii) (b) The disclosure of the information would cause unwarranted invasion of the privacy of the individual, and that there is no larger public interest involved in such disclosure.

38. Let us now examine the claim of exemption under Section 8(1)(j) in the present case, in view of the aforesaid principles. The information sought by the Respondent relates to the proposed disciplinary action and/or imposition of penalty against Shri G.S. Narang, IRS, Central Excise and Customs Officer of 1974 Batch and the

decision/recommendation of the Petitioner communicated to the concerned Ministry.

39. The Petitioner in the present case, being a constitutional body and thereby a "public authority" under the Act, cannot claim the exemption of personal information qua itself and its officials under Section 8(1)(j). Even otherwise, its act of tendering advice to the concerned Ministry on matters relating to disciplinary proceedings against a charged officer is in discharge of a public duty entrusted to it by the law itself, and is thereby a public activity. Consequently, the defence is also not available to the officers of the Petitioner with respect to their acts and conduct relevant to the discharge of their official duties.

40. The information sought, in the present case, also does not relate to the privacy of the charged officer. Disciplinary inquiry of the charged officer is with regard to the alleged irregularities committed by him while discharging public duties and public functions. The disclosure of such information cannot be regarded as invasion of his privacy.

41. Even otherwise, the disclosure of such information would be in the larger public interest, keeping in view the object of the Act, which is to promote transparency and accountability and also to contain corruption. The preamble of the Act, inter alia, 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,. …. …. …
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 paramountancy of the democratic ideal; … … …"

42. This Court in *LPA No. 501/2009 titled* ***Secretary General, Supreme Court of India vs. Subhash Chandra Aggarwal***, dealing with the concept of 'Right to Information' under the Act observed as under:

"*30. Information is currency that every citizen requires to participate in the life and governance of the society. In any democratic polity, greater the access, greater will be the responsiveness, and greater the restrictions, greater the feeling of powerlessness and alienation. Information is basis for knowledge, which provokes thought, and without thinking process, there is no expression. "Knowledge" said James Madison, "will forever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of obtaining it is but a prologue to farce or tragedy or perhaps both". **The citizens" right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State**. And that is why the demand for openness in the government is increasingly growing in different parts of the world. "* (emphasis supplied)

43. The Court, while explaining the importance and need of the Right, referred to the following observation of the Supreme Court in ***S.P. Gupta vs. Union of India***, *1981 (Supp) SCC 87*:

> *"65. The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rules and, once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government - an attitude and habit of mind.* ***But this important role people can fulfill in a democracy only if it is an open government where there is full access to information in regard to the functioning of the government****."* (emphasis supplied)

44. After, having referred to a sea of judgments and scholarly excerpts, the Division Bench of this Court held as follows:

> "*60. The decisions cited by the learned Attorney General on the meaning of the words "held" or "control" are relating to property and cannot be relied upon in interpretation of the provisions of the Right to Information Act.* ***The source of right to information does not emanate from the Right to Information Act. It is a right that emerges from the constitutional guarantees under Article 19(1)(a) as held by the Supreme Court in a catena of decisions. The Right to Information Act is not repository of the right to information. Its repository is the constitutional rights guaranteed under Article 19((1)(a). The Act is merely an instrument that lays down statutory procedure in the exercise of this right. Its overreaching purpose is to facilitate democracy by helping to ensure that citizens have the information required to participate meaningfully in the democratic process and to help the governors accountable to the governed. In construing such a statute the Court ought to give to it the widest operation which its language will permit. The Court will also not readily read words which are not there and introduction of which will restrict the rights of citizens for whose benefit the statute is intended.***" (Emphasis supplied)

45. It is clear from the above, that the thrust of the legislation is 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, unless its disclosure is exempted under the Act. The access to information is considered vital to the functioning of a democracy, as it creates an informed citizenry. Transparency of information is considered vital to contain corruption and to hold Government and its instrumentalities accountable to the governed citizens of this country.

46. The orders of the learned Single Judge and Division Bench of this Court in ***Ravinder Kumar*** (Supra) have no relevance for a variety of reasons. The order of the learned Single Judge, upholding the claim of exemption under Section 8(1)(j) raised by the public authority- to the disclosure of note sheets containing opinions and advices rendered by officials in respect of departmental proceedings- on the ground that the same was against public interest, had been made specifically in the facts and circumstances of that case. Further, the order of the Division Bench was an order dismissing an application for restoration of the LPA. It was not an order on merits. There was no decision on any legal proposition on merits rendered by the Court in the said order. Mere *prima facie* observations of the Division Bench do not constitute a binding precedent. The decisions in ***Ravinder Kumar*** (supra), therefore, do not even otherwise apply in the facts of the present case.

47. Reliance placed, by the Petitioner, on ***Shri K.L. Bablani*** (supra) is misplaced. Firstly, this is the view of the CIC and does not bind this Court. What can, however, be relied upon are the reasons contained in this decision to persuade this Court to form its view. The CIC held that the file notings relating to vigilance matters, on the basis of which administrative/disciplinary action has been taken may not be disclosed, except upon demonstration of public interest, as it could embarrass and put pressure on those making file notings regarding the officer whose conduct is under comment.

48. The concerns expressed in, and which swayed the decision of the CIC in ***Shri K.L. Balbani*** (supra) relied upon by the Petitioner, can be met by resort to Section 10 of the Act. However, those concerns cannot be a good reason to altogether deny information which, otherwise, is not exempt from disclosure under the law. Consequently, the defence set up by the petitioner, founded upon clause (j) of Section 8(1) is not tenable in this case.

49. The defences under Section 8(1)(e) and Section 8(1) (g) of the Act would also be of no avail to the Petitioner in the present case. This is so, not merely on account of it being an afterthought of the Petitioner to raise the same, but also because they are untenable in the facts of the present case.

50. The over-riding public interest involved in the present case, as aforesaid, would render inoperative the exemption under Section

8(1)(e) of the Act. Even otherwise, the exemption under Section 8(1)(e) of the Act would not apply since the information sought by the Respondent is not held by, or available with the petitioner in its fiduciary capacity. The Supreme Court in ***CBSE vs. Aditya Bandopadhyay,*** *(2011) 8 SCC 497,* laid down the test of determining fiduciary relationship as follows;

> "*41. 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.*" (Emphasis supplied)

51. In the present case it cannot be said that the opinion /advice tendered by the officers of the petitioner in respect of Sh. G.S. Narang was on account of their position as that of a "beneficiary" and that the

position of the petitioner was that of a "trustee". The officers concerned who were involved in the opinion/advice making process acted in the discharge of their official/public duties. In any event, as aforesaid, the interest of such an officer can be effectively and sufficiently safeguarded by resort to Section 10 of the Act.

52. Reliance is placed by the petitioner, on the Judgment of the Supreme Court in ***Institute of Chartered Accountants of India vs. Shaunak H. Satya & Ors.,*** *(2011) 8 SCC 781*. The Supreme Court, in the said decision, while referring to the test laid down in the **Aditya Bandopadhyay** (s*upra*), observed as under:

> "*21. 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.***" (Emphasis supplied)

53. The aforesaid observation of the Supreme Court in ***Institute of Chartered Accountants of India*** (*Supra*) does not render support to the contention of the Petitioner in claiming exemption from disclosing the opinion/recommendations tendered by it to the Ministry. It is not the case of the petitioner that the files notings containing the opinions/views of its officers, and the ultimate final opinion/recommendation tendered by it to the Ministry were confidential or secret.

54. It is pertinent to note that there is no bar, per se, to the furnishing of opinions and advices in response to an application under the Act. The Supreme Court in ***Khanapuram Gandaiah vs. Administrative Officer,*** *(2010) 2 SCC 1*, while referring to Section 2 (f) of the Act, which defines 'information', held as under:

> *"10. x x x x x x x x x*
>
> *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."* (emphasis supplied)

55. Therefore, what emerges from the aforesaid is that opinions/advices tendered/given by the officers (public officials) can be sought for under the Act, provided the same have not been tendered in confidence/secrecy and in trust to the authority concerned, i.e. to say-

in a fiduciary relationship. Since the petitioner has not been able to set up the same in the present case, as aforesaid, the claim of exemption under Section 8(1)(e) stands rejected.

56. A bare perusal of Section 8(1)(g) of the Act, makes it clear that the exemption would come into operation only if the disclosure of information would endanger the life or physical safety of any person or would identify the source of the information or assistance given in confidence for law enforcement or security purposes. The opinion/advice, which constitutes the information in the present case, cannot be said to have been given "*in* ***confidence*** *for law enforcement or security purposes*", as aforesaid. Therefore, that part of the clause would be inapplicable and irrelevant in the present case. So far as the petitioner's submission- that the disclosure of Information would endanger the life and safety of the officers who tendered their opinion/advices- is concerned, the same in my considered opinion, as aforesaid, in the facts of the present case, may be addressed- by resort to Section 10 of the Act. The exemption under Section 8(1)(g) of the Act, therefore, as claimed by the Petitioner, would be no ground for disallowing the disclosure of the information (sought by the Respondent) in the facts of the present case.

57. At this stage, I may take note of the fact that the petitioner herein tendered to this court, after the judgment in the present case had been reserved, decisions of the CIC- wherein information sought

by RTI applicants with regard to disciplinary proceedings of charged officers, were held to be exempt from disclosure under Section 8(1)(h) of the Act on the grounds that the disciplinary proceedings/investigation were ongoing, and as such, disclosure of information sought would impede the process of investigation.

58. The said argument cannot be availed of by the petitioner herein as it was not raised at any stage (before and after the filing of the present petition), and no opportunity was afforded to the respondent herein to meet the same. Moreover, on the facts of this case, the argument premised upon clause (h) of Section 8(1) cannot be sustained. The information sought at point 'B' relates to the note sheets and final opinion rendered by the UPSC regarding imposition of penalty/punishment on the charged offer. Such information, as is evident from a plain reading, relates to notings and opinion post investigation i.e., after the investigation is complete. Disclosure of such information cannot, be any means whatsoever be held to "impede the process of investigation" which could be raised only when an investigation is ongoing. As such the exemption under Section 8(1)(h) of the Act also cannot be raised in by the petitioner in the present case.

59. The petitioner's submission that the order of the CIC is unsustainable in as much as it is contrary to the decisions of the concurrent benches of the CIC is neither here nor there. The impugned

decision of the CIC had been made specifically in the facts and circumstances of the present case. As regards the Petitioner's submission that the CIC's decision (Impugned order) is unsustainable since it was rendered while this Court was seized of a similar issue in ***UPSC v. C.L. Sharma*** (supra)- is concerned, the same in my view is entirely untenable. The pendency of the same issue in other cases before this Court does not preclude the CIC from dealing with the issues arising before it, unless there is a restraint on the CIC from doing so. There is nothing on record to suggest that this Court has, in ***UPSC v. C.L. Sharma*** (supra), put a blanket restraint on the CIC from dealing with the claim of exemption under Section 8(1)(j) of the Act. Therefore, the said submission also stands rejected.

60. In view of above, the decision of the CIC is upheld, subject to the modification that the petitioner may, examine the case with regard to applicability of Section 10 of the Act, in relation to the names of the officers who may have acted in the process of opinion formation while dealing with the case of charged officer Sh.G.S. Narang.

61. The petition is accordingly disposed of. The interim order stands vacated.

(VIPIN SANGHI)
JUDGE

JULY 13, 2012
SR/*'BSR'*

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 19.08.2013
Judgment pronounced on : 23.08.2013

\+ **W.P.(C) 3444/2012**

UNION OF INDIA ..... Petitioner

Through: None

versus

HARDEV SINGH

..... Respondent

Through: Mr. P. Narula, Advocate

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

Vide application filed on 27.9.2011, the respondent sought certain information from PIO of the Ministry of External Affairs, Regional Passport Office, Bhikaji Cama Palace, New Delhi with respect to passport number B 5131321 issued to one Shri Beant Singh on 28.6.2001. The said application was replied by the CPIO on 9.11.2011. The following were the queries and their replies:

SI.	Queries	Reply
1.	Name and details of the person to whom passport no. B 5131321 was issued from Delhi Passport Office on 28.6.2001	Beant Singh s/o Sukhwinder Singh file no. BO4899/01
2.	Photocopies of all the documents submitted as proof of address and identity on the basis on which the passport was issued.	Photocopies of all documents cannot be provided to you as it is third party information and disclosure of the individual. Please refer to section 8(1) (j) of RTI Act, 2005.
3.	Whether due process and procedure was followed in issue of the passport,	No, police verification report was conducted and received clear on

	including police verification report.	21.10.2001.
4.	Names and addresses of the witnesses who had recommended and signed for issue of the passport.	As stated in (2) above.
5	Copy of the noting of the officer who had recommended issue of the passport.	Copy of the noting portion cannot be provided to you as it would be direct the resources of the public authority. Please refer to section 7(9) of the RTI Act, 2005.
6.	Whether application from the person for renewal of the passport has since been received. If so, the status thereof is including date of receipt of the application and whether marriage certificate attached.	No record is found for renewal of the passport no B51313
7.	All details as mentioned in (1) to (5) above in respect of the renewal of the passport.	As stated in (6) above.

2. Being aggrieved from the reply, the respondent preferred an appeal before the First Appellate Authority. The first appeal was dismissed on 16.12.2011. The respondent thereafter preferred a second appeal to the Central Information Commission, under Section 19 of the Right to Information Act. Vide order dated 14.3.2012, the Commission directed the PIO to provide complete information as per the available record to the respondent. Being aggrieved from the order passed by the Commission, the petitioner is before this Court.

3. As regards the queries numbers 1,3 and 6, the requisite reply was furnished by the CPIO to the respondent.

The main issue involved in this writ petition is as to whether the respondent is entitled to (i) the documents submitted by Shri Beant Singh to the Regional Passport Office, as proof of his address and identity (ii) the noting portion whereby issue of passport was recommended to Shri Beant Singh. The Public Information Officer, refused to provide copies of

documents in proof of address and identity, to the respondent on the ground that it was a third party information exempted from disclosure under Section 8(1)(j) of the Right to Information Act. Section 8(1)(j) of the said Act reads as under:

> "(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."

It would thus be seen that if the information sought by the applicant is a personal information relating to a third party, it cannot be disclosed, unless the information relates to any public activity of a third party who has provided the said information or it is in public interest to disclose the information desired by the applicant. It further shows that a personal information cannot at all be disclosed if its disclosure would cause unwarranted invasion of the privacy of the third party which has provided the said information, unless the larger public interest justifies such disclosure.

4. The above referred provision came up for consideration before this Court in ***UPSC versus R.K. Jain*** [W.P(C) No.1243/2011] decided on 13.7.2012 and the following view was taken:

> "19. Therefore, "personal information" under the Act, would be information, as set forth above, that pertains to a

person. As such it takes into its fold possibly every kind of information relating to the person. Now, such personal information of the person may, or may not, have relation to any public activity, or to public interest. At the same time, such personal information may, or may not, be private to the person.

20. The term "personal information" under section 8(1)(j) does not mean information relating to the information seeker, or the public authority, but about a third party. The section exempts from disclosure personal information, including that which would cause "unwarranted invasion of the privacy of the individual". If one were to seek information about himself, the question of invasion of his own privacy would not arise. It would only arise where the information sought relates to a third party. Consequently, the exemption under Section 8(1)(j) is as regards third party personal information only.

21. ... The expression "personal information" used in Section 8(1)(j) means information personal to any "person", that the public authority may hold. For instance, a public authority may in connection with its functioning require any other person to provide information which may be personal to that person. It is that information, pertaining to that other person, which the public authority may refuse to disclose, if the information sought satisfies the conditions set out in clause (j) of Section 8(1) of the Act, i.e., if such information has no relationship to any public activity (of the person who has provided the information, or who is the source of the information, or to whom that information pertains), or to public interest, or which would cause unwarranted invasion of the privacy of the individual (unless larger public interest justifies disclosure).

22. Merely because information that may be personal to a third party is held by a public authority, a querist does not become entitled to access it, unless the said personal information has a relationship to a public activity of the third person (to whom it relates), or to public interest. If it is private informtaion (i.e. it is personal information which impinges on the privacy of the third party), its disclosure would not be made unless larger public interest dictates it. Therefore, for example, a querist cannot seek the personal or private particulars provided by a third party in his

application made to the passport authorities in his application to obtain a passport, merely because such information is available with the passport authorities, which is a public authority under the Act.

24. "Public activity" qua a person are those activities which are performed by the person in discharge of a public duty, i.e. in the public domain. There is an inherent public interest involved in the discharge of such activities, as all public duties are expected to be discharged in public interest. Consequently, information of a person which is related to, or has a bearing on his public activities, is not exempt from disclosure under the scheme and provisions of the Act, whose primary object is to ensure an informed citizenry and transparency of information and also to contain corruption. For example, take the case of a surgeon employed in a Government Hospital who performs surgeries on his patients who are coming to the government hospital. His personal information, relating to discharge of his public duty, i.e. his public activity, is not exempt from disclosure under the Act.

27.... whenever the querist applicant wishes to seek information, the disclosure of which can be made only upon existence of certain special circumstances, for example- the existence of public interest, the querist should in the application (moved under Section 6 of the Act) disclose/ plead the special circumstance, so that the PIO concerned can apply his mind to it, and, in case he decides to issue notice to the concerned third party under Section 11 of the Act, the third party is able to effectively deal with the same. Only then the PIO/appellate authority/CIC would be able to come to an informed decision whether, or not, the special circumstances exist in a given case.

28. I may also observe that public interest does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their rights or liabilities are affected...

xxx

34. It follows that the „privacy" of a person, or in other words his "private information", encompasses the personal

> intimacies of the home, the family, marriage, motherhood, procreation, child rearing and of the like nature. "Personal information", on the other hand, as aforesaid, would be information, in any form, that pertains to an individual. Therefore, „private information" is a part of "personal information". All that is private is personal, but all that is personal may not be private.
>
> 37. In light of the above discussion, the following principles emerge for the exemption under Section 8(1)(j) to apply (i) The information sought must relate to "Personal information" as understood above of a third party. Therefore, if the information sought does not qualify as personal information, the exemption would not apply; (ii) Such personal information should relate to a third person, i.e., a person other than the information seeker or the public authority; AND
>
> (iii) (a) The information sought should not have a relation to any public activity qua such third person, or to public interest. If the information sought relates to public activity of the third party, i.e. to his activities falling within the public domain, the exemption would not apply. Similarly, if the disclosure of the personal information is found justified in public interest, the exemption would be lifted, otherwise not;
> OR
> (iii) (b) The disclosure of the information would cause unwarranted invasion of the privacy of the individual, and that there is no larger public interest involved in such disclosure."

5. In the case before this Court, it can hardly be disputed that the information provided by Shri Beant Singh to the Regional Passport Office, as proof of his address and identity, would be a 'personal information', though its disclosure may not necessarily impinge on his privacy. Such information has no relationship to any public activity of Shri Beant Singh and in fact this is not the case of the respondent that Shri Beant Singh actually was engaged in public activity at any point of

time. I find it difficult to accept the view of the Commission that a person providing information relating to his address and identity, while seeking issue of passport to him is engaged in a public activity. No element of public duty is involved in providing information in proof of the address and identity of the applicant, while seeking a passport. Therefore, such information would certainly be personal information of Shri Beant Singh, having no relationship to any public activity. This is not the case of the respondent that it was in public interest to disclose the documents submitted by Shri Beant Singh as proof of his address and identity. In any case, no public interest is shown to be involved in disclosure of such information pertaining to Shri Beant Singh. As observed by this Court in **R.K. Jain (supra)**, the applicant should disclose, in the application itself, the special circumstances such as existence of public interest which would warrant disclosure of the information sought by him. No such circumstance, however, was disclosed by the respondent in his application to the PIO. Therefore, the information sought by the respondent, to the extent it pertains to the documents submitted by Shri Beant Singh, as proof of his address and identity, is clearly exempt from disclosure under Section 8(1)(j) of the Right to Information Act and to this extent the order passed by the Central Information Commission cannot be sustained.

6. As regards, noting on the file recommending issue of passport to Shri Beant Singh, the only ground given by the PIO for denying the said information to the respondent was that the information was exempt under section 8(1)(j) of the Act. It is not known whether such noting contains any information which would disclose the address, or any other personal

information relating to Shri Beant Singh. In case the file noting sought by the respondent does not contain any information which can be said to be personal information within the meaning of Section 8(1) (j) of the Act, there can be no objection to its disclosure.

7. For the reasons stated hereinabove, the writ petition is disposed of with a direction that though the respondent shall not be entitled to photocopies of the documents submitted by Shri Beant Singh as proof of his address and identity, the noting of the officer who had recommended to issue passport to him shall be provided to him within four weeks in case such noting does not contain any personal information relating to Shri Beant Singh.

There shall be no orders as to costs.

V.K.JAIN, J

AUGUST 23, 2013/*rd*

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 394/2012

ORIENTAL BANK OF COMMERCE ..... Petitioner

Through: Mahabir Singh Kasana, Advocate

versus

SUNITA SHARMA ..... Respondent

Through: Mr. Pardeep Dhingra and Mr. Varun Chandiok, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

30.01.2013

1. This writ petition has been filed to assail the order of the Central Information Commission (in short CIC) dated 30.12.2011.

2. The petition has been filed in the background of the following facts :-

2.1 The respondent who is the employee of the petitioner bank had filed an application on 23.05.2011 seeking the following information :-

?..The copy of final annual performance appraisal along marks awarding details of the rating and the reviewing authorities of all the branch incumbents of your region for the year 2008-2009 and 2009-2010...?

2.2 The CPIO of the petitioner-bank, however, vide order dated 10.06.2011 denied the information to the respondent on the ground that it

pertained to a third party and hence was exempted from disclosure under section 8(1)(j) of the Right to Information Act, 2005 (in short RTI Act).

2.3 The respondent, it appears approached the CIC directly against the order of the CPIO, whereupon the CIC vide order dated 10.08.2011 remanded the matter for consideration by the First Appellate Authority, in accordance with, Section 19 of the RTI Act.

2.4 Accordingly, the petitioner approached the First Appellate Authority. Vide order dated 19.09.2011, the First Appellate Authority rejected the appeal and sustained the order of the CPIO.

2.5 Being aggrieved, the petitioner filed an appeal with the CIC. By virtue of the impugned order dated 30.12.2011, the CIC has disposed of the appeal directing that the information sought by the respondent ought to be given to her.

3. Undoubtedly, the information sought by the respondent pertains to annual performance of her colleagues, which is a third party information. This court in the case of Arvind Kejriwal Vs. Central Public Information

Officer, Cabinet Secretariat, 172 (2010) DLT 124 had an occasion to deal with the similar issue. The court after analysing the arguments raised before it made the following crucial observations :-

21. This Court has considered the above submissions. It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would be a defense available to a person about whom information is being sought. Such defence could be taken by a third party in a proceeding under Section 11(1) when upon being issued notice such third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there

cannot be a disclosure of information pertaining to or which relates to. such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the

rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a given case.

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-a-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??

3.1 The aforementioned judgment of the Single Judge was challenged before the Division Bench. The Division Bench vide judgment dated

30.09.2011 passed in LPA No.719/2010 dismissed the appeal. Also see the judgment of the Division Bench of this court in R.K. Jain Vs. Union of India; dated 20.04.2012, passed in LPA No.22/2012.

4. An argument was raised that some parts of the information was released to certain other persons employed with the petitioner who were similarly circumstanced as the respondent herein. During the course of the argument, learned counsel for the respondent says that this was information pertaining to marks awarded qua interviews by the authority tasked with the job of selecting candidates in the post of Manager Scale-II for the year 2008-2009 and 2009-2010. It was, therefore, argued that, all that the respondent required was, marks awarded to her compatriots, who were assessed alongwith the respondent for the years 2008-2009 and 2009-2010 for the post of Manager Scale II; as appearing in their respective ACRs. In other words, the argument was, since some part of the information had been supplied to the other persons, without adhering to the rigour of Section 11 of the RTI Act, the remaining information could also be supplied to the respondent.

5. This was the precise argument which was raised before the learned

Single Judge in the case of Arvind Kejriwal (supra). The learned Judge repelled this contention by observing that mere fact that inspection of certain files was permitted without following the mandatory procedure provided under section 11(1) of the RTI Act, the said procedure could not be waived (see para 24 to 26 of the said judgment).

6. In view of the observations of this court, the impugned judgment of the CIC has to be reversed. It is ordered accordingly. As observed by a Single Judge of this court that it is not as if the information is completely exempt, all that the holder of information in this case, the petitioner-bank would have to do is, to follow the procedure under Section 11 of the RTI Act. Notice will have to be given to third parties to whom such information is related to.

7. For this purpose, the respondent would have to move an application before the petitioner-bank who would then issue notice to the third party and after hearing the third party, a decision would be taken by the concerned CPIO. The third party would be entitled to plead the defence of privacy; the petitioner-bank may for good reason over rule such defence. As observed by the learned Judge in the aforementioned judgment, it is open to disclose the information if the public interest

outways the objections of the third party to the disclosure of information.

8. Therefore, while setting aside the impugned order of the CIC dated 30.12.2011, it would be in order to permit the respondent to move an appropriate application under Section 11 for disclosure of information whereupon the petitioner-bank will take the consequential steps in the matter

in accordance with law. It is ordered accordingly.

9. I may only note that an argument was advanced that the information sought, pertained to the colleagues of the petitioner and hence did not fall within the ambit of the expression ?third party?. It also was sought to be contended that unless such information was supplied, no comparative assessment could be made as to whether or not the petitioner was unfairly treated i.e., downgraded. In my opinion, there is no reason why the expression third party appearing in Section 11 should be read to include only those who are unconnected with the concerned organisation, which is, the repository of information. Therefore, this submission is clearly unmerited. However, what could perhaps be said in favour of the respondent is that, when the repository of information, in this case the petitioner, is required to consider the aspect of public interest, it will take a view as to whether denial of information will impinge upon public weal.

10. With the aforesaid directions, the writ petition is disposed of.

RAJIV SHAKDHER, J

JANUARY 30, 2013

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3406/2012 & CM APPL. 7218/2012

UNION OF INDIA ..... Petitioner
Through Mr. Rakesh Tiku, Senior Advocate
with Mr. P.R. Choudhary, Advocate

versus

R JAYACHANDRAN ..... Respondent
Through None

AND

\+ W.P.(C) 8915/2011 & CM APPLs. 20128/2011, 20162/2012

MINISTRY OF EXTERNAL AFFAIRS ..... Petitioner
Through Mr. Rakesh Tiku, Senior Advocate
with Mr. P.R. Choudhary, Advocate

versus

D.K.PANDEY ..... Respondent
Through None

AND

\+ W.P.(C) 410/2012 & CM APPL. 871/2012

MINISTRY OF EXTERNAL AFFAIRS ..... Petitioner
Through Mr. Rakesh Tiku, Senior Advocate
with Mr. P.R. Choudhary, Advocate

versus

K.K.DHARMAN ..... Respondent
Through None

% Date of Decision : 19th February, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present batch of writ petitions has been filed challenging the orders of the Central Information Commission (for short 'CIC') whereby the petitioner-Ministry of External Affairs has been directed to provide copies of passports of third parties along with their birth certificates, educational qualifications and identity proofs. Since the reasoning of the CIC in all the impugned orders is identical, the relevant portion of the impugned order in W.P.(C) 3406/2012 is reproduced hereinbelow:-

> *"We can also look at this from another aspect. The State has no right to invade the privacy of individual. There are some extraordinary situations where the State may be allowed to invade the privacy of a Citizen. In those circumstances special provisions of the law apply;- usually with certain safeguards. Therefore where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.*
>
> *Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly to all human beings worldwide. However, the concept of 'privacy' is a cultural notion, related to social norms, and different societies would look at these differently. Therefore referring to the UK Data protection act or the laws of other countries to define 'privacy' cannot be considered a valid exercise to constrain the Citizen's fundamental Right to Information in India. Parliament has not codified the right to privacy so far, hence in balancing the Right to Information of Citizens and the*

individual's Right to Privacy the Citizen's Right to Information would be given greater weightage. The Supreme Court of India has ruled that Citizens have a right to know about charges against candidates for elections as well as details of their assets, since they desire to offer themselves for public service. It is obvious then that those who are public servants cannot claim exemption from disclosure of charges against them or details of their assets. Given our dismal record of misgovernance and rampant corruption which colludes to deny Citizens their essential rights and dignity, it is in the fitness of things that the Citizen's Right to Information is given greater primacy with regard to privacy."

2. Despite filing affidavit of service, none has appeared for the respondents today. Even yesterday, none had appeared for the respondents. Consequently, this Court has no other option but to proceed with the matter ex parte.

3. Mr. Rakesh Tiku, learned senior counsel for petitioners submits that CIC failed to appreciate that the passport application contains personal information and if disclosed, would cause unwarranted invasion of privacy of third party. He further submits that even if the CIC came to the conclusion that the information sought for was not exempt from disclosure under Section 8(1)(j) of the Right to Information Act, 2005 (for short 'RTI Act'), it would still have to follow the third party information procedure under Section 11 of the RTI Act.

4. Mr. Tiku fairly points out that in connected matters, i.e., W.P.(C) Nos. 2232/2012, 8932/2011, 3421/2012, 1263/2012, 1677/2012, 1794/2012, 2231/2012, a co-ordinate bench of this Court has directed the Ministry of External Affairs to give details of passport to third parties like passport number, date of its first issue, subsequent renewals, the name of police

station from which verification had been done, nature of documents submitted with the passport application without disclosing the contents of those documents along with the information as to whether Visa was issued to the third party.

5. Mr. Tiku, however, submits that the reasoning in W.P.(C) 2232/2012 for release of third party information that the said information was generated by Ministry of External Affairs, is untenable in law. According to him, if this reasoning were to be accepted, then a third party's Permanent Account Number (PAN) and password would also be liable to be disclosed as the same are generated by the Income Tax Department. He states that if an applicant were to get a third party's PAN and password details, he would be able to find out his financial details like income, tax paid etc.

6. This Court finds that the concept of third party information has been comprehensively dealt with in the RTI Act. Some of the relevant sections pertaining to third party as well as personal information are reproduced hereinbelow:-

> *"**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.*
>
> *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,—*
>
> *xxxx xxxx xxxx xxxx*
>
> *(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.

xxxx xxxx xxxx xxxx

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.

xxxx xxxx xxxx xxxx

19. Appeal.-

xxxx xxxx xxxx xxxx

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against

which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party."

7. Keeping in view the aforesaid provisions, this Court is of the view that the proper approach to be adopted in cases where personal information with regard to third parties is asked is first to determine whether information sought falls under Section 8(1)(j) of the RTI Act and if the Court/Tribunal reaches the conclusion that aforesaid exemption is not attracted, then the third party procedure referred to in Section 11(1) of the RTI Act must be followed before releasing the information.

8. This Court finds that except making general observations in the impugned matters, CIC has not considered the aforesaid binding statutory provisions. In fact, the impugned order is based on surmises and conjectures. CIC has not pointed out as to how any of its general observations with regard to mis-governance, rampant corruption by public servants and politicians have any relevance to the present batch of cases. CIC has nowhere stated in the impugned orders that third parties are either public servants or politicians or persons in power.

9. CIC has neither examined the issue whether larger public interest justifies the disclosure of the information sought by the applicants in these cases nor has followed the third party procedure prescribed under Sections 11 and 19(4) of RTI Act.

10. This Court also finds that the observations given by learned Single Judge in the batch of writ petitions being W.P.(C) 2232/2012 are without taking into account the binding provisions of Sections 11(1) and 19(4) of the

RTI Act. In particular the learned Single Judge erred in observing in W.P.(C) 1677/2012 that passport number is not a personal information. This Court is in agreement with Mr. Tiku's submission that as to who generates a third party information, is totally irrelevant. After all passport number is not only personal information but also an identification proof, specifically when one travels abroad.

11. This Court is also of the view that if passport number of a third party is furnished to an applicant, it can be misused. For instance, if the applicant were to lodge a report with the police that a passport bearing a particular number is lost, the Passport Authority would automatically revoke the same without knowledge and to the prejudice of the third party.

12. Further, the observations of learned Single Judge in the aforesaid batch of writ petitions are contrary to the judgment of another learned Single Judge in ***Suhas Chakma Vs. Central Information Commission, W.P.(C) 9118/2009*** decided on ***2nd January, 2010*** as well as a Division Bench's judgment in ***Harish Kumar Vs. Provost Marshal-Cum-Appellate Authority & Ors., LPA 253/2012*** decided on ***30th March, 2012***. In ***Suhas Chakma*** (supra) another learned Single Judge has held as under:-

> *"5. The Court is of the considered view that information which involves the rights of privacy of a third party in terms of Section 8(1)(j) RTI Act cannot be ordered to be disclosed without notice to such third party. The authority cannot simply come to conclusion, that too, on a concession or on the agreement of parties before it, that public interest overrides the privacy rights of such third party without notice to and hearing such third party.*"

13. The relevant portion of the Division Bench in ***Harish Kumar*** (supra) is reproduced hereinbelow:-

"9. What we find in the present case is that the PIO had not refused the information. All that the PIO required the appellant to do was, to follow third party procedure. No error can be found in the said reasoning of the PIO. Under Section 11 of the Act, the PIO if called upon to disclose any information relating to or supplied by a third party and which is to be treated as confidential, is required to give a notice to such third party and is to give an opportunity to such third party to object to such disclosure and to take a decision only thereafter.

10. There can be no dispute that the information sought by the appellant was relating to a third party and supplied by a third party. We may highlight that the appellant also wanted to know the caste as disclosed by his father-in-law in his service record. The PIO was thus absolutely right in, response to the application for information of the appellant, calling upon the appellant to follow the third party procedure under Section 11. Reliance by the PIO on Section 8 (1) (j) which exempts from disclosure of personal information and the disclosure of which has no relationship to any public activity or interest and which would cause unwanted invasion of the privacy of the individual was also apposite. Our constitutional aim is for a casteless society and it can safely be assumed that the disclosure made by a person of his or her caste is intended by such person to be kept confidential. The appellant however as aforesaid, wanted to steal a march over his father-in-law by accessing information, though relating to and supplied by the father-in-law, without allowing his father-in-law to oppose to such request."

14. The Supreme Court in ***Municipal Corporation of Delhi Vs. Gurman Kaur, (1989) 1 SCC 101*** has held that a decision of a Court is *per incuriam* when it is given in ignorance of the terms of a statute. In the present case, as the direction of learned Single Judge in the aforesaid batch of writ petitions bearing W.P.(c) 2232/2012 is specifically contrary to Section 11(1) of the RTI Act, this Court is of the view that it is *per incuriam*.

15. Consequently, present writ petitions are allowed and the impugned orders dated 11th April, 2012 passed in W.P.(C) 3406/2012; 21st October, 2011 in W.P.(C) 8915/2011; and 19th December, 2011 in W.P.(C) 410/2012 by CIC are set aside. The applications stand disposed of.

MANMOHAN, J

FEBRUARY 19, 2014
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 27.04.2009
Judgment pronounced on: 01.07.2009

\+ W.P. (C) 803/2009

VIJAY PRAKASH ..... Petitioner
Through: Petitioner in person.

versus

UOI AND ORS. ..... Respondents
Through: Mr. S.K. Dubey with
Mr. K.B. Thakur and Mr. Deepak Kumar, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Hon'ble Mr. Justice S. Ravindra Bhat

1. The petitioner in this proceeding under Article 226 of the Constitution of India, challenges a decision of the Central Information Commission (CIC) dated 17.12.2008 (the impugned order] affirming the decision of the appellate authority under the Right to Information Act, 2005 [hereafter, "the Information Act"] not to allow disclosure of the information sought.

2. The facts necessary for deciding the case are that the petitioner is a former officer of the Indian Air Force. He apparently got married in 2001. According to the averments, he had sought resignation from the Indian Air Force, which was granted on 30.09.2001. His wife was inducted

in the Defence Research Development Organization (DRDO) on 31.03.2005 and was posted at 4, Air Force Selection Board ("AFSB"), Varanasi. Eventually, differences cropped up between the two, and his wife applied for divorce. The petitioner caused to be served, through his counsel, an application to the Station Commander, 4 AFSB, requesting for information in respect of his wife's service records pertaining to all leave application forms submitted by her; attested copies of nomination of DSOP and other official documents with financial implications, and the changes made to them; record of investments made and reflected in the service documents of his wife, along with nominations thereof.

3. The information application was declined by the Public Information Officer, i.e. the Wing Commander of the 4, AFSB by his letter dated 25.04.2007 on the ground that the particulars sought for related to personal information, exempted under Section 8(1)(j) of the Information Act; that disclosure of such information had no relation with any public activity or interest and that it would cause unwarranted invasion into the privacy of the individual. The petitioner felt aggrieved and preferred an appeal under Section 19 of the Information Act. The appeal was rejected by an order dated 25.01.2008 by the Air Vice Marshal, Senior Officer Incharge, Administration, of the Indian Air Force, who was the designated Appellate authority. Feeling aggrieved, the writ petitioner preferred a second appeal to the Central Information Commissioner.

4. By the impugned order, the CIC, after discussing the arguments and pleas advanced, rejected the appeal. The relevant part of the impugned order, upholding the determination of the authorities, including the appellate authority is as follows:-

> *"During the hearing, the Appellant submitted that the information sought was required for producing before the Competent Court where a dispute was pending between him and Dr. Sandhya Verma and the information was necessary for fair trial. The Respondents submitted that the information was necessary pertained to personal information concerning Dr. Sandhya Verma, a Third Party and had no relationship to any public interest or activity and, therefore, exempt from disclosure under Section 8(1)(j) of the Right to Information Act. The information which has been sought includes, attested copies of all the leave application forms submitted by Dr. S. Verma since she was posted to 4 AFSB, copies of nomination of DSOP/other official documents with financial implications and record of investment made and reflected thereon in service documents along with the nominations thereof, if explicitly made. The information sought is obviously personal information concerning Dr. Sandhya Verma, a Third Party. It is immaterial if Dr. Sandhya Verma happens to be the wife of the Appellant. The information sought does not seem to have any relationship to any public interest or public activity and has been expressly sought to be used as evidence in a dispute in a Court pending between the Appellant and Dr. Sandhya Verma. The decision of the CPIO, upheld by the Appellate Authority, in denying the information by invoking the exemption provision of Section 8(1)(j) of the Right to Information Act seem to be absolutely right and just. We find no reason to interfere with the decision of the Appellate Authority and, thus, reject the appeal."*

5. The writ petitioner, a self-represented litigant, argues that the approach of the authorities under the Information Act has been unduly narrow and technical. He emphasized that by virtue of Section 6, a right is vested in every person to claim information of all sorts which exists on the record. He relied upon Section 2 (i) and (j) to say that information under the Act has been defined in the widest possible manner and that the question of exceptions should be construed from the perspective of the right rather than the exemptions, which has been done in this case. Reliance was placed upon Division Bench ruling in *Surup Singh Hrya Naik v. State of Maharashtra* AIR 2007 Bom 121 to submit that ordinarily information sought for by person must be made available without disclosure by him about the reason why he seeks it. It is submitted further that a close reading of the decision would show that the public right to

information ordinarily prevails over the private interest of a third party, who may be affected. Particularly, it was emphasized that the Court should always keep in mind the object of the Act, which is to make public authorities accountable and open and the contention that the information might be misused is of no consequence. It was submitted lastly that even if there is a rule prohibiting disclosure of information, that would yield to the dictates of the Information Act, as the latter acquires supremacy.

6. It was consequently urged that in the context of this case, the information sought for was not really of a third party, but pertained to the petitioner's wife. Although they are facing each other in litigation, nevertheless, having regard to their relationship, the invocation of Section 8(1)(j) was not justified.

7. The petitioner contended further that the grounds urged, i.e. lack of public interest and unwarranted intrusion of privacy, were unavailable in this case. It was submitted in this regard that being a public official, the petitioner's wife was under a duty to make proper and truthful disclosure; the pleadings made by her in the divorce proceedings, contained untruthful averments. These could be effectively negatived by disclosure of information available with the respondents. Therefore, there was sufficient public interest in the disclosure of information.

8. The Indian Air Force (IAF), which has been impleaded as second respondent argues that the impugned decision is justified and in consonance with law. It argued that what constitutes "public interest" is defined in *Black's Law Dictionary (6th Edition)* at page 1229 as follows:

> *"Public Interest: Something in which the public, the community at large, has some pecuniary interest by which their legal rights or liabilities are affected. It*

does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question……"

9. It is urged that the Information Act was brought into force as a means of accessing information under the control of public authorities, to citizens with the object of promoting transparency and accountability. This regime, is however, subject to reasonable restrictions or exemptions. Particular reliance is placed upon the non-obstante clause contained in Section 8, which lists out the various exemptions. It was submitted that if the disclosure of personal information has no relation to any public activity or interest, the authorities under the Act within their rights in denying disclosure. The counsel contended in this regard that there is no element of public interest, in relation to the private matrimonial litigation pending before the Court between the petitioner and his wife. Similarly, the action of filing information in relation to one's assets and investments, with the public authority, *per se*, is not a public activity, and contents of such disclosure cannot be accessed. It was argued that in addition, the disclosure of such information (which is meant purely for the records and for the use of the employer), during inappropriate instances, is bound to cause unwarranted loss of privacy to the individual. Therefore, in the overall conspectus of the facts of this case, even though the parties were married to each other, as a policy matter, the IAF acted within the bounds of law in denying access to the information submitted by the petitioner's wife.

10. The relevant provisions of the Information Act, in the context of this case, are extracted below:

*"**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;

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(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;

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

XXXXXX XXXXXX XXXXXX

(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.

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***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, 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."

11. The precise question to be decided here is whether records relating to investments of, and financial disclosure made during the course of employment by the petitioner's wife were justifiably withheld on grounds of lack of public interest element and likelihood of invasion of privacy.

12. In the decision relied upon by the petitioner reported as *Surup Singh Hrya Naik v. State of Maharashtra (supra)*, the Bombay High Court had to deal with the question whether disclosure of medical records of a member of the Legislative Assembly, who had been

imprisoned for contempt of Court, for a month, was protected by the exemption under Section 8(1)(j). The Court dealt with the argument that in terms of regulations framed by the Indian Medical Council (IMC), such records were confidential. However, the argument that such confidentiality obliged the Government to deny the request, was turned-down on the ground that the regulations had to yield to provisions of the Act and that unless the third party made out a strong case for denial, such information could always be disclosed. In the course of its reasoning, the Division Bench emphasized that the proviso to Section 8(1)(j) clothes Parliament and State Legislatures with plenary powers, which in turn implied that all manner of information was capable of disclosure and could not, therefore, be withheld.

13. Under the scheme of the Information Act, the expressions "record", "information", "right to Information" have been given the widest possible amplitude. By virtue of Sections 3, 5, 6 and 7, every public authority requested to provide information is under a positive obligation to do so; the information seeker is under no obligation to disclose why he requests it. The information provider or the concerned agency is further, obliged to decide the application within prescribed time limits. A hierarchy of authorities is created with the CIC, at the apex to decide disputes pertaining to information disclosure. In this Scheme, the Parliament has in its wisdom, visualized certain exemptions. Section 8 lists those exemptions; it opens with a *non-obstante* clause, signifying the intention that irrespective of the rights of the information seeker, in regard to matters listed under that provision, the information providers can justifiably withhold access to the information seeker the record, information or queries sought for by him. This case concerns the applicability of Section 8(1)(j).

14. The right to access public information, that is, information in the possession of state agencies and governments, in democracies is an accountability measure empowering citizens to be aware of the actions taken by such state "actors". This transparency value, at the same time, has to be reconciled with the legal interests protected by law, such as other fundamental rights, particularly the fundamental right to privacy. This balancing or reconciliation becomes even more crucial if we take into account the effects of the technological challenges which arise on account of privacy. Certain conflicts may arise in particular cases of access to information and the protection of personal data, stemming from the fact that both rights cannot be exercised absolutely. The rights of all those affected must be respected, and no right can prevail over others, except in clear and express circumstances.

15. To achieve the above purpose, the Information Act outlines a clear list of the matters that cannot be made public. There are two types of information seen as exceptions to access; the first usually refers to those matters limited to the State in protection of the general public good, such as security of State, matters relating to investigation, sensitive cabinet deliberations, etc. In cases where state information is reserved, the relevant authorities must prove the damage that diffusion of information will effectively cause to the legal interests protected by law, so that the least amount of information possible is reserved to benefit the individual, thus facilitating governmental activities. The second class of information with state or its agencies, is personal data of both citizens and artificial or juristic entities, like corporations. Individuals' personal data is protected by the laws of access to confidentiality and by privacy rights.

16. Democratic societies undoubtedly have to guarantee the right of access to public information; it is also true that such societies' legal regimes must safeguard the individual's right to privacy. Both these rights are often found at the same "regulatory level". The Universal Declaration of Human Rights, through Article 19 articulates the right to information as follows:

> *"Everyone has the right to freedom of opinion 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".*

Article 12 of the same Declaration provides that,

> *"no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".*

17. The scheme of the Information Act no doubt is premised on disclosure being the norm, and refusal, the exception. Apart from the classes of exceptions, they also appear to work at different levels or stages, in the enactment. Thus, for instance, several organizations –security, and intelligence agencies, are excluded from the *regime,* by virtue of Section 24, read with the Second Schedule to the Act. The second level of exception is enacted in Section 8, which lists 11 categories or classes (clauses (a) to (j)) that serve as guidelines for non-disclosure. Though by Section 22, the Act overrides other laws, the opening *non-obstante* clause in Section 8 ("notwithstanding anything contained in this Act") confers primacy to the exemptions, enacted under Section 8(1). Clause (j) embodies the exception of information in the possession of the public authority which relates to a third party. Simply put, this exception is that if the information concerns a third party (i.e. a party other than the information seeker and the information provider), unless a public interest in disclosure is shown, information would not be

given; information may also be refused on the ground that disclosure may result in unwarranted intrusion of privacy of the individual. Significantly, the enactment makes no distinction between a private individual third party and a public servant or public official third party.

18. It is interesting to note that paradoxically, the right to privacy, recognized as a fundamental right by our Supreme Court, has found articulation – by way of a safeguard, though limited, against information disclosure, under the Information Act. In India, there is no law relating to data protection, or privacy; privacy rights have evolved through the interpretive process. The right to privacy, characterized by Justice Brandeis in his memorable dissent, in *Olmstead* v. *United States*, 277 US 438 (1928) as *""right to be let alone… the most comprehensive of rights and the right most valued by civilised men"* has been recognized under our Constitution by the Supreme Court in four rulings - *Kharak Singh* v. *State of U.P.* (1964) 1 SCR 332; *Gobind v. State of M.P.,* (1975) 2 SCC 148; *R. Rajagopal v. State of T.N.,* (1994) 6 SCC 632; and *District Registrar and Collector v. Canara Bank,*(2005) 1 SCC 496. None of these judgments, however explored the intersect between the two values of information rights and privacy rights; *Rajagopal,* which is nearest in point, was concerned to an extent with publication of material that was part of court records.

19. It has been held by a Constitution Bench of the Supreme Court that an individual does not forfeit his fundamental rights, by becoming a public servant, in *O.K. Ghosh v. E.X. Joseph* AIR 1963 SC 812:

"...the fundamental rights guaranteed by Art. 19 can be claimed by Government servants. Art. 33 which confers power on the parliament to modify the rights in their application to the Armed Forces, clearly brings out the fact that all citizens, including Government servants, are entitled to claim the rights guaranteed by Art. 19."

Earlier, in *Kameshwar Prasad v. State of Bihar* AIR 1962 1166, an argument that public servants do not possess certain fundamental rights, was repelled, by another Constitution Bench, categorically, in these terms:

"It was said that a Government servant who was posted to a particular place could obviously not exercise the freedom to move throughout the territory of India and similarly, his right to reside and settle in any part of India could be said to be violated by his being posted to any particular place. Similarly, so long as he was in government service he would not be entitled to practice any profession or trade and it was therefore urged that to hold that these freedoms guaranteed under Art. 19 were applicable to government servants would render public service or administration impossible. This line of argument, however, does not take into account the limitations which might be imposed on the exercise of these rights by cls. (5) and (6) under which restrictions on the exercise of the rights conferred by sub-cls. (d) and (g) may be imposed if reasonable in the interest of the general public.

13. In this connection he laid stress on the fact that special provision had been made in regard to Service under the State in some of the Articles in Part III - such as for instance Arts. 15, 16, and 18(3) and (4) - and he desired us therefrom to draw the inference that the other Articles in which there was no specific reference to Government servants were inapplicable to them. He realised however, that the implication arising from Art. 33 would run counter to this line of argument but as regards this Article his submission was that it was concerned solely to save Army Regulations which permitted detention in a manner which would not be countenanced by Art. 22 of the Constitution. We find ourselves unable to accept the argument that the Constitution excludes Government servants as a class from the protection of the several rights guaranteed by the several Articles in Part III save in those cases where such persons were specifically named.

14. In our opinion, this argument even if otherwise possible, has to be repelled in view of the terms of Art. 33. That Article select two of the Services under the State-members of the armed forces charged with the maintenance of public order and saves the rules prescribing the conditions of service in regard to them -

from invalidity on the ground of violation of any of the fundamental rights guaranteed by Part III and also defines the purpose for which such abrogation or restriction might take place, this being limited to ensure the proper discharge of duties and the maintenance of discipline among them. The Article having thus selected the Services members of which might be deprived of the benefit of the fundamental rights guaranteed to other persons and citizens and also having prescribed the limits within which such restrictions or abrogation might take place, we consider that other classes of servants of Government in common with other persons and other citizens of the country cannot be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms as we have pointed out in relation to Art. 19(1)(e) and (g)."

(emphasis supplied)

20. A bare consideration of the right of individuals, including public servants, to privacy would seem to suggest that privacy rights, by virtue of Section 8(1)(j) whenever asserted, would have to prevail. However, that is not always the case, since the public interest element, seeps through that provision. Thus when a member of the public requests information about a public servant, a distinction must be made between "official" information inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task appears to be easy; but is in practice, not so, having regard to the dynamics inherent in the conflict. Though it may be justifiably stated that protection of the public servant's private or personal details as an individual, is necessary, provided that such protection does not prevent due accountability, there is a powerful counter argument that public servants must effectively waive the right to privacy in favour of transparency. Thus, if public access to the personal details such as identity particulars of public servants, i.e. details such as their dates of birth, personal identification numbers, or other personal information furnished to public agencies, is requested, the

balancing exercise, necessarily dependant and evolving on case by case basis may take into account the following relevant considerations, i.e.

i) whether the information is deemed to comprise the individual's private details, unrelated to his position in the organization, and,

ii) whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;

iii) whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.

21. An important and perhaps vital consideration, aside from privacy is the public interest element, mentioned previously. Section 8(1)(j)'s explicit mention of that concept has to be viewed in the context. In the context of the right to privacy, Lord Denning in his *What next in Law,* presciently said that:

> *"English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established."*

22. A private individual's right to privacy is undoubtedly of the same order as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection,

therefore, which is afforded to the two classes – public servants and private individuals, has to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. Therefore, if an important value in public disclosure of personal information is demonstrated, in the particular facts of a case, the protection afforded by Section 8(1)(j) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official, as a "third party" and consider his views on why there should be no disclosure. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the object of Section 8(1)(j); the legislative intention in carving out an exception from the normal rule requiring no "locus" by virtue of Section 6, in the case of exemptions, is explicit through the *non-obstante* clause. The court is also unpersuaded by the reasoning of the Bombay High Court, which appears to have given undue, even overwhelming deference to Parliamentary privilege (termed "plenary" by that court) in seeking information, by virtue of the proviso to Section 8(1)(j). Were that the true position, the enactment of Section 8(1)(j) itself is rendered meaningless, and the basic safeguard bereft of content. The proviso has to be only as confined to what it enacts, to the *class* of information that Parliament can ordinarily seek; if it were held that all information relating to all public servants, even private information, can be accessed by Parliament, Section 8(1)(j) would be devoid of any substance, because the provision makes no

distinction between public and private information. Moreover there is no law which enables Parliament to demand all such information; it has to be necessarily in the context of some matter, or investigation. If the reasoning of the Bombay High Court were to be accepted, there would be nothing left of the right to privacy, elevated to the status of a fundamental right, by several judgments of the Supreme Court.

23. As discussed earlier, the "public interest" argument of the Petitioner is premised on the plea that his wife is a public servant; he is in litigation with her, and requires information, - in the course of a private dispute – to establish the truth of his allegations. The CIC has held that there is no public interest element in the disclosure of such personal information, in the possession of the information provider, i.e. the Indian Air Force. This court concurs with the view, on an application of the principles discussed. The petitioner has, not been able to justify how such disclosure would be in "public interest" : the litigation is, pure and simple, a private one. The basic protection afforded by virtue of the exemption (from disclosure) enacted under Section 8(1)(j) cannot be lifted or disturbed.

24. In view of the above discussion, the writ petition fails, and is dismissed. In the circumstances of the case, there shall be no order on costs.

S. RAVINDRA BHAT, J

JULY 01, 2009
'ajk'

REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION (CIVIL) NOS.8396/2009, 16907/2006, 4788/2008, 9914/2009, 6085/2008, 7304/2007, 7930/2009 AND 3607 OF 2007,**

Reserved on : 12th August,2009/2nd September, 2009.

% **Date of Decision** : 30th November , 2009.

(1) **WRIT PETITION (CIVIL) NO. 8396 OF 2009**

UNION OF INDIA THR. DIRECTOR,
MINISTRY OF PERSONNEL, PG & PENSION ….Petitioner
Through Mr.S.K.Dubey, Mr.Deepak Kumar, advocates.

versus

CENTRAL INFORMATION COMMISSION &
SHRI P.D. KHANDELWAL ….Respondents
Through Prof. K.K. Nigam, advocate for CIC.
Respondent no.2, in person.

(2) **WRIT PETITION (CIVIL) NO.16907 OF 2006**

UNION OF INDIA ..... Petitioner
Through Mr. A.S. Chandhiok, ASG with Mr. Ritesh Kumar, Ms. Vibha Dhawan & Mr. Sandeep Bajaj, Advocates.

versus

SWEETY KOTHARI ..... Respondent
Through Mr. Bhakti Pasrija, Advocate.

(3) **WRIT PETITION (CIVIL) NO. 4788 OF 2008**

UNION OF INDIA THR. SECRETARY,
MINISTRY OF DEFENCE & ANOTHER .... Petitioners
Through Mr. A.S. Chandhiok, ASG with Mr. R. Balasubramanian, Advocate.

versus

THE CENTRAL INFORMATION COMMISSION

THR. ITS REGISTRAR & ANOTHER ..... Respondents
Through Prof. K.K. Nigam, Advocate for respondent No. 1.

(4) **WRIT PETITION (CIVIL) NO. 9914 OF 2009**

UNION OF INDIA THR. SECRETARY,
MINISTRY OF DEFENCE & ANOTHER .... Petitioners
Through Mr. A.S. Chandhiok, ASG with Mr. R. Balasubramanian, Advocate.

versus

THE CENTRAL INFORMATION COMMISSION
THR. ITS REGISTRAR &
MAJ.RAJ PAL (RETD.) ..... Respondents
Through Prof. K.K. Nigam, Advocate for respondent No. 1.
Maj. Raj Pal, in person.

(5) **WRIT PETITION (CIVIL) NO. 6085 OF 2008**

UNION OFINDIA & ANOTHER ..... Petitioners
Through Mr. A.S. Chandhiok, ASG with Mr. R. Balasubramanian, Advocate.

versus

CENTRAL INFORMATION COMMISSION
& ANOTHER ..... Respondents
Through Prof. K.K. Nigam, Advocate for respondent No. 1.

(6) **WRIT PETITION (CIVIL) NO. 7304 OF 2007**

UNION OF INDIA ..... Petitioner
Through Mr. A.S. Chandhiok, ASG with Mr. Ritesh Kumar, Ms. Vibha Dhawan & Mr. Sandeep Bajaj, Advocates.

Versus

BHABARANJAN RAY & ANOTHER ..... Respondents
Through

(7) **WRIT PETITIION (CIVIL) NO. 7930 OF 2009**

ADDL.COMMISSIONER OF
POLICE (CRIME) ..... Petitioner

Through Mr. A.S. Chandhiok, ASG with Ms. Mukta Gupta , Ms. Anagha, Mr. Ritesh Kumar, Ms. Vibha Dhawan & Mr. Sandeep Bajaj & Mr. Bhagat Singh, Advocates.

versus

CENTRAL INFORMATIONAL COMMISSION
& ANOTHER. ..... Respondents

Through Prof. K.K. Nigam, Advocate for respondent No. 1.
Mr. Prashant Bhushan, Advocate for respondent No. 2 .

(8) **WRIT PETITION (CIVIL) NO. 3607 OF 2007**

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA ..... Petitioner

Through Mr. Parag P. Tripathi, Sr. Advocate with Mr. Rakesh Agarwal & Mr. Anuj Bhandari, Advocates.

Versus

CENTRAL INFORMATION COMMISSION ..... Respondent

Through Prof. K.K. Nigam, Advocate.

CORAM :
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

SANJIV KHANNA, J.:

1. The petitioners herein have challenged orders passed by the Central Information Commission (hereinafter also referred to as CIC,

for short) under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act, for short).

2. The challenge to the impugned orders involves interpretation of Sections 8(1), 18 and 19 of the RTI Act, which read as under:-

> "**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;
> (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 secretes 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 authority 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. ”

“Section 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-limit 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 court 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 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.

Section 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 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 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.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under Section 11 to disclose third-party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(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.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, 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.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

SECTION 8 OF THE RTI ACT

3. Section 8 (1) of the RTI Act begins with a non-obstante clause and stipulates that notwithstanding any other provision under the RTI Act, information need not be furnished when any of the clauses (a) to (j) apply. Right to information is subject to exceptions or exclusions stated in section 8(1) (a) to (j) of the RTI Act. Sub-clauses (a) to (j) are in the nature of alternative or independent sub clauses. In the present cases, we are primarily concerned with Clauses (e), (h), (i) and (j) of the RTI Act. Each sub-clause has been interpreted separately. Section 8(1)(h) of the RTI Act has been interpreted while examining WP(C) No. 7930/2009, Addl. Commissioner of Police (Crime) Vs. Central Information Commission & Another.

SECTION 8 (1) (e) OF THE RTI ACT

4. Section 8(1)(e) protects information available to a person in his fiduciary relationship. As per Section 3(42) of the General Clauses Act, 1897 the term “person” includes a juristic person, any company or association or body of individuals, whether incorporated or not. Section 8(1)(e) adumbrates that information should be available to a person in his fiduciary relationship. The “person” in Section 8(1)(e) will include the “public authority”. The word “available” used in this Clause will include information held by or under control of a public authority and also information to which the public authority has access to under any other statute or law. The term “information” has been defined in Section 2(f) of the RTI Act as under:

> “(*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; “

5. The information relating to a private body which can be accessed by a public authority under any other law in force is information which may be made available. Information “available” with a public authority can be furnished.

6. The term “fiduciary relationship” has not been defined in the RTI Act. Therefore, we have to interpret the term “fiduciary

relationship" keeping in mind the object and purpose of the RTI Act and the term "fiduciary" as is understood in common parlance. The RTI Act is a progressive and a beneficial legislation enacted to provide a practical regime to secure to the citizen's, right to information; to promote transparency, accountability and efficiency and eradicate corruption. Sub-section 8(1)(e) of the RTI Act permits screening and preservation of confidential and sensitive information made available due to fiduciary relationship. The aforesaid Clause has been interpreted by S. Ravindra Bhat, J. in ***CPIO, Supreme Court of India, New Delhi versus Subhash Chandra Agarwal and another*** (Writ Petition No. 288/200) decided on 2nd September, 2009 as under:-

> "55. It is necessary to first discern what a fiduciary relationship is, since the term has not been defined in the Act. In *Bristol & West Building Society v. Mothew* [1998] Ch 1, the term "fiduciary",was described as under:
>
> > *"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." Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan*,(2005) 1 SCC 212 and *Needle Industries (India) Ltd v. Needle Industries (Newey) India Holding Ltd* : 1981 (3) SCC 333 establish that Directors of a company owe fiduciary duties to its shareholders. In *P.V. Sankara Kurup v. Leelavathy Nambiar,* (1994) 6 SCC 68, the Supreme Court held that an agent and power of attorney holder can be said to owe a fiduciary relationship to the principal.
>
> 56. In a recent decision *(Mr. Krishna Gopal Kakani v. Bank of Baroda* 2008 (13) SCALE 160) the Supreme Court had to decide whether a transaction resulted in a fiduciary relationship. Money was sought to be recovered

by the plaintiff, from a bank, who had moved the court for auction of goods imported, and retained the proceeds,; the trail court overruled the objection to maintainability, stating that the bank held the surplus (of the proceeds)in a fiduciary capacity. The High Court upset the trial court 's findings, ruling that the bank did not act in a fiduciary capacity. The Supreme Court affirmed the High Court 's findings. The court noticed Section 88 of the Trusts Act, which reads as follows:

> *"Section 88.Advantage gained by fiduciary.- Where a trustee, executor, partner, agent, director of a company, legal advisor, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained."*

Affirming the High Court 's findings that the bank did not owe a fiduciary responsibility to the appellant, it was held by the Supreme Court, that:

> *"9.An analysis of this Section would show that the Bank, to whom the money had been entrusted, was not in the capacity set out in the provision itself. The question of any fiduciary relationship therefore arising between the two must therefore be ruled out. It bears reiteration that there is no evidence to show that any trust had been created with respect to the suit money.."*

The following kinds of relationships may broadly be categorized as "fiduciary ":

Trustee/beneficiary (Section 88, Indian Trusts Act, 1882);

Legal guardians / wards (Section 20, Guardians and Wards Act, 1890);

Lawyer/client;

Executors and administrators / legatees and heirs;

Board of directors / company;

Liquidator/company;

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

Doctor/patient;

Parent/child.

57. *The Advanced Law Lexico*n, 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 relationship ….Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who is 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 "*

58. From the above discussion, it may be seen that a fiduciary relationship is one whereby a person places complete confidence in another in regard to a particular transaction or his general affairs or business. The relationship need not be "formally "or "legally "ordained, or established, like in the case of a written trust; but can be one of moral or personal responsibility, due to the better or superior knowledge or training, or superior status of the fiduciary as compared to the one whose affairs he handles."

7. In ***Woolf vs Superior Court*** (2003)107 Cal.App. 4th 25**,** the California Court of Appeals defined fiduciary relationship as "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."

8. Fiduciary can be described as an arrangement expressly agreed to or at least consciously undertaken in which one party trusts, relies and depends upon another's judgment or counsel. Fiduciary relationships may be formal, informal, voluntary or involuntary. It is legal acceptance that there are ethical or moral relationships or duties in relationships which create rights and obligations. The fiduciary obligations may be created by a contract but they differ from contractual relationships for they can exist even without payment of consideration by the beneficiaries and unlike contractual duties and obligations, fiduciary obligations may not be readily tailored and modified to suit the parties. In a fiduciary relationship, the principal emphasis is on trust, and reliance, the fiduciary's superior power and corresponding dependence of the beneficiary on the fiduciary. It requires a dominant position, integrity and responsibility of the fiduciary to act in good faith and for the benefit of and to protect the beneficiary and not oneself.

9. One basic difference between fiduciary and contractual or any other relationship is the quality and the extent of good faith obligation.

In contractual or in other non fiduciary relationship, the obligation is substantially weaker and qualitatively different as compared to a fiduciary's legal obligation. Fiduciary loyalty and obligation requires complete subordination of self-interest and action exclusively for benefit of the beneficiary. Primary fiduciary duty is duty of loyalty and disloyalty an anathema. Contractual or other non fiduciary relationship may require that a party should not cause harm or damage the other side, but fiduciary relationship casts a positive obligation and demands that the fiduciary should protect the beneficiary and not promote personal self interest. Although, strict liability may not apply to instances of disloyalty, other than in cases of self-dealing, judicial scrutiny is still intense and the level of commitment and loyalty expected is higher in fiduciary relationships than non-fiduciary relationships. In some cases, trustees have been held liable even when there is conflict of interests as the beneficiary relies upon and is dependent upon the fiduciary's discretion. Fiduciary's loyalty obligation is stricter than the morals of the market place. It is not honesty alone, but the *punctilio* of an honour, the most sensitive is the standard of behaviour (Justice Cardozo in ***Meinhard vs Salmon N.Y. (1928) 164, n.e. 545, 546***.

10. In a contractual or other non fiduciary relationship, the relationship between parties is horizontal and parties are required to attend to and take care of their interests. Law of contract does not systematically or formally assign contracting parties to dominant or

subordinate roles. Paradigmatically, image of a contract is a horizontal relationship. Fiduciary relationship defines the fiduciary as a dominant party who has systematically empowered over the subordinate beneficiary.

11. It is not possible to accept the contention of Mr.Prashant Bhushan, advocate that statutory relationships or obligations and fiduciary relationships or obligations cannot co-exit. Statutory relationships as between a Director and a company which is regulated by the Companies Act, 1956, can be fiduciary. Similarly, fiduciary relationships do not get obliterated because a statute requires the fiduciary to act selflessly with integrity and fidelity and the other party depends upon the wisdom and confidence reposed. All features of a fiduciary relationship may be present even when there is a statute, which endorses and ensures compliance with the fiduciary responsibilities and obligations. In such cases the statutory requirements, reiterates the moral and ethical obligation which already exists and does not erase the subsisting fiduciary relationship but reaffirms the said relationship.

12. A contractual or a statutory relationship can cover a very broad field but fiduciary relationship may be confined to a limited area or act, e.g. directors of a company have several statutory obligations to perform. A relationship may have several facets. It may be partly fiduciary and partly non fiduciary. It is not necessary that all statutory,

contractual or other obligations must relate to and satisfy the criteria of fiduciary obligations. Fiduciary relationships may be confined to a particular act or action and need not manifest itself in entirety in the interaction or relationship between the two parties. What distinguishes a normal contractual or informal relationship from a fiduciary relationship or act is as stated above, the requirement of trust reposed, highest standard of good faith and honesty on the part of the fiduciary with regard to the beneficiaries' general affairs or in a particular transaction, due to moral or personal responsibility as a result of superior knowledge and training of the fiduciary as compared to the beneficiary, resulting in dependence of the beneficiary. In this regard I may quote, the following observations in the decision dated 23rd April, 2007 by five members of the CIC in ***Rakesh Kumar Singh and others versus Harish Chander, Assistant Director and others*** ***MANU/CI/0246/2007.***

> "31. The word "fiduciary is derived from the Latin fiducia meaning "trust, a person (including a juristic person such as Government, University or bank) who has the power and obligation to act for another under circumstances which require total trust, good faith and honesty. The most common example of such a relationship is the trustee of a trust, but fiduciaries can include business advisers, attorneys, guardians, administrators, directors of a company, public servants in relation to a Government and senior managers of a firm/company etc. The fiduciary relationship can also be one of moral or personal responsibility due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling. In short, it is a relationship wherein one person places complete confidence in another in regard to a

> particular transaction or one's general affairs of business. The Black's Law Dictionary also describes a fiduciary relationship as "one founded on trust or confidence reposed by one person in the integrity and fidelity of another. The meaning of the fiduciary relationship may, therefore, include the relationship between the authority conducting the examination and the examiner who are acting as its appointees for the purpose of evaluating the answer sheets"

13. The relationship of a public servant with the Government can be fiduciary in respect of a particular transaction or an act when the law requires that the public servant must act with utmost good faith for the benefit of the Government and confidence is reposed in the integrity of the public servant, who should act in a manner that he shall not profit or take advantage from the said act. However, there should be a clear and specific finding in this regard. Normal, routine or rather many acts, transactions and duties of a public servant cannot be categorized as fiduciary for the purpose of Section 8(1)(e) of the RTI Act and information available relating to fiduciary relationship. (The said reasoning may not be applicable to service law jurisprudence, with which we are not concerned.)

14. Fiduciary relationship in law is ordinarily a confidential relationship; one which is founded on the trust and confidence reposed by one person in the integrity and fidelity of the other and likewise it precludes the idea of profit or advantage resulting from dealings by a person on whom the fiduciary obligation is reposed.

15. The object behind Section 8(1) (e) is to protect the information because it is furnished in confidence and trust reposed. It serves public purpose and ensures that the confidence, trust and the confidentiality attached is not betrayed. Confidences are respected. This is the public interest which the exemption under Section 8(1)(e) is designed to protect. It should not be expanded beyond what is desired to be protected. Keeping in view the object and purpose behind Section 8(1)(e) of the RTI Act, where it is possible to protect the identity and confidentiality of the fiduciary, information can be furnished to the information seeker. This has to be examined in case to case basis, individually. The aforesaid view is in harmony and in consonance with Section 10 of the RTI Act which reads as under:-

> "Section 10. (*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.
>
> (*2*) Where access is granted to a part of the record under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing—
>
> *(a)* that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
>
> *(b)* the reasons for the decision, including any findings on any material question of fact,

> referring to the material on which those findings were based;
>
> *(c)* the name and designation of the person giving the decision;
>
> *(d)* the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
>
> *(e)* his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (*1*) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access."

16. Thus, where information can be furnished without compromising or affecting the confidentiality and identity of the fiduciary, information should be supplied and the bar under Section 8(1)(e) of the Act cannot be invoked. In some cases principle of severability can be applied and thereafter information can be furnished. A purposive interpretation to effectuate the intention of the legislation has to be applied while applying Section 8(1)(e) of the RTI Act and the prohibition should not be extended beyond what is required to be protected. In cases where it is not possible to protect the identity and confidentiality of the fiduciary, the privileged information is protected under Section 8(1)(e) of the RTI Act. In other cases, there is no jeopardy and the fiduciary relationship is not affected or can be protected by applying doctrine of severability.

17. Even when Section 8(1)(e) applies, the competent authority where larger public interest requires, can pass an order directing disclosure of information. The term “competent authority” is defined in Section 2(e) of the RTI Act and reads as under:-

> (*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;”

18. The term “competent authority” is therefore distinct and does not have the same meaning as “public authority” or Public Information Officer (hereinafter also referred to as PIO, for short) which are defined in Section 2(e) and (h) of the RTI Act.

19. The term “competent authority” is a term of art which has been coined and defined for the purposes of the RTI Act and therefore wherever the term appears, normally the definition clause i.e. Section 2(e) should be applied, unless the context requires a different interpretation. Under Section 8(1)(e) of the RTI Act, the competent authority is entitled to examine the question whether in view of the

larger public interest information protected under the Sub-clause should be disclosed. The jurisdiction of PIO is restricted and confined to deciding the question whether information was made available to the public authority in fiduciary relationship. The competent authority can direct disclosure of information, if it comes to the conclusion that larger public interest warrants disclosure. The question whether the decision of the competent authority can be made subject matter of appeal before the First Appellate Authority or the CIC has been examined separately. A decision of the PIO on the question whether information was furnished/available to a public authority in fiduciary relationship or not, can be made subject matter of appeal before the Appellate Authorities including the CIC.

SECTION 8(1)(i) OF THE RTI ACT

20. The said sub-clause protects Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. The first proviso however stipulates that the prohibition in respect of the decision of the Council of Ministers, the reasons thereof and the material on the basis of which decisions were taken shall be made public after the decision is taken and the matter is complete or over. Thus, a limited prohibition for a specified time is granted. Prohibition is not for an unlimited duration or infinite period but lasts till a decision is taken by the Council of Ministers and the matter is complete or over.

21. The main clause to Section 8(1)(i) uses the term Cabinet Papers which include records or deliberations, but the first proviso refers to the decision of the Council of Ministers, reasons thereof and the material on the basis of which the decisions were taken. The term "Council of Minsters" is wider than and includes Cabinet Ministers. It is not possible to accept the contention of Mr. A.S. Chandhiok , Learned Addl. Solicitor General that cabinet papers are excluded from the operation of the first proviso. The legal position has been succulently expounded in the order dated 23.10.2008 passed by the CIC in Appeal No.CIC/WA/A/2008/00081:

> "The Constitution of India, per se, did not include the term "Cabinet", when it was drafted and later on adopted and enacted by the Constituent Assembly. The term "Cabinet" was, however, not unknown at the time when the Constitution was drafted. Lot of literature was available during that period about "Cabinet", "Cabinet System" and "Cabinet Government". Sir Ivor Jennings in his "Cabinet Government", stated that the Cabinet is the supreme directing authority. It has to decide policy matters. It is a policy formulating body. When the Cabinet has determined on policy, the appropriate Department executes it either by administrative action within the law, or by drafting a Bill to be submitted to Parliament so as to change the law. The Cabinet is a general controlling body. It neither desires, nor is able to deal with all the numerous details of the Government. It expects a Minister to take all decisions that are of political importance. Every Minister must, therefore, exercise his own discretion as to what matters arising in his department ought to receive Cabinet sanction.
>
> 3. In the Indian context, the Cabinet is an inner body within the Council of Ministers, which is responsible for formulating the policy of the Government. It is the Council of Ministers that is collectively responsible to

the Lok Sabha. The Prime Minster heads the Council of Ministers and it is he, *primus inter pares* who determines which of the Ministers should be Members of the Cabinet.

4. It is a matter of common knowledge that the Council of Ministers consist of the Prime Minister, Cabinet Ministers, Ministers of State and the Civil Services. The 44th Amendment to the Constitution of India for the first time not only used the term "Cabinet" but also literally defined it. Clause 3 of Article 352, which was inserted by 44th Amendment, reads as under:-

"The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing."

5. As per Section 8 of the Right to Information Act, 2005 a "Public Authority" is not obliged to disclose Cabinet papers including records of deliberations of the Council of Ministers, secretaries and other officers. Section 8(1) subjects this general exemption in regard to Cabinet papers to two provisos, which are as under:-

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 public after the decision has been taken, and the matter is complete, or over.

6. From a plain reading of the above provisos, the following may be inferred:-

i) Cabinet papers, which include the records of deliberations of the Council of Ministers, Secretaries and other officers shall be disclosed after the decision has been taken and the matter is complete or over.

ii) The matters which are otherwise exempted under Section 8 shall not be disclosed even after the decision has been taken and the matter is complete or over.

iii) Every decision of the Council of Ministers is a decision of the Cabinet as all Cabinet Ministers are also a part of the Council of Ministers. The Ministers of State are also a part of the Council of Ministers, but they are not Cabinet Ministers.

As we have observed above, the plea taken by the First Appellate Authority, the decision of the Council of Ministers are disclosable but Cabinet papers are not, is totally untenable. Every decision of the Council of Ministers is a decision of the Cabinet and, as such, all records concerning such decision or related thereto shall fall within the category of "Cabinet papers" and, as such, disclosable under Section 8(1) sub-section (i) after the decision is taken and the matter is complete, and over."

22. However, there is merit in the contention of Mr.A.S. Chandhiok, Learned Addl. Solicitor General relying upon Article 74(2) of the Constitution of India, which reads as under:-

"**74. Council of Ministers to aid and advise President**.-(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.

Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advise tendered after such reconsideration.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."

23. Seven Judges of the Supreme Court in ***S.P. Gupta and others versus President of India and others*** AIR 1982 SC 149 have examined and interpreted Article 74(2) of the Constitution of India.

The majority view of six Judges is elucidated in the judgment of Bhagwati, J. (as his lordship then was) in para 55 onwards. It was observed that the Court cannot embark upon an inquiry as to whether any and if so what advice was tendered by the Council of Ministers to the President. It was further observed that the reasons which prevailed with the Council of Ministers, would form part of the advice tendered to the President and therefore they would be beyond the scope/ambit of judicial inquiry. However, if the Government chooses to disclose these reasons or it may be possible to gather the reasons from other circumstances, the Court would be entitled to examine whether the reasons bear reasonable nexus [See, para 58 at p.228, ***S.P. Gupta*** (supra)]. Views expressed by authorities/persons which precede the formation of advice tendered or merely because these views are referred to in the advice which is ultimately tendered by the Council of Ministers, do not necessarily become part of the advice protected against disclosure under Article 74(2) of the Constitution of India. Accordingly, the material on which the reasons of the Council of Ministers are based and the advice is given do not form part of the advice. This has been lucidly explained in para 60 of the judgment as under:

> "60. …..But the material on which the reasoning of the Council of Ministers is based and the advice is given cannot be said to form the part of advice. The point we are making may be illustrated by taking the analogy of a judgment given by a Court of Law. The judgment would undoubtedly be based on the

> evidence led before the Court and it would refer to such evidence and discuss it but on that account can it be said that the evidence forms part of the Judgment? The judgment would consist only of the decision and the reasons in support of it and the evidence on which the reasoning and the decision are based would not be part of the judgment. Similarly, the material on which the advice tendered by the Council of Ministers is based cannot be said to be part of the advice and the correspondence exchanged between the Law Minister, the Chief Justice of Delhi and the Chief Justice of India which constituted the material forming the basis of the decision of the Central Government must accordingly be held to be outside the exclusionary rule enacted in cl.(2) of Art. 74."

24. Certain observations relied upon by the Union of India in the judgment of the Supreme Court in ***State of Punjab versus Sodhi Sukhdev Singh*** AIR 1961 SC 493, were held to be mere general observations and not ratio which constitutes a binding precedent. Even otherwise, it was held that report of Public Service Commission which formed material on the basis of which the Council of Ministers had taken a decision, did not form part of the advice tendered by the Council of Ministers. When Article 74(2) of the Constitution applies and bars disclosure, information cannot be furnished. RTI Act cannot and does not have the ability and mandate to negate the constitutional protection under Article 74(2). The said Article refers to inquiry by courts but will equally apply to CIC.

25. Bhagwati, J. (as his Lordship then was), has proceeded to examine and interpret Section 123 of the Evidence Act, 1872 and the protection on the basis of State privilege or public interest immunity.

Section 22 of the RTI Act is a non-obstante provision and therefore overrides Section 123 of the Evidence Act, 1872. Protection under Section 123 of the Evidence Act, 1872 cannot be a ground to deny information under the RTI Act. However, the question of public interest immunity has been examined in detail and the same is of relevance while interpreting Section 8(1)(j) of the RTI Act and this aspect has been discussed below.

26. The second proviso to Section 8(1)(i) of the RTI Act explains and clarifies the first proviso. As held above, the first proviso removes the ban on disclosure of the material on the basis of which decisions were taken by the Council of Ministers, after the decision has been taken and the matter is complete or over. The second proviso clarifies that even when the first proviso applies, information which is protected under Clauses (a) to (h) and (j) of Section 8(1) of the RTI Act, is not required to be furnished. The second proviso is added as a matter of abundant caution *exabudent catulia*. Sub-clauses (a) to (j) of Section 8(1) of the RTI Act are independent and information can be denied under Clauses 8(1)(a) to (h) and (j),even when the first proviso is applicable.

SECTION 8(1)(j) OF THE RTI ACT

27. The said clause has been examined in depth by Ravindra Bhat, J. in ***Subash Chand Agarwal*** (supra) under the heading point 5.

28. Examination of the said Sub-section shows that it consists of three parts. The first two parts stipulate that personal information which has no relationship with any public activity or interest need not be disclosed. The second part states that any information which should cause unwarranted invasion of a privacy of an individual should not be disclosed unless the third part is satisfied. The third part stipulates that information which causes unwarranted invasion of privacy of an individual will not be disclosed unless public information officer or the appellate authority is satisfied that larger public interest justifies disclosure of such information. As observed by S. Ravindra Bhat, J. the third part of Section 8(1)(j) reconciles two legal interests protected by law i.e. right to access information in possession of the public authorities and the right to privacy. Both rights are not absolute or complete. In case of a clash, larger public interest is the determinative test. Public interest element sweeps through Section 8(1)(j).Unwarranted invasion of privacy of any individual is protected in public interest, but gives way when larger public interest warrants disclosure. This necessarily has to be done on case to case basis taking into consideration many factors having regard to the circumstances of each case.

29. Referring to these factors relevant for determining larger public interest in ***R.K. Jain versus Union of India*** (1993) 4 SCC 120 it was observed :-

"54. The factors to decide the public interest immunity would include (a) where the contents of the documents are relied upon, the interests affected by their disclosure; (b) where the class of documents is invoked, whether the public interest immunity for the class is said to protect; (c) the extent to which the interests referred to have become attenuated by the passage of time or the occurrence of intervening events since the matters contained in the documents themselves came into existence; (d) the seriousness of the issues in relation to which production is sought; (e) the likelihood that production of the documents will affect the outcome of the case; (f) the likelihood of injustice if the documents are not produced……"

55. ……When public interest immunity against disclosure of the State documents in the transaction of business by the Council of Ministers of the affairs of State is made, in the clash of those interests, it is the right and duty of the court to weigh the balance in the scales that harm shall not be done to the nation or the public service and equally to the administration of justice. Each case must be considered on its backdrop. The President has no implied authority under the Constitution to withhold the documents. On the other hand it is his solemn constitutional duty to act in aid of the court to effectuate judicial review. The Cabinet as a narrow centre of the national affairs must be in possession of all relevant information which is secret or confidential. At the cost of repetition it is reiterated that information relating to national security, diplomatic relations, internal security of sensitive diplomatic correspondence per se are class documents and that public interest demands total immunity from disclosure. Even the slightest divulgence would endanger the lives of the personnel engaged in the services etc. The maxim *salus populi est suprema lex* which means that regard to public welfare is the highest law, is the basic postulate for this immunity. Political decisions like declaration of emergency under Article 356 are not open to judicial review but it is for the electorate at the polls to decide the executive wisdom. In other areas every communication which preceded from

> one officer of the State to another or the officers inter se does not necessarily per se relate to the affairs of the State. Whether they so relate has got to be determined by reference to the nature of the consideration the level at which it was considered, the contents of the document of class to which it relates to and their indelible impact on public administration or public service and administration of justice itself. 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 case* this Court held that only the actual advice tendered to the President is immune from enquiry and the immunity does not extend to other documents or records which form part of the advice tendered to the President."

30. In ***S.P. Gupta*** (supra), the Supreme Court held that democratic form of Government necessarily requires accountability which is possible only when there is openness, transparency and knowledge. Greater exposure about functioning of the Government ensures better and more efficient administration, promotes and encourages honesty and discourages corruption, misuse or abuse of authority, Transparency is a powerful safeguard against political and administrative aberrations and antithesis of inefficiency resulting from a totalitarian government which maintains secrecy and denies information. Reference was again made to ***Sodhi Sukhdev Singh*** (supra) and it was observed that there was no conflict between 'public

interest and non-disclosure' and 'private interest and disclosure' rather Sections 123 and 162 of the Evidence Act, 1872 balances public interest in fair administration of justice, when it comes into conflict with public interest sought to be protected by non-disclosure and in such situations the court balances these two aspects of public interest and decides which aspect predominates. It was held that the State or the Government can object to disclosure of a document on the ground of greater public interest as it relates to affairs of the State but the courts are competent and indeed bound to hold a preliminary enquiry and determine the validity of the objection to its production and this necessarily involves an enquiry into the question whether the evidence relates to affairs of the State. Where a document does not relate to affairs of the State or its disclosure is in public interest, for the administration of justice, the objection to disclosure of such document can be rejected. It was observed :

> "The court would allow the objection if it finds that the document relates to affairs of State and its disclosure would be injurious to public interest, but on the other hand, if it reaches the conclusion that the document does not relate to affairs of State or that the public interest does not compel its non-disclosure or that the public interest in the administration of justice in the particular case before it overrides all other aspects of public interest, it will overrule the objection and order disclosure of the document."

31. A statement or defence to non-disclosure is not binding on the courts and the courts retain the power to have a prima facie enquiry and balance the two public interest and affairs of the State. The same

is equally true and applies to CIC, who can examine the documents/information to decide the question of larger public interest. Section 18(4) of the RTI Act empowers CIC to examine any record under the control of a public authority, while inquiring into a complaint. The said power and right cannot be denied to CIC when they decide an appeal. Section 18 is wider and broader, yet jurisdiction under section 18 and 19 of the RTI Act is not water-tight and in some areas overlap.

32. The Supreme Court in **S.P Gupta**'s case considered the question whether there may be classes of documents which the public interest requires not to be disclosed or which should in absolute terms be regarded as immune from disclosure. In other words, we may examine the contention whether there can be class of documents which can be granted immunity from disclosure not because of their contents but because of their class to which they belong. Learned Additional Solicitor General in this regard made pointed reference to the following observations in ***S.P.Gupta*** (supra) :

> "69. …. The claim put forward by the learned Solicitor General on behalf of the Union of India is that these documents are entitled to immunity from disclosure because they belong to a class of documents which it would be against national interest or the interest of the judiciary to disclose…….. This class includes cabinet minutes, minutes of discussions between heads of departments, high level inter-departmental communications and dispatches from ambassadors abroad (vide : Conway v. Rimmer, 1968 AC 910 at pp. 952, 973, 979, 987 and 993 and Reg v. Lewes

> J.K. Ex parte Home Secy., 1973 AC 388 at p.412). Papers brought into existence for the purpose of preparing a submission to cabinet (vide Commonwealth Lanyon property Ltd v. Commonwealth, 129 LR 650) and indeed any documents which relate to the framing of government policy at a high level (vide : Re Grosvenor Hotel, London). It would seem that according to the decision in Sodhi Sukhdev Singh's case (AIR 1961 SC 493) (supra) this class may also extend to "notes and minutes made by the respective officers on the relevant files, information expressed or reports made and gist of official decisions reached" in the course of determination of questions of policy. Lord Reid in Conway v. Rimmer (supra) at page 952 proceeded also to include in this class "all documents concerned with policy-making within departments including, it may be minutes and the like by quite junior officials and correspondence with outside bodies". It is this case to consider what documents legitimately belong to this class so as to be entitled to immunity from disclosure, irrespective of what they contain. But it does appear that cabinet papers, minutes of discussions of heads of departments and high level documents relating to the inner working of the government machine or concerned with the framing of government policies belong to this class which in the public interest must be regarded as protected against disclosure."

33. The aforesaid observations have to be read along with the ratio laid down by the Supreme Court in subsequent paras of the said judgment. In para 71, it was observed that the object of granting immunity to documents of this kind is to ensure proper working of the Government and not to protect Ministers or other government servants from criticism, however intemperate and unfairly biased they may be. It was further observed that this reasoning can have little validity in democratic society which believes in open government. It was accordingly observed as under:-

> "The reasons given for protection the secrecy of government at the level of policy making are two. The first is the need for candour in the advice offered to Minister; the second is that disclosure 'would create or fan ill-informed or captious public or political criticism.' Lord Reid in Conway v. Rimmer thought the second 'the most important reason'. Indeed, he was inclined to discount the candour argument.

I think both reasons are factors legitimately to be put into the balance which has to be struck between the public interest in the proper functioning of the public service (i.e. the executive arm of the government) and the public interest in the administration of justice. 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.

The same view was expressed by Gibbs A.C.J. in Sankey v. Whitlam (supra) where the learned acting Chief Justice said:

> "I consider that although there is a class of documents whose members are entitled to protection from disclosure irrespective of their contents, the protection is not absolute, and it does not endure for ever. The fundamental and governing principle is that documents in the class may be withheld from production only when this is necessary in the public interest. In a particular case the court must balance the general desirability that documents of that kind should not be disclosed against the need to produce them in the interests of justice. The court will of course examine the question with special care, giving full weight to the reasons for preserving the secrecy of documents of this class, but it will not treat all such documents as entitled to the same measure of protection – the extent of protection required will depend to some extent on the general subject matter with which the documents are concerned."

There is nothing sacrosanct about the immunity which is granted to documents because they belong to a certain class. Class immunity is not absolute or

> inviolable in all circumstances. It is not a rule of law to be applied mechanically in all cases. The principle upon which class immunity is founded is that it would be contrary to public interest to disclose documents belonging to that class, because such disclosure would impair the proper functioning of the public service and this aspect of public interest which requires that justice shall not be denied to any one by withholding relevant evidence. This is a balancing task which has to be performed by the Court in all cases."

34. Possibly the only class of documents which are granted immunity from disclosure is those mentioned under Article 74(2) of the Constitution. These are documents or information which are granted immunity from disclosure not because of their contents but because of the class to which they belong. Other documents and information which do not fall under Article 74(2) of the Constitution cannot be held back on the ground that they belong to a particular class which is granted absolute protection against disclosure. All other documents/information is not granted absolute or total immunity. Protection from disclosure is decided by balancing the two competing aspects of public interest i.e. when disclosure would cause injury or unwarranted invasion of privacy and on the other hand if non-disclosure would throttle the administration of justice or in this case, the public interest in disclosure of information. In such cases, the Court/CIC has to decide, which of the two public interests pre-dominates.

35. Same view has been taken by the Supreme Court in its subsequent judgment in the case of ***R.K. Jain*** (supra). It was observed as under:-

"43. It would, therefore, be concluded that it would be going too far to lay down that no document in any particular class or one of the categories of cabinet papers or decisions or contents thereof should never, in any circumstances, be ordered to be produced. Lord Keith in *Burmah Oil case* considered that it would be going too far to lay down a total protection to Cabinet minutes. The learned Law Lord at p.1134 stated that "something must turn upon the subject-matter, the persons who dealt with it, and the manner in which they did so. Insofar as a matter of government policy is concerned, it may be relevant to know the extent to which the policy remains unfulfilled, so that its success might be prejudiced by disclosure of the considerations which led to it. In that context the time element enters into the equation. Details of an affair which is stale and no longer of topical significance might be capable of disclosure without risk of damage to the public interest….. The nature of the litigation and the apparent importance to it of the documents in question may in extreme cases demand production even of the most sensitive communications to the highest level". Lord Scarman also objected to total immunity to Cabinet documents on the plea of candour. In *Air Canada case* Lord Fraser lifted Cabinet minutes from the total immunity to disclose, although same were "entitled to a high degree of protection…."

44. x x x x x

45. In a clash of public interest that harm shall be done to the nation or the public service by disclosure of certain documents and the administration of justice shall not be frustrated by withholding the document which must be produced if justice is to be done, it is the courts duty to balance the competing interests by weighing in scales, the effect of disclosure on the public interest or injury to administration of justice, which would do greater harm. Some of the important considerations in the balancing act are thus: "in the interest of national security some information which is so secret that it cannot be disclosed except to a very few for instance the State or its own spies or agents just as other countries have. Their very lives may be endangered if there is the slightest hint of what they are doing." In *R. v. Secretary of State for Home Affairs, ex p Hosenball* in the interest of national security Lord Denning, M.R. did not permit disclosure of the

> information furnished by the security service to the Home Secretary holding it highly confidential. The public interest in the security of the realm was held so great that the sources of the information must not be disclosed nor should the nature of information itself be disclosed."

36. Reference in this regard may also be made to the judgment of the Supreme Court in ***Dinesh Trivedi M.P. and others versus U.O.I*** (1997) 4 SCC 306 and ***Peoples' Union for Civil Liberties versus Union of India*** (2004) 2 SCC 476.

37. Considerable emphasis and arguments were made on the question of 'candour argument' and the observations of the Supreme Court in the case of ***S.P. Gupta*** (supra). It will be incorrect to state that candour argument has been wholly rejected or wholly accepted in the said case. The ratio has been expressed in the following words:

> "70. ….. We agree with these learned Judges that the need for candour and frankness cannot justify granting of complete immunity against disclosure of documents of this class, but as pointed out by Gibbs A.C.J. in Sankey v. Whitlam (supra), it would not be altogether unreal to suppose "that in some matters at least communications between ministers and servants of the Grown may be more frank and candid if these concerned believe that they are protected from disclosure" because not all Crown servants can be expected to be made of "sterner stuff". The need for candour and frankness must therefore certainly be regarded as a factor to be taken into account in determining whether, on balance, the public interest lies in favour of disclosure or against it (vide : the observations of Lord Denning in Neilson v. Lougharre, (1981) 1 All ER at p. 835.
>
> 71. There was also one other reason suggested by Lord Reid in *Conway* v. *Rimmer* for according protection against disclosure to documents

> belonging to this case: “To my mind,” said the learned Law Lord: “the most important reason is that such disclosure would create or fan ill-informed or captious public or political criticism. The business of Government is difficult enough as it is, and no Government could contemplate with equanimity the inner workings of the Government machine being exposed to the gaze of those ready to criticise without adequate knowledge of the background and perhaps with some axe to grind.” But this reason does not commend itself to us. The object of granting immunity to documents of this kind is to ensure the proper working of the Government and not to protect the ministers and other Government servants from criticism however intemperate and unfairly based. Moreover, this reason can have little validity in a democratic society which believes in an open Government. It is only through exposure of its functioning that a democratic Government can hope to win the trust of the people. If full information is made available to the people and every action of the Government is bona fide and actuated only by public interest, there need be no fear of “ill-informed or captious public or political criticism”. But at the same time it must be conceded that even in a democracy, Government at a high level cannot function without some degree of secrecy. No minister or senior public servant can effectively discharge the responsibility of his office if every document prepared to enable policies to be formulated was liable to be made public. It is therefore in the interest of the State and necessary for the proper functioning of the public service that some protection be afforded by law to documents belonging to this class. What is the measure of this protection is a matter which we shall immediately proceed to discuss.”

38. This becomes clear when we examine the test prescribed by the Supreme Court on how to determine which aspect of public interest predominates. In other words, whether public interest requires disclosure and outweighs the public interest which denies access. Reference was made with approval to a passage from the

judgment of Lord Reid in ***Conway vs Rimmer*** 1968 AC 910. The Court thereafter elucidated:-

> "72. …..The court has to decide which aspect of the public interest predominates or in other words, whether the public interest which requires that the document should not be produced, outweighs the public interest that a court of justice in performing its function should not be denied access to relevant evidence. The court has thus to perform a balancing exercise and after weighing the one competing aspect of public interest against the other, decide where the balance lies. If the court comes to the conclusion that, on the balance, the disclosure of the document would cause greater injury to public interest than its non-disclosure, the could would uphold the objection and not allow the document to be disclosed but if, on the other hand, the court finds that the balance between competing public interests lies the other way, the court would order the disclosure of the document. This balancing between two competing aspects of public interest has to be performed by the court even where an objection to the disclosure of the document is taken on the ground that it belongs to a class of documents which are protected irrespective of their contents, because there is no absolute immunity for documents belonging to such class."

39. Again reference was made to the following observations of Lord Scarman in ***Burmah Oil versus Bank of England*** 1979-3 All ER 700:

> "But, is the secrecy of the inner workings of the government at the level of policy making are two. The first is the need for candour in the advice offered to Ministers; the second is that disclosure 'would create or fan ill-informed or captious public or political criticism.' Lord Reid in Conway v. Rimmer thought the second 'the most important reason'. Indeed, he was inclined to discount the candour argument."

40. However, the said observations have to be read and understood in the context and the year in which they were made. In the **S.P Gupta's** case, the Supreme Court observed that interpretation of every statutory provision must keep pace with the changing concepts and values and to the extent the language permits or rather does not prohibit sufficient adjustments to judicial interpretations in accord with the requirements of fast changing society which is indicating rapid social and economic transformation. The language of the provision is not a static vehicle of ideas and as institutional development and democratic structures gain strength, a more liberal approach may only be in larger public interest. In this regard, reference can be made to the factors that have to be taken into consideration to decide public interest immunity as quoted above from ***R.K. Jain case*** (supra).

41. The proviso below Section 8(1)(j) of the RTI Act was subject of arguments. The said proviso was considered by the Bombay High Court in ***Surup Singh Hryanaik versus State of Maharashtra*** AIR 2007 Bom. 121 and it was held that it is proviso to the said sub-section and not to the entire Section 8(1). The punctuation marks support the said interpretation of Bombay High Court. On a careful reading of Section 8(1), it becomes clear that the exemptions contained in the clauses (a) to (i) end with a semi colon ";" after each such clause which indicate that they are independent clauses. Substantive sub section Clause (j) however,

ends with a colon ":"followed by the proviso. Immediately following the colon mark is the proviso in question which ends with a full stop ".". In Principles of Statutory Interpretation, 11th Ed. 2008 (at page No. 169) G.P Singh, has noted that "If a statute in question is found to be carefully punctuated, punctuation, though a minor element, may be resorted to for purposes of construction." Punctuation marks can in some cases serve as a useful guide and can be resorted to for interpreting a statute

42. Referring to the purport of the proviso in ***Surup Singh*** (supra), the Bombay High Court has held that information normally which cannot be denied to Parliament or State Legislature should not be withheld or denied.

43. A proviso can be enacted by the legislature to serve several purposes. In ***Sundaram Pillai versus Patte Birman*** (1985) 1 SCC 591 the scope and purpose of a proviso and an explanation has been examined in detail. Normally, a proviso is meant to be an exception to something in the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. A proviso cannot be torn apart from the main enactment nor can it be used to qualify and set at naught, the object of the main enactment. Sarthi on "Interpretation of Statutes", referred to in the

said judgment, states that a proviso is subordinate to the main section and one of the principles which can be applied in a given case is that a proviso would not enlarge an enactment except for compelling reasons. It is unusual to import legislation from a proviso into the body of the statute. But in exceptional cases a proviso in itself may amount to a substantive provision. The proviso in the present cases is a guiding factor and not a substantive provision which overrides Section 8(1)(j) of the RTI Act. It does not undo or rewrite Section 8(1)(j) of the RTI Act and does not itself create any new right. The purpose is only to clarify that while deciding the question of larger public interest i.e., the question of balance between 'public interest in form of right to privacy' and 'public interest in access to information' is to be balanced.

SECTION 8(2) OF THE RTI ACT

44. Section 8(2) of the RTI Act empowers a public authority to allow access to information even when the Official Secrets Act, 1923 or any of the exemption clauses in Sub-section (1) are applicable. The requirement is that public interest in disclosure should outweigh the harm to protected interest. The question of public interest and when the right to disclosure of information would outweigh rights to secrecy and confidentiality or privacy as has been referred to and considered above. Section 8(2) of the RTI Act empowers the public authority to decide the question whether right to disclosure over-weighs the harm to protected interests. PIO cannot decide this question and cannot

pass an order under Section 8(2) of the RTI Act holding, inter alia, that information is covered by the exemption clauses under Section 8(1) of the RTI Act but public interest in disclosure overweighs and justifies disclosure. Once PIO comes to the conclusion that any of the exemption clauses is applicable, he cannot decide and hold that Section 8(2) of the RTI Act should be invoked and lager public interest requires disclosure of information. Unlike Section 8(1)(j) of the RTI Act, under section 8(2) this power to decide whether larger public interest warrants disclosure of information is not conferred on the PIO.

APPEALS AND COMPLAINTS

45. Chapter V of the RTI Act incorporates powers and functions of Central Information Commissions, appeals and penalties. Section 18 of the RTI Act which defines powers and functions of the Central Information Commission and/or State Information Commissions relates to administrative functions of the said Commissions and their power and authority to ensure general compliance of the provisions of the RTI Act by the PIOs. The said Section ensures that the Central or the State Information Commissions have superintendence and can issue directions to PIOs so that there is effective and proper compliance of the provisions of the RTI Act in letter and spirit. For this purpose, Information Commissions have been vested with powers under the Code of Civil Procedure, 1908 and right to inspect any

record during the pendency of in respect of any decision made under this Act. No record can be withheld from the Central or the State Information Commissions on any ground. This power to inspect the records, etc., will equally apply when CIC decides appeals under Section 19 of the RTI Act.

46. Section 19 of the RTI Act relates to appellate power of the first appellate authority and the Central or the State Information Commissions.

47. Appeal can be filed before the first appellate authority when the information seeker does not receive any decision within the time specified in Section 7(1) or if the information seeker is aggrieved from the quantum of cost demanded for furnishing of information under Section 7(3)(a) of the RTI Act or against the decision of the PIO. Under Section 19(1) of the RTI Act, appeal before the first Appellate Authority cannot be filed against an order or a decision of the competent authority or the public authority or the appropriate government.

48. Under Section 19(3) of the RTI Act, second appeal before the Central or the State Information Commissions is maintainable against the decision under Sub-section (1) of the first Appellate Authority. The scope of appeal therefore before the second Appellate Authority is restricted to subject matters that are appealable before the first Appellate Authority under Sub-section (1) of Section 19 of RTI Act.

Second Appellate Authority cannot therefore go into the questions which cannot be raised and made subject of appeal before the first Appellate Authority. As a necessary corollary, the second Appellate Authority i.e. the Central of the State Information Commissions can examine the decision of the PIO or their failure to decide under Section 7(1) or the quantum of cost under Section 7(3)(a) of the RTI Act. They can also go into third party rights and interests under Section 19(4) of the RTI Act. Central or the State Information Commissions cannot examine the correctness of the decisions/directions of the Public Authority or the competent authority or the appropriate government under the RTI Act, unless under Section 18 the Central/State Information Commission can take cognizance. The information seeker is however not remediless and where there is a lapse by the competent authority, the public authority or the appropriate government, writ jurisdiction can be invoked. It is always open to a citizen to make a representation to public authority, appropriate government or the competent authority whenever required and on getting an unfavourable response, take recourse to constitutional rights under Article 226/227 of the Constitution of India. In a given case, the Central or the State Information Commissions can recommend to the competent authority, public authority or the appropriate government to exercise their powers but the decision of the competent authority, public authority or the appropriate government cannot be made subject matter of appeal, unless the

right has been conferred under Section 18 or 19 of the RTI Act. Central and State Information commissions have been created under the statute and have to exercise their powers within four corners of the statute. They are not substitute or alternative adjudicators of all legal rights and cannot decide and adjudicate claims and disputes other than matters specified in Sections 18 and 19 of the RTI Act.

49. It was urged by Mr.A.S. Chandhiok, learned Additional Solicitor General of India that Section 8(1) of the RTI Act is not the complete code or the grounds under which information can be refused and public information officers/appellate authorities can deny information for other justifiable reasons and grounds not mentioned. It is not possible to accept the said contention. Section 22 of the RTI Act gives supremacy to the said Act and stipulates that the provisions of the RTI Act will override notwithstanding anything to the contrary contained in the Official Secrets Act or any other enactment for the time being in force. This non-obstante clause has to be given full effect to, in compliance with the legislative intent. Wherever there is a conflict between the provisions of the RTI Act and another enactment already in force on the date when the RTI Act was enacted, the provisions of the RTI Act will prevail. It is a different matter in case RTI Act itself protects a third enactment, in which case there is no conflict. Once an applicant seeks information as defined in Section 2(f) of the RTI Act, the same cannot be denied to the information seeker except on any of the grounds mentioned in Sections 8 or 9 of

the RTI Act. The Public Information Officer or the appellate authorities cannot add and introduced new reasons or grounds for rejecting furnishing of information. It is a different matter in case what is asked for by the applicant is not 'information' as defined in Section 2(f) of the RTI Act. (See, Writ Petition (Civil) No.4715/2008 titled ***Election Commission of India versus Central Information Commission and others***, decided on 4th November, 2009 and Writ Petition (Civil) No. 7265/2007 titled ***Poorna Prajna Public School versus Central Information Commission & others*** decided on 25th September, 2009).

50. There is one exception, to the aforesaid principle. Dissemination of information which is prohibited under the Constitution of India cannot be furnished under RTI. Constitution of India being the fountainhead and the RTI Act being a subordinate Act cannot be used as a tool to access information which is prohibited under the Constitution of India or can be furnished only on satisfaction of certain conditions under the Constitution of India.

51. Learned Additional Solicitor General had urged that Section 8(1) of the RTI Act empowers and authorizes public information officers to deny information but the decision on merits cannot be questioned in appeal before the Central/State Information Commission. It was submitted that the decision of the public information officers and the first appellate authority cannot be made

subject matter of second appeal before the CIC except when under Section 8(1) of the RTI Act the Central/State Information Commission has been empowered to examine the correctness or merit of the decision of the public information officer. In this connection, my attention was drawn to the language of Section 8(1)(j) of the RTI Act. This contention cannot be accepted. Power of the CIC as observed above, under Sections 18 and 19 includes power to go into the question whether provisions in any clause of Section 8(1) of the RTI Act, have been rightly interpreted and applied in a given case. The power of the CIC is that of an appellate authority which can go into all questions of law and fact and is not circumscribed or limited power. Indeed the argument will go against the very object and purpose of the RTI Act and negates the power of general superintendence vested with the Central/State Information Commissions under Section 18 of the RTI Act.

(1) <u>WRIT PETITION (CIVIL) NO. 8396 OF 2009</u>

52. Respondent no.2-P.D. Khandelwal by his application dated 26th April, 2007 had asked for inspection of the file/records of Appointments Committee of the Cabinet mentioned in letter no. 18/12/99-EO(SM-II) in which the following directions were issued:

> "There shall be no supersession inter-se seniority among all officers considered fit for promotion will be maintained as before. Department of Revenue should expeditiously undertaken amendment to Recruitment Rules to bring it on part with All India Services to avoid supersession."

53. The request was declined by the CPIO as exempt under Section 8(1)(i) of the RTI Act. On first appeal a detailed order was passed inter alia holding that records of Appointments Committee of the Cabinet are Cabinet Papers and distinct from decision of Council of Ministers, reasons thereof and materials on the basis of which decisions are taken. It was accordingly held that the first proviso to Section 8(1)(i) of the RTI Act is not applicable. Reference was made to Article 74 of the Constitution of India which refers to Council of Ministers and it was held that Cabinet is a creature of rule making power under Article 77(3) of the President of India. In the words of the first Appellate Authority it was held:

> "…….This rule-making power (for conduct of the Government business) of the President of India is his supreme power, in his capacity as the supreme executive of India. This power is unencumbered even by the Acts of Parliament, as this rule-making power flows from the direct constitutional mandate and they are not product of any legislative authorization. In view of the fact that the "separation of powers" is one of the fundamental feature of the our Constitution, these rules, promulgated by the President of India, for regulation of conduct of Government's business (Transaction of business and allocation of business) cannot be fettered by any act or by any Judicial decision of any Court, Commission, Tribunal, etc. Since ACC is a product of the rules framed under Article 77(3) of the Constitution of India, its business (deliberations including the decision whether they are to be made public) are not the subject-matter of the decisions of any other authority other than the President of India himself.
>
> Therefore, unless these rules, framed under Article 77(3) themselves provide for disclosure of

information pertaining to the working of the cabinet and its committees, no disclosure can be made pertaining to them, under the RTI Act. Therefore, the RTI Act has rightly provided for non-disclosure of the information pertaining to "Cabinet Papers."

54. The CIC has rightly rejected the said reasoning.

55. Article 77 of the Constitution reads :

> "**77. Conduct of business of the Government of India.**—(1) All executive action of the Government of India shall be expressed to be taken in the name of the President.
>
> (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.
>
> (3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."

56. In ***Jayanti Lal Amrit Lal Shodan versus Rana,*** (1964) 5 SCR 294 the Supreme Court had drawn a distinction between the Executive power of the Union under Article 53 and the Executive functions vested with the President under specific Articles. It was observed that *the functions specifically vested in the President have to be distinguished from the Executive Power of the Union.* The functions specifically vested with the President cannot be delegated and have to be personally exercised. The aforesaid principle was expanded in ***Sardari Lal versus Union of India*** AIR 1971 SC 1547 holding, inter alia, that Joint Secretary to the Government of India by virtue of power delegated to under Article 77(3) could not on behalf of

President of India pass an order dispensing with an enquiry under Article 311(2) of the Constitution. However the decision in ***Sardari Lal*** *(supra)* has been overruled in ***Shamsher Singh versus State of Punjab*** AIR 1974 SC 2192. It was held that decision in ***Jayanti lal*** (supra) was confined to Article 258 of the Constitution and had no bearing on Articles 74, 75 and 77 of the Constitution. It was held that whatever Executive functions have to be exercised by the President, whether such function is vested in the Union or in the President as President, it is to be exercised with the advice of Council of Ministers. The President being the Constitutional head of the Executive is bound by the said advice except under certain exceptions which relate to extraordinary situations. Even in functions required to be performed by the President on subjective satisfaction could be delegated by rules of business under Article 77(3) to the Minister or Secretary of the Government of India. The satisfaction referred to in the Constitutional sense is the satisfaction of the Council of Ministers who advice the President or the Governor.

57. Article 77 nowhere prohibits or bans furnishing of information. The only prohibition is mentioned in Article 74(2) of the Constitution which has been examined above. The query raised obviously does not fall within the protection granted under Article 74(2) of the Constitution and no reliance can be placed on the said Article in the present case. On the question of distinction between the Cabinet and

the Council of Ministers I entirely agree with the reasoning given by the Chief Information Commissioner which has been quoted above.

Accordingly, the Writ Petition is dismissed.

(2) WRIT PETITION (CIVIL) NO. 16907 OF 2006

58. Respondent no.1-Sweety Kothari had filed an application seeking following information:

> " (a) Copies of the advertisements calling for applications for selection of ITAT members in Calendar Years 2002 and 2003.
>
> (b) Recommendation of Interview/Selection Board regarding selection of the said members.
>
> (C) Names of the person finally selected as ITAT members in the above-mentioned Calendar Years."

59. Information at serial nos. (a) and (c) have been supplied but information at serial no.(b) was denied by the Public Information Officer and the first appellate authority. Central Information Commission by the impugned order dated 7th June, 2006 has directed furnishing of the said information. The contention of the petitioner herein is that the final selection is approved by the Appointment Committee of the Cabinet (ACC) and therefore Section 8(1)(i) of the RTI Act was attracted, was rejected. It was the contention of the public authority that Appointment Committee of the Cabinet functions under the delegated powers of the Cabinet and for all practical purposes it is co-extensive with the Cabinet's powers attracts exemption under Section 8(1)(i) of the RTI Act. To this

extent, the CIC agreed but relying upon the first proviso to Section 8(1)(i) of the RTI Act it was observed that appointments have already been made and therefore information should be disclosed and put in public domain.

60. The recommendations made by the interview/selection board, is one of the material which is before the Appointment Committee of the Cabinet. Therefore the recommendations are not protected under Article 74(2) of the Constitution of India which grants absolute immunity from disclosure of the advice tendered by Ministers and the reasons thereof. After appointments have been made, even if Section 8(1)(i) applies, the first proviso comes into operation.

61. Learned counsel for the petitioner submitted that information should be denied under Section 8(1)(j) of the RTI Act. It appears that no such contention was raised before the Central Information Commission. The order passed by the Public Information Officer also does not rely upon Section 8(1)(j) of the RTI Act. In the grounds reference has been made to Section 8(1)(j) of the RTI Act but without giving any foundation and basis to invoke the said clause. There is no foundation to justify, remand of the matter to CIC to examine exclusion under Section 8(1)(j) of the RTI Act. Information seeker is asking for recommendations made by the selection/interview board and not for comments or observations. List of candidates as per the recommendations of the interview/selection board have to be

furnished. Reference before the CIC was made to Section 123 of the Evidence Act, 1872, and as held above in view of Section 22 of the RTI Act, the said provision cannot be a ground to deny information. In view of the aforesaid, the present Writ Petition is dismissed.

(3) WRIT PETITION (CIVIL) NO. 4788 OF 2008

62. Central Information Commission by the impugned Order dated 6th June, 2008 has directed furnishing of the information under clauses (b) to (e) to the Respondent no.2-Brig.Deepak Grover (retd.):

> "(a)The ACR profiles of all officers of 1972 batch of Engineer Officers who were considered in the Selection Board No.1 held in September 05"
>
> (b) The weightage, if any, given over and above the ACR grading to each of the officers considered in the Selection Board referred to at Para 3(a) above.
>
> (C) The final comparative graded merit of all the Engineer Officers of the 1972 batch placed before the Selection Board referred to at Para 3(a) above.
>
> (d) The recommendations of the Selection Board referred to at Para 3(a) above with respect to all the Engineer officers of the 1972 batch considered by the Board.
>
> (e) The No. of Engineer Officers considered vis-à-vis those approved for promotion by the Selection Board No.1 for the 1968, 1969, 1970, 1971, 1972 and 1973 batches."
>
> [Note; information (a) has been denied.]

63. The public authority had relied upon Section 8(1)(e) and (j) of the RTI Act. Central Information Commission referred to the judgment of the Supreme Court in Civil Appeal No. 7631/2002 titled ***Dev Dutt versus Union Public Service Commission and others***

(decided on 12th May, 2008) but it was observed that this decision was not applicable as the information seeker had asked for third party ACRs. Thus information (a) was denied. CIC made reference to their decision dated 13th July, 2006 in the case of ***Gopal Kumar versus Ministry of Defence*** (Case No. CIC/AT/A/2006/00069) and it was observed that disclosure of contents of ACR is not exempted under Section 8(1)(j) but the principle of severability under section 10 of the RTI Act should be applied. Informations (b) to (e) were directed to be furnished. The Central Information Commission did not permit the petitioner herein to rely upon Section 8(1)(a) of the RTI Act as the said Section was not invoked by the Public Information Officer or the first appellate authority. The said approach and reasoning is not acceptable. Public authority is entitled to raise any of the defences mentioned in Section 8(1) of the RTI Act before the Central Information Commission and not merely rely upon the provision referred to by the Public Information Officer or the first appellate authority to deny information. An error or mistake made by the Public Information Officer or the first appellate authority cannot be a ground to stop and prevent a public authority from raising a justiciable and valid objection to disclosure of information under Section 8(1) of the RTI Act. The subject matter of appeal before the Central Information Commission is whether or not the information can be denied under Section 8(1) of the RTI Act. While deciding the said question it is open to the public authority to rely upon any of the Sub-sections to

Section 8(1) of the RTI Act, whether or not referred to by the public information officer or the first appellate authority. Under Section 19(9) notice of the decision is to be given to a public authority.

64. Decision in ***Dev Dutt case*** (supra) holds that public servant has a right to know the annual grading given to him and the same must be communicated to him within a reasonable period. However, the said ratio as per para 41 of the said judgment is not applicable to military officers in view of the decision of the Supreme Court in ***Union of India versus Maj. Bahadur Singh*** (2006) 1 SCC 368. The present case is one of a military officer. Further, the information seeker wants to know observations in and contents of his ACR and not merely his gradings. The petitioners herein have also relied upon Section 8(1)(e) and (j) of the RTI Act in addition to Section 8(1)(a) of the RTI Act.

65. CIC has partly allowed the appeal but did not notice that under queries (b) to (e) the respondent no. 2 had also asked for ACR grading of other officers and comparative grade/merit charge of all officers of 1972 batch. Thus information mentioned in (a) and (b) to (e) were some-what similar. Information (a) has been denied but (b) to (e) have been allowed. There is no discussion and reasoning given in the order with reference to either Section 8(1)(e) or (j) of the RTI Act. In ***R.K. Jain's*** case (supra) it was observed

> **"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 Government when transacted by bureaucrats, even in personal level, it would be difficult to have equanimity if the inner working of the Government machinery is needlessly exposed to the public. On such sensitive issues it would hamper the expression of frank and forthright views or opinions. Therefore, it may be that at that level the deliberations and in exceptional cases that class or category of 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."

66. It cannot be said that comments in ACRs in all cases have to be furnished as a matter of right and in no case Section 8(1)(e) or (j) of the RTI Act will apply. Each case has to individually examined keeping in mind the factual matrix. While applying Section 8(1)(j) the two interests have to be balanced. As the matter is remanded back on the question of applicability of Section 8(1)(a) of the RTI Act, the petitioners herein will be entitled to raise objection under Sub-section (e) and (j) of the RTI Act before the Central Information Commission.

67. However, as noticed above, in view of Section 22 of the RTI Act reference to the provisions of the Army Act and the subordinate legislation made thereunder is irrelevant. Whether or not information should be furnished has to be examined in the light of Section 8(1) of the RTI Act.

(4) WRIT PETITION (CIVIL) NO. 9914 OF 2009

68. Respondent no.2-Maj. Rajpal (retd) was invalidated from army service on medical grounds on 26th August, 1992. On 14th May, 2007 he asked for the following information:-

> " (i) List of senior service officers who formed the "selection panel".
>
> (ii) List of affected service officers placed before the "selection board".
>
> (iii) My medical category listed and placed before the "selection board".
>
> (iv) Board proceedings and its subsequent disposal duly enclosing the relevant AO/AI's on the subject.
>
> (v) A copy of Military Seecretary-14 (MS-14) Branch letter No. 55821/Gen/MS-14/B dated 21 August, 1992 addressed to 664 Coy ASC Tk tptr type 'C', C/O 56 APO, Subject : Photograph Officers, The said letter has been signed by Sh B.R. Sharma, ACSO, Offg AMS-14 for MS."

69. Information was partly denied by the Public Information Officer and the first appellate authority. On second appeal by the impugned Order dated 12th February, 2009 the Central Information Commission has directed furnishing of following information :-

> "(i) A list of senior officers who constituted the Selection Board.
>
> (ii) A copy of the Board proceedings of the Selection Board including the copy of the record in the recommendation of the Board was subsequently dealt with."

70. Union of India objects and has filed the present Writ Petition.

71. It is mentioned in the writ petition that the respondent no.2 was considered for promotion to the rank of Lt. Colonel (Time Scale) in June 1990 but because of low medical category he was not granted the said grade.

72. The period in question admittedly relates to the year 1990. The respondent no.2 has been adversely affected and was denied promotion as a result of the said board proceedings. As held above the test of larger public interest cannot be put in any strait jacket but is flexible and depends upon factual matrix of each case. It is difficult to comprehend and accept that any public interest would be served by denying information to the respondent no.2 with regard to selection board proceedings and record of how the recommendations of the selection board was subsequently dealt in an old matter relating to the year 1990. The matter is already stale and of no interest and concern to others, except respondent no.2. Reference can be made to para 54 of the decision of the Supreme Court in ***R.K. Jain*** (supra) that the extent to which the interests referred to have become attenuated by passage of time or occurrence of intervening events is

a relevant circumstance. Passage of time since the creation of information may have an important bearing on the balancing of interest under section 8(1)(j) of the RTI Act. The general rule is that maintaining exemption under the said clause diminishes with passage of time. The test of larger public interest merits disclosure and not denial of the said information. However, direction to disclose names of the officers who constituted the said panel could not have been issued without complying with provisions of Section 11 and Section 19(4) of the RTI Act. The said procedure has not been followed by the CIC. I am however not inclined to remand the matter back on the said question as disclosure of the said names would result in unwanted invasion of privacy of the said persons and there is no ground to believe that larger public interest would justify disclosure of said names. The impugned order passed by the CIC dated 12th February, 2009 is non-speaking and no-reasoned and does not take the said aspects into consideration. Even the written submissions of the respondent no.2 do not disclose any larger public interest which would justify disclosure of the name of the officers. This will also take care of objection under section 8(1)(e) of the RTI Act.

73. The Writ Petition is accordingly partly allowed and the petitioner need not disclose the name of the officers who constituted the selection panel and applying the doctrine of severability, copy of the board minutes and subsequent record of recommendation should be supplied without disclosing the names of the officers.

(5) WRIT PETITION (CIVIL) NO. 6085 OF 2008

74. Col. H.C. Goswami (retd.)-respondent no.2 is a retired Army officer of 1963 batch officer. He was charge sheeted on the ground of misconduct and general court martial was convened and he was sentenced to be cashiered and directed to serve rigorous imprisonment of two years. The court martial proceedings and subsequent orders were quashed in Crl. Writ Petition No.675/1989. The respondent no.2 was held entitled to all benefits as if he was not tried and punished and the said judgment was upheld by the Supreme Court. Consequent upon the judgment, the respondent no.2's case was put up for consideration for promotion to the rank of Brigadier on 7th September, 1999 before selection board-II. By letter dated 25th October, 1999 respondent no.2 was informed that he was not found fit for promotion. This order was successfully challenged in W.P.(C) 7391/2000 decided on 7th August, 2008. The Division Bench held that the selection board-II could not have directly or indirectly relied upon or discussed respondent no.2's trial and punishment in the court martial proceedings while evaluating his performance and considering his case for promotion. Reference was made to Master Data sheets and CR dossiers in which the details of CRs earned since commissioned and court certificates, awards, citations in respect of honours, details of disciplinary cases are mentioned. It was noticed that evaluation of merits of the officers was not based upon

any quantification of marks or aggregation of marks. There was no cut off discernible from the record to justify or deny promotion to any one falling below the cut off. Accordingly, the recommendations made by the selection board II denying promotion was set aside with a direction to reconvene a selection board to consider the case of the respondent no.2 afresh. It was in these circumstances that the respondent no.2 had filed an application under the RTI Act seeking the following information :-

> " Regarding the proceedings of No.2 Selection Board held in August/September 1999 and the proceedings of no.2 selection Board held in Aug/Sep 1990 of 1963 batch for promotion to the rank of Brigadier:
>
> 1. The extracts of all my ACRs which were considered for his promotion to the rank of Brigadier
>
> 2. The OAP (Overall Performance) Grading/Pointing of his promotion to the rank of Brigadier of the batch 1999 with whom my name was considered.
>
> 3. The OAP of the last officer who was approved and promoted to the rank of Brigadier of the batch 1999 with whom my name was considered.
>
> 4. The OAP Grading/Points of the last officer of 1963 batch who was approved by the No.2 Selection Board held in Aug/Sep 1990 for promotion to the rank of Brigadier."

75. Before the CIC it was submitted that there was no appraisal known as OAP (Overall Performance) with the Ministry of Defence and there was no figurative assessment of officers. However, it was admitted that an overall profile was considered by the senior officers to determine whether the officer was entitled to promotion. A sample

of the said profile was placed on record before the CIC and consists of the following heads :

> "Agenda No:
> Arm/Service:
> Member Data Sheet:
> Date
> PFH:
> Page
> Year birth:
> Med cat:
> Hons/Awd:
> Civil Qual:
> DOC:
> DOS:
> Disc.
> BPR:
> Prev Bd Res-"

76. It was stated before the CIC that the grading in the overall profile proforma was done on the basis of the information in the ACRs and thereafter the selection board decided whether or not the officer was fit for promotion in his turn to the next rank or should not be empanelled, etc.

77. Learned CIC in the impugned order has quoted several paragraphs from the judgment in the case of ***Dev Dutt*** (supra) but has held that the said judgment is not intended to be applicable to the military officers. However, the appeal filed by the respondent no.2 has been allowed on the ground that the said respondent No.2 has now retired and the effect of disclosure at best would lead to readjustment of pension benefits without seriously compromising any

public interest. In these circumstances, the overall profile of respondent no.2 has been directed to be disclosed.

78. The disclosure directed by CIC does not require interference except that names of the officers who were members of the selection committee II need not be revealed. Information asked for is personal to the respondent No.2 and if names of members of selection Committee II are not revealed, there will be no unwarranted invasion of privacy. Even otherwise the facts disclosed above, repeated judgments in favour of the respondent no.2 and his frustration is not difficult to understand. Blanket denial of information would be contrary to public interest and disclosure of information without names would serve public cause and justice.

Writ Petition is accordingly disposed of.

(6) WRIT PETITION (CIVIL) NO. 7304 OF 2007

79. Central Information Commission has allowed the appeal of Respondent no.1-Bhabaranjan Ray vide the impugned Order dated 26th April, 2007 and has directed that he should be shown his ACRs together with those of third parties who had been promoted to Senior Administrative Grade (SAG). The impugned Order is extremely brief and cryptic and directs that openness and transparency requires that every public authority should provide reasons to the affected persons by showing him all papers/documents. The reasoning given is as under:

> "12. As for the contents of the application, the Appellant desires to see the files/records/documents which led to his being denied promotion to SAG grade from Selection Grade. The Commission feels that in the interest of transparency, the Appellant must be allowed access to all such records. The Commission also pointed out that this particular case attracted Section 4(1)(d) of the RTI Act which reads : "every public authority shall provide reasons for its administrative and quasi judicial decisions to the affected persons." Since in the present case, the Appellant, without doubt, is an affected party, it is incumbent upon the Respondents to show him all the papers and documents relating to this issue. In his application, the Appellant has also desired to see the copies of ACRs of his own together with those who had been promoted to the SAG in the DPC held on 23 July 1998. The Commission sees no reason as to why these ACRs should not be shown to him. Granted that ACRs by their nature are confidential but on the other hand they are also in the public domain and through an ACR no public authority should unjustifiably either favour or deny justice to a concerned employee. The Commission directs the Respondents, therefore, to show call the relevant documents to the Appellant by 10 May 2007."

80. There is no examination or consideration of the relevant provisions of Section 8(1) of the Act and it may be noticed that disclosure of information relating to third parties requires compliance of procedure under Sections 11 and 19(4) of the RTI Act. Grades in ACRs must be disclosed in the light of the judgment of the Supreme Court in ***Dev Dutt*** (supra) but the question of disclosure of internal comments on the officers has to be decided in each case depending on the factual background. No universal applicable rule as such can be laid down. In some cases it is possible that the records may be

denied or may be made available after erasing the name of the officer who have given the comments. Reference can also be made to passages from the decision in the case of R.K.Jain(supra) quoted above.

81. Respondent no.1 in his counter affidavit has pointed out several facts on the basis of which it was submitted that larger public interest demands disclosure of the said information. He has referred to the Order dated 25th Feb., 2005 passed by the Central Administrative Tribunal, Calcutta directing the petitioner herein to hold a review DPC without taking into consideration the un-communicated adverse entries below the bench mark. He has also referred to the order passed by the Calcutta High Court dated 7th October, 2005 upholding the said decision and has submitted that the petitioners inspite of the said orders have even in the review DPC rejected his case for promotion to Sr. Administrative Grade without recording any reasons. It is stated that this had compelled the respondent no.1 to file another petition before the Central Administrative Tribunal.

82. Accordingly, the matter is remanded back to the Central Information Commission for fresh adjudication keeping in view the above discussion.

(7) <u>WRIT PETITION (CIVIL) NO. 7930 OF 2009</u>

83. By the impugned order dated 9.3.2009 CIC has directed furnishing of copy of the FIR registered by the officers of the Special

Cell with Jamia Nagar P.S. regarding encounter at Batla House on 19th September, 2008 and furnishing of post mortem reports of inspector Mr. Mohan Chand Sharma, Mr. Atif Ameen and Mr. Sajid after erasing the name of the person who had filed the FIR and details of doctors who have conducted the post mortem by applying principle of severability under Section 10 of the RTI Act. It was held that disclosing names of the said persons would impede process of investigation under Section 8(1)(h) and the non-disclosure of the said names was justified under Section 8(1)(g) of the RTI Act as it could endanger life and physical safety of the said persons.

84. Addl. Commissioner of Police has filed the present writ petition aggrieved by the direction given by the CIC in the impugned order dated 9.3.2009 directing furnishing of the FIR without the name of the complainant and copy of the post mortem report without disclosing of the doctors. Reliance is placed by the petitioner on Section 8(1)(h) of the RTI Act.

85. Mere pendency of investigation, or apprehension or prosecution of offenders is not a good ground to deny information. Information, however, can be denied when furnishing of the same would impede process of investigation, apprehension or prosecution of offenders. The word “impede” indicates that furnishing of information can be denied when disclosure would jeopardize or would hamper investigation, apprehension or prosecution of offenders. In Law

Lexicon, Ramanatha Aiyar 2nd Edition 1997 it is observed that "the word "impede" is not synonymous with 'obstruct'. An obstacle which renders access to an inclosure inconvenient, impedes the entrance thereto, but does not obstruct it, if sufficient room be left to pass in and out. 'Obstruct' means to prevent, to close up."

86. The word "impede" therefore does not mean total obstruction and compared to the word 'obstruction' or 'prevention', the word 'impede' requires hindrance of a lesser degree. It is less injurious than prevention or an absolute obstacle. Contextually in Section 8(1)(h) it will mean anything which would hamper and interfere with procedure followed in the investigation and have the effect to hold back the progress of investigation, apprehension of offenders or prosecution of offenders. However, the impediment, if alleged, must be actual and not make belief and a camouflage to deny information. To claim exemption under the said Sub-section it has to be ascertained in each case whether the claim by the public authority has any reasonable basis. Onus under Section 19(5) of the RTI Act is on the public authority. The Section does not provide for a blanket exemption covering all information relating to investigation process and even partial information wherever justified can be granted. Exemption under Section 8(1)(h) necessarily is for a limited period and has a end point i.e. when process of investigation is complete or offender has been apprehended and prosecution ends. Protection from disclosure will also come to an end when disclosure of

information no longer causes impediment to prosecution of offenders, apprehension of offenders or further investigation.

87. FIR and post mortem reports are information as defined under Section 2(f) of the RTI Act as they are material in form of record, documents or reports which are held by the public authority.

88. First Information Report as per Section 154 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Code, for short) is the first information recorded in writing by an officer in-charge of a police station and read over to the informant. The substance of the said information is entered in a book/register required to be maintained as per the form prescribed by the State Government. Copy of the First Information has to be furnished forthwith and free of cost to the informant and under section 157 of the Code the same has to be sent forthwith to the Magistrate empowered to take cognizance of the said offence. There are judicial decisions in which FIR has been held to be a public document under the Evidence Act, 1872. Under Sections 74 and 76 of the Evidence Act, 1872 a person who has right to inspect a public document also has a right to demand copy of the same. Right to inspect a public document is not an absolute right but subject to Section 123 of the Evidence Act,1872. Inspection can be refused for reasons of the State or on account of injury to public interest. Under Section 363(5) of the Code any person affected by a judgment or an order passed by a criminal court, on an

application and payment of prescribed charges is entitled to copy of such judgment, order, deposition or part of record. Under Sub-section (6) any third person who is not affected by a judgment or order can also on payment of a fee and subject to such conditions prescribed by the High Court can apply for copies of any judgment or order of the criminal court.

89. In the present writ petition the Asst. Commissioner of Police has not been able to point out and give any specific reason how and why disclosure of the first information report even when the name of the informant is erased would impede process of investigation, apprehension of offenders or prosecution of offenders. In fact both the Public Information Officer as well as the first Appellate Authority have stated that the first information report has to be furnished to the accused and the informant. It is also not denied that a copy of the first information report has been sent to the concerned Magistrate and forms part of the record of the criminal court. It is not pleaded or stated that the first information report has been kept under sealed cover. It may be also noticed that the respondent no.2 in the counter affidavit has stated that one of the persons who has been detained is the son of the caretaker of the flat at Batla House. In these circumstances I do not see any reason to interfere with and modify the order passed by CIC directing furnishing copy of FIR minus the name of the informant. The contention of the petitioner that copy of the FIR cannot be furnished to the respondent no.2 under the Code is

without merit as the said information has been asked for under the RTI Act and whether or not the information can be furnished has to be examined by applying the provisions of the RTI Act. As per Section 22 of the RTI Act, the said Act overrides any contrary provision in any other earlier enactment including the Code.

90. However, disclosure of post mortem reports at this stage when investigation is in progress even without names of the doctors falls in a different category. It has been explained that post mortem reports contains various details with regard to nature and type of injuries/wounds, time of death, nature of weapons used, etc. Furnishing of these details when investigation is still in progress is likely to impede investigation and also prosecution of offenders. It is the case of the petitioners that enquiries/investigation are in progress and further arrests can be made. Furnishing of post mortem report at this stage would jeopardize and create hurdles in apprehension and prosecution of offenders who may once information is made available take steps which may make it difficult and prevent the State from effective and proper investigation and prosecution.

Writ petition is accordingly disposed off.

(8) WRIT PETITION (CIVIL) NO. 3607 OF 2007

91. Respondent no.2 herein-Mr. Y.N. Thakkar had made a complaint alleging professional misconduct against a member of the Institute of Chartered Accountants of India. The complaint was

examined by the Central Council in its 244th meeting held in July 2004 and was directed to be filed as the council was prima facie of the opinion that the member concerned was not guilty of any professional or other misconduct. The council did not inform or give any reasons for reaching the prima facie conclusion. In fact it is stated in the writ petition filed by the Institute of Chartered Accountant that the council was not required to pass a speaking order while forming a prima facie opinion.

92. On 7th January, 2006 respondent no.2 filed an application seeking details of reasons recorded by the council while disposing of the complaint. The information was not furnished and was denied by the PIO and the first Appellate Authority on the ground that the opinion expressed by the members of the council was confidential.

93. By the impugned order dated 31st January, 2007 CIC has directed furnishing of information without disclosing the identity of the individual members.

94. In the writ petition filed, the Institute of Chartered Accountant has projected that respondent no.2 wants, and as per the impugned order, the CIC has directed furnishing of deliberations and comments made by members of the council while considering the complaint, reply and the rejoinder. Respondent no.2 has not asked for copy of deliberations or the discussion and comments of the members of the council. He has asked for reasons recorded by the council while disposing of his complaint. During the course of discussion, members of the council can express different views. Confidentiality has to be

maintained in respect of these deliberations and furnishing of individual statements and comments may not be required in view of Section 8(1)(e) and (j) of the RTI Act. However, I need not decide this question in the present writ petition as the respondent no.2 has not asked for copy of the deliberations and comments. His application is for furnishing of reasons recorded by the council while disposing of the complaint. There is difference between the reasons recorded by the council while disposing of the complaint and comments and deliberations made by individual members when the complaint was examined and considered. Reasons recorded for rejecting the complaint should be disclosed and there is no ground or justification given in the writ petition why the same should not be disclosed. In fact, as per the writ petition it is stated that the council did not pass a speaking order rejecting the complaint and it is the stand of the petitioner that no speaking order is required to be passed while forming a prima facie opinion. It is open to the petitioner to inform respondent no.2 that no specific reasons have been recorded by the council. The consequence and effect of not recording of reasons is not subject matter of the present writ petition and is not required to be examined here. Writ Petition is accordingly disposed of with the observations made above.

(SANJIV KHANNA)
JUDGE

NOVEMBER 30, 2009.
P

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 6614/2008 & CM APPL No. 12685/2008

Reserved on: 8th July, 2010
Decision on: 30th July, 2010

ARVIND KEJRIWAL ..... Petitioner
Through Mr. Prashant Bhushan with
Ms. Girija Kishan Verma and
Mr. Rishikesh Kumar, Advocates.

versus

CENTRAL PUBLIC INFORMATION OFFICER, CABINET SECRETARIAT .....Respondent
Through Mr. S.K. Dubey with
Mr. Vanshdeep Dalmia and
Mr. Abhinav Rao, Advocates.

WITH

W.P.(C) 8999/2008 & CM APPL. No. 7517/2008

UNION OF INDIA ..... Petitioner
Through Mr. S.K. Dubey with
Mr. Vanshdeep Dalmia and
Mr. Abhinav Rao, Advocates.

versus

ARVIND KEJRIWAL …..Respondent
Through Mr. Prashant Bhushan with
Ms. Girija Kishan Verma and
Mr. Rishikesh Kumar, Advocates.

AND

W.P.(C) 8407/2009 & CM APPL. 5286/2009

UNION OF INDIA ..... Petitioner
Through Mr. S.K. Dubey with
Mr. Vanshdeep Dalmia and
Mr. Abhinav Rao, Advocates.

versus

ARVIND KEJRIWAL ..... Respondent
Through Mr. Prashant Bhushan with
Ms.Girija Kishan Verma and
Mr. Rishikesh Kumar, Advocates.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

J U D G M E N T

1. A short but interesting question arises for determination in these petitions arising out of an order dated 12th June 2008, passed by the Central Information Commission ('CIC'). That question is whether the information seeker Mr. Arvind Kejriwal can be provided with copies of documents in the files concerning appointments at the levels of Deputy Secretary, Director, Joint Secretary, Additional Secretary and Secretary in the Government of India without the procedure outlined in Section 11(1) of the Right to Information Act, 2005 ('RTI Act') having to be followed?

2. The CIC allowed Mr. Kejriwal inspection of the relevant files concerning empanelment of Additional Secretaries and Secretaries to the Government of India and he was to be provided by the Department of Personnel and Training ('DoPT'), Government of India copies of the documents and records, as might be specified by him after inspection. Further, it was held that since Mr. Kejriwal had already been allowed inspection of the files of the appointments of officers in the rank of Deputy Secretary, Director and Joint Secretary, the denial of photocopies of the documents was not justified. These documents included the annual confidential rolls ('ACRs'), the grading of the officers, their vigilance clearance etc., However, since Mr. Kejriwal

himself stated that he did not want copies of the ACRs of each of the officers "but required only the chart which contained the grading of the officers" and "since such chart would not contain any personal information", the CIC directed the DoPT to provide copies of the chart to him within 20 working days.

3. Mr. Kejriwal has filed Writ Petition (Civil) No. 6614 of 2008 seeking implementation of the above order dated 12th June 2008 of the CIC. The Union of India ('UOI') has filed Writ Petition (Civil) No. 8999 of 2008 challenging the said order. It has also filed Writ Petition (Civil) No. 8407 of 2009 challenging a subsequent order dated 27th November 2008 passed by the CIC taking exception to the DoPT's non-compliance of its earlier order dated 12th June 2008 and directing compliance by 30th December 2008.

4. While directing notice to be issued in the Writ Petition (C) No. 8999 of 2008 filed by the Union of India, this Court stayed the operation of the impugned order dated 12th June 2008 of the CIC. Likewise, in Writ Petition (Civil) No. 8407 of 2009 while directing notice to be issued, this Court stayed the operation of the impugned order dated 27th November 2008.

5. The background to the proceedings before the CIC has been set out elaborately in the impugned order dated 12th June 2008 of the CIC. Mr. Kejriwal sought information from the DoPT by filing three separate applications on 17th November 2005 under the RTI Act. This

information related to empanelment of officers in the Government of India at the level of (i) Deputy Secretary and Director (ii) Joint Secretary (iii) Additional Secretary and above. Under each category the Petitioner sought the following information:

> "(i) Service-wise list of all the officers empanelled during Financial Years 2004-05 and 2005-06 for the posts of Deputy Secretary, Director, Joint Secretary and Additional Secretary & above and date of empanelment of each officer.
>
> (ii) List of all posts of Deputy Secretary, Director, Joint Secretary and Additional Secretary & above on which, appointments were made under Central Staffing Scheme (CSS) during the Financial Years 2004-05 and 2005-06.
>
> (iii)After the panels of suitable officers have been made, what is the procedure for appointing officers at various posts falling vacant at these levels. Which clause of the Central Staffing Scheme deals with the selection of officers from the panels and their final appointment? Please give copies of all Rules, Regulations etc. which guide this process.
>
> (iv) Inspection of all files, including file notings, through which the officers were picked up from panels for particular posts during the period from January, 2005 till date.
>
> (v) For each of the appointments done at these levels during the Financial Years 2003-04 and 2004-05 and till date in the current year, please indicate how the bio-data of appointed officer was considered more suitable than the others for that post."

6. While some of the information was provided, the Central Public Information Officers ('CPIOs') justified the withholding of the remaining information stating that information relating to the Cabinet Secretary and the Secretaries of the other departments was exempted under Section 8 of the RTI Act. Secondly, the information concerning

empanelment of the officers was personal to those officers and had no relationship with any public activity or interest. It would constitute an unwarranted invasion of the privacy of the individuals and, therefore, could not be disclosed under Section 8(1)(j) of the RTI Act. Thirdly, the records which form part of the decision of the Appointments Committee of the Cabinet (hereafter `the ACC') and the recommendations thereon were 'privileged' and could not be disclosed under Section 8 of the RTI Act.

7. The Appellate Authority remanded the matter to the CPIOs by separate orders passed on 3rd February 2006 and 13th March 2006. Among the observations made by the Appellate Authority was that the information sought by Mr. Kejriwal pertained to a third party and fell within the provisions of Section 11(1) of the RTI Act. Therefore, it was obligatory on the part of the CPIOs to issue notice to such third parties and invite them to make submissions, in writing or orally, as to whether the information could be disclosed. Further, since the information sought would involve compilation of a huge amount of data, this aspect was also required to be considered by the CPIOs.

8. Aggrieved by the above order, Mr. Kejriwal filed a second appeal before the CIC. During the course of the said appeal, Mr. Kejriwal submitted that "he did not require the information in any particular format" and that "he may simply be allowed inspection of all files so that he could specify the documents, copies whereof he desired to have." In response to the submission of the UOI that allowing

inspection of so many files could disrupt the normal functioning of the DoPT as there would be more than 600 files, Mr. Kejriwal suggested that "he should be allowed inspection of 10-20 files everyday in such a way that it did not disrupt the functioning of the Department".

9. On 14th July 2006, the CIC noted that during the course of the hearing, the CPIOs agreed to dispose of the cases remanded by the Appellate Authority within one month and that "the CPIO would find ways and means to provide information to the Appellant in the light of these discussions". It was noted that "there seems to be no objection on the part of DoPT to provide information. The only issue is how to provide it considering its voluminous nature."

10. When the Petitioner went back to the CIC complaining of non-implementation of its directions, notices were again issued to the CPIOs by the CIC asking for a compliance report. As regards information concerning the appointments of Deputy Secretaries and Directors, the concerned CPIO informed the CIC by his letter dated 27th February 2007 that Mr. Kejriwal had already examined all the files, noted down their details and, therefore, the order of the CIC dated 14th July 2006 stood complied with. It was further submitted that "copies of the examination report, files and notings include personal information of the officers and, as such, furnishing of the said information would attract Section 11(1) of the RTI Act. Since it was a major exercise it would also attract the provisions of Section 7(9) of the RTI Act."

11. As regards appointments at the level of Joint Secretary, the concerned CPIO informed the CIC that Mr. Kejriwal had been allowed to inspect those files as well. However, the copies of the examination report as sought by Mr. Kejriwal included the officers' ACRs, gradings, their vigilance clearance reports etc. Therefore, providing that information would attract Section 11(1) of the RTI Act. As regards appointments at the level of Additional Secretary and Secretary, the CPIO informed that the Cabinet Secretariat had been asked to provide the information and Mr. Kejriwal had been requested to inspect the files relating to the appointments at the level of Additional Secretary and Secretary.

12. The CIC apparently was satisfied and the Petitioner was informed by a letter dated 18th April 2007 that with the above compliance no further action was required. However, on 20th April 2007 Mr. Kejriwal filed an application before the CIC seeking a review. The CIC on 14th July 2007 passed an order dismissing the review petition. This was challenged by the Petitioner by filing Writ Petition No. 6777 of 2007 in this Court. By an order dated 14th September 2007 this Court remanded the case to the CIC to be heard by a Bench constituted by the CIC.

13. During the hearing after remand before the CIC on 19th February 2008 the Section Officer and the CPIO in the DoPT informed the CIC that the copies of the examination reports, file notings and

correspondence sought by Mr. Kejriwal included personal information of the officers which apart from being voluminous would also attract Section 11(1) of the RTI Act. Seeking prior permission of such officers would itself be a major exercise. It was noted that in any case, Mr. Kejriwal had already examined all the files and noted down the details which had been brought to the notice of the CIC by an order dated 17th December 2007.

14. The other CPIO informed the CIC that Mr. Kejriwal had examined all the files pertaining to appointments at the level of Deputy Secretary and Director for the years 2004 and 2005 "for about two hours each day for several days." Mr. Kejriwal "was also provided a list of all appointments made during 2005 at the levels of Deputy Secretaries and Directors". Mr. Kejriwal's request to provide "copies of the files for the year 2006" could not be acceded to as it was voluminous attracting Section 7(9) of the RTI Act. As regards the empanelment of officers in the select list of Joint Secretary, Mr. Kejriwal was informed that "the grounds for determining the eligibility had been laid down in the provisions of the Central Staffing Scheme ('CSS'), a copy of which had been provided to it". Mr. Kejriwal was informed that "all the officers from a given batch were not sponsored by the respective cadre controlling authorities of Group 'A' services in the earlier years". The reasons why the remaining officers were not sponsored for empanelment would be available with the respective cadre controlling authorities. Accordingly Mr. Kejriwal was provided a list of the services and the respective cadre controlling

authorities. As regards the DoPT which was the cadre controlling authority in respect of the IAS, information was provided to Mr. Kejriwal.

15. Consequently, the only point that remained to be considered by the CIC was whether Mr. Kejriwal should be given copies of the documents which he had already inspected. As regards the information being of a voluminous nature, Mr. Kejriwal limited the information sought to the appointment of senior officers over a period of three years. Therefore, as regards the information concerning the officers at the level of Deputy Secretary, Director and Joint Secretary, inspection of the files had already been done and the CIC noted that "the only question that now remained was whether photocopies of the concerned files could be given or not". Since the DoPT had not furnished any proper information, the CIC ordered that Mr.Kejriwal should be furnished with copies of the documents he was seeking within 20 days.

16. As regards the files concerning the empanelment of Additional Secretaries and Secretaries, the CIC again directed that Mr. Kejriwal should be provided the copies of the documents and records after inspection.

17. In view of the narrow issue that was examined by the CIC in its impugned order, both Mr. Prashant Bhushan, learned counsel appearing on behalf of Mr. Arvind Kejriwal and Mr. S.K. Dubey,

learned counsel appearing for the Union of India confined their arguments to the question whether providing copies of the above documents, as sought by Mr. Kejriwal, would attract the provisions of Section 11(1) of the RTI Act.

18. In order to appreciate their respective contentions, it is first necessary to refer to Section 11(1) of the RTI Act which reads as under:

> "**11. Third party information** .- (1)Where a Central Public Information Officer or the 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." (emphasis supplied)

19. According to Mr. Bhushan, the 'third party information' is that information which is in fact provided by the third party and further should be asked by the said third party to be kept confidential. It is only when both these conditions are fulfilled that Section 11(1) of the RTI Act is attracted. In other words, although Section 11(1) of the RTI Act indicates that where the information sought "relates to or has been supplied by a third party" the word 'or' should be read as 'and' for only then the provision would be workable. It was submitted that unless the above interpretation is placed on Section 11(1), it will not be possible for a person to access information relating to appointments to the various posts in the Government of India.

20. On the other hand, it was submitted by Mr. Dubey that there was no scope to substitute the word 'or' with the word 'and' and that since the statute was unambiguous it had to be read as such. He submitted that information pertaining to ACRs, vigilance reports etc., of an individual officer and their collation even in the form of a chart would be information personal to such officers and has to be viewed as 'third party information'. It is submitted that in such event the mandatory procedure outlined under Section 11(1) of the RTI Act has to be followed.

21. This Court has considered the above submissions. It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would

be a defense available to a person about whom information is being sought. Such defence could be taken by a third party in a proceeding under Section 11(1) when upon being issued notice such third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there cannot be a disclosure of information pertaining to or which 'relates to' such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a given case.

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.

28. Writ Petition (Civil) No. 6614 of 2008 filed by Mr. Arvind Kejriwal is dismissed and Writ Petition (Civil) Nos. 8999 of 2008 and 8407 of 2009 filed by the Union of India are accordingly allowed,

with no order as to costs. All the pending applications stand disposed of.

S. MURALIDHAR, J

JULY 30, 2010
ak

REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION (CIVIL) No. 8524 OF 2009

Reserved on : 23rd July, 2009.

% **Date of Decision** : 4th November , 2009.

RAJINDER JAINA ..... Petitioner.
Through Mr.Rajesh Garg, Advocate.

VERSUS

CENTRAL INFORMATION COMMISSION
& OTHERS. ..... Respondents
Through Mr. Anjum Javed, Advocate.

CORAM :
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

SANJIV KHANNA, J.:

1. Mr. Rajinder Jaina-petitioner seeks issue of Writ of Certiorari for quashing of Order dated 2nd March, 2009 passed by the Central Information Commission (hereinafter referred to as CIC, for short) directing disclosure of the following information :-

> "1. List of all complaints filed against Mr.Rajinder Jaina alias Rajender Jain alias Mr.Rajender Jaina S/o.T.C. Jain r/o. Flat 'P', Sagar Apartments, G. Tilak Marg, New Delhi-

110001, office at N-52A, Connaught Circus, New Delhi-110001.

2. All FIR's filed against the above named person along with ATR and current status.

3. All arrest warrants and non-traceable reports issued in the name of Mr.T.C.Jaina, father of Mr.Rajender Jaina.

4. List of all complaints filed against M/s.Rajendra's and M/lord Builders Pvt. Ltd.

Period for which information asked for : From 1980 till date."

3. Learned counsel for the petitioner submitted that disclosure of information mentioned above is an unwarranted invasion on the right to privacy of the petitioner and is contrary to Section 8(1)(j) of the Right to Information Act, 2005 (hereinafter referred to as Act, for short).

4. Right to privacy has been a subject matter and reiterated in the ***State of Andhra Pradesh and District Registrar and Collector, Hyderabad and another versus Canara Bank and others*** (2005) 1 SCC 496***.*** However, the said right is not an absolute right. Right to information is a part of Right to Freedom of Speech and Expression. Section 8(1)(j) of the Act balances right to privacy and right to information. It recognizes that both rights are important and require protection and in case of conflict between the two rights, the test of over-riding public interest is applied to decide whether information should be withheld or disclosed.

5. Section 8(i)(j) of the Act, stands interpreted by Ravindra Bhat, J. in ***The CPIO, Supreme Court of India, Tilak Marg, New Delhi versus Subhash Chandra Agarwal & another*** (Writ Petition No. 288/2009) decided on 2nd September, 2009. It has been held as under:-

> "66. It could arguably be said that that privacy rights, by virtue of Section 8(1)(j) whenever asserted, would prevail. However, that is not always the case, since the public interest element, seeps through that provision. Thus when a member of the public requests personal information about a public servant, - such as asset declarations made by him- a distinction must be made between the personal data inherent to the position and those that are not, and therefore affect only his/her private life. This balancing task appears to be easy; but is in practice, not so, having regard to the dynamics inherent in the conflict. If public access to the personal data containing details, like photographs of public servants, personal particulars such as their dates of birth, personal identification numbers, or other personal information furnished to public agencies, is requested, the balancing exercise, necessarily dependant and evolving on a case by case basis, would take into account of many factors which would require examination, having regard to circumstances of each case. These may include:
>
> i) whether the disclosure of the personal information is with the aim of providing knowledge of the proper performance of the duties and tasks assigned to the public servant in any specific case;
>
> ii)whether the information is deemed to comprise the individual 's private details, unrelated to his position in the organization, and,

iii) whether the disclosure will furnish any information required to establish accountability or transparency in the use of public resources.

Section 8(1)(j)'s explicit mention of privacy,therefore,has to be viewed in the context. Lord Denning in his "*What next in Law ",*presciently emphasized the need to suitably balance the competing values, as follows:

> *"English law should recognise a right to privacy. Any infringement of it should give a cause of action for damages or an injunction as the case may require. It should also recognise a right of confidence for all correspondence and communications which expressly or impliedly are given in confidence. None of these rights is absolute. Each is subject to exceptions. These exceptions are to be allowed whenever the public interest in openness outweighs the public interest in privacy or confidentiality. In every instance it is a balancing exercise for the Courts. As each case is decided, it will form a precedent for others. So a body of case-law will be established."*

67. A private citizen 's privacy right is undoubtedly of the same nature and character as that of a public servant. Therefore, it would be wrong to assume that the substantive rights of the two differ. Yet, inherent in the situation of the latter is the premise that he acts for the public good, in the discharge of his duties, and is accountable for them. The character of protection, therefore, afforded to the two classes – public servants and private individuals, is to be viewed from this perspective. The nature of restriction on the right to privacy is therefore of a different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending on what is at

> stake. Therefore, if an important value in public disclosure of personal information is demonstrated, in the particular facts of a case, by way of objective material or evidence, furnished by the information seeker, the protection afforded by Section 8(1)(j) may not be available; in such case, the information officer can proceed to the next step of issuing notice to the concerned public official,as a "third party "and consider his views on why there should be no disclosure. The onus of showing that disclosure should be made, is upon the individual asserting it; he cannot merely say that as the information relates to a public official, there is a public interest element. Adopting such a simplistic argument would defeat the objective of Section 8(1)(j); Parliamentary intention in carving out an exception from the normal rule requiring no "locus " by virtue of Section 6,in the case of exemptions, is explicit through the *non-obstante* clause."

6. In the present case, the CIC has applied the same "test of public interest" to determine and decide whether the information sought should be disclosed or disclosure will amount to unwarranted invasion of right to privacy.

7. It may be noted here that the information sought for by respondent no.2 relates to criminal complaints filed against the petitioner, FIRs registered against him, their current status and whether warrants were issued against some persons, police reports on execution of warrants and their current status. The aforesaid information is already as observed by the CIC, part of public records including court records. It is obvious and admitted

that complaints are pending and FIRs have been registered and the same have been filed with the criminal court. Issue of arrest warrants and submissions of reports thereon also form part of the court records. It may be relevant to state here that the petitioner himself has admitted that he has disputes with various parties and litigations are pending. He has also given details of some of the FIRs registered against him in the Writ Petition itself. It may be appropriate here to reproduce the ratio as expounded by the Supreme Court in ***Raj Gopal versus State of Andhra Pradesh*** (1994) 6 SCC 632 which reads as under:

> "(1) A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, childbearing and education among other matters.
>
> (2) None can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned. But a publication concerning the above aspects becomes unobjectionable, if such publication is based upon public records including court records. Once something becomes a matter of public record, the right of privacy no longer exists. The only exception to this could be in the interest of decency.
>
> (3) In the case of public officials, it is obvious that right of privacy or for that matter, remedy of action for damages is simply not available with respect to their acts and conducts relevant to the discharge of their official duties. This is so even where the publication is based upon the acts and statements that are not true unless the official establishes that

the publication was made with reckless disregard for truth.

(4) So far as the Government, local authority or other organization and institution exercising governmental power are concerned, they cannot maintain suit for damages for defaming them."

(emphasis supplied)

In view of the aforesaid, I do not find any merit in the present Writ Petition and the same is dismissed.

(SANJIV KHANNA)
JUDGE

NOVEMBER 4th , 2009.
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: .07.10.2013
Date of Decision: .10.10.2013

\+ W.P.(C) 4079/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

G.S. SANDHU ..... Respondent
Through: Mr Subhiksh Vasudev, Adv.

\+ W.P.(C) 2/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
Versus

SHATMANYU SHARMA ..... Respondent

Through: Counsel for the respondent.

\+ W.P.(C) 8/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

SH. SAHADEVA SINGH ..... Respondent
Through: Mr Praveen Singh, Adv with respondent in person.

\+ W.P.(C) 5630/2013

UNION PUBLIC SERVICE COMMISSION..... Petitioner
Through: Mr Naresh Kaushik and Ms Aditi Gupta and Mr Vardhman Kaushik, Advs.
versus

K.L. MANHAS ..... Respondent
Through: Counsel for the respondent.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The issue involved in these petitions as to whether the copies of office notings recorded on the file of UPSC and the correspondence exchanged between UPSC and the Department seeking its advice can be accessed, by the person to whom such advice relates, in RTI Act or not.

The respondent in W.P(C) No.4079/2013 sought information from the CPIO of the petitioner – Union Public Service Commission (hereinafter referred to as "UPSC"), with respect to the advice given by the petitioner – UPSC to the Government of Maharashtra in respect of departmental proceedings against him. The CPIO having declined the information sought by the respondent, an appeal was preferred by him before the First Appellate Authority. Since the appeal filed by him was dismissed, the respondent approached the Central Information Commission (hereinafter referred to as "the Commission") by way of a second appeal. Vide impugned order dated 1.5.2013, the Commission rejected the contention of the petitioner – UPSC that the said information was exempt from disclosure under Section 8(1) (e), (g) & (j) of the Right to Information Act (the Act) and directed the petitioner to disclose the file notings relating to the matter in hand to the respondent, with liberty to the petitioner –UPSC to obliterate the name and designation of the officer who made the said notings. Being aggrieved, the petitioner – UPSC is before this Court by way of this writ petition.

2. The respondent in W.P(C) No.2/2013 sought the information from the petitioner – UPSC with respect to the advice given by it in respect of the disciplinary proceedings initiated against the said respondent. The said information having been denied by the CPIO as well as the First Appellate Authority, the respondent approached the Commission by way of a second appeal. The Commission vide the impugned order dated 26.9.2012 directed the petitioner to provide, to the respondent, the photocopies of the relevant file after masking the signatures of the officers including other identity marks. Being aggrieved, the petitioner – UPSC is before this Court seeking quashing of the aforesaid order passed by the Commission.

3. In W.P(C) No. 5603/2013, the respondent before this Court sought information with respect to the advice given by UPSC to the State of Haryana with respect to the disciplinary proceedings instituted against him. The said information having been refused by the CPIO and the First Appellate Authority, he also approached the Commission by way of a second appeal. The Commission rejected the objections raised by the petitioner and directed disclosure of the file notings and the correspondence relating to the charge-sheet against the respondent. The petitioner being aggrieved from the said order is before this Court by way of this petition.

4. In W.P(C) No.8/2013, the respondent before this Court sought information with respect to the advice given by UPSC in a case of disciplinary proceedings instituted against him. The said information, however, was denied by the CPIO of UPSC. Feeling aggrieved, the respondent preferred an appeal before the First Appellate Authority. The

appeal, however, came to be dismissed. The respondent thereupon approached the Commission by way of a second appeal. The Commission vide the impugned order dated 26.9.2012 directed disclosure of the information to the respondent. The petitioner – UPSC is aggrieved from the aforesaid order passed by the Commission.

5. The learned counsel for the petitioner – UPSC Mr. Naresh Kaushik has assailed the order passed by the Commission on the following grounds (i) there is a fiduciary relationship between UPSC and the department which seeks its advice and the information provided by the Department is held by UPSC in trust for it. The said information, therefore, is exempted from disclosure under Section 8(1)(e) of the Act (ii) the file notings and the correspondences exchanged between UPSC and the department seeking its advice may contain information relating not only to the information seeker but also to other persons and departments and institutions, which, being personal information, is exempt from disclosure under Section 8(1)(j) of the Act (iii) the officers who record the notings on the file of UPSC are mainly drawn on deputation from various departments. If their identity is disclosed, they may be subjected to violence, intimidation and harassment by the persons against whom an adverse note is recorded and if the said officer of UPSC, on repatriation to his parent department, happens to be posted under the person against whom an adverse noting was recorded by him, such an officer may be targeted and harassed by the person against whom the note was recorded. Such an information, therefore, is exempt from disclosure under Section 8(1)(g) of the Act and (iv) the notings recorded by UPSC officer on the file are only inputs given to the Commission to enable it to render an appropriate advice to the

concerned department and are not binding upon the Commission. Therefore, such information is not really necessary for the employee who is facing departmental inquiry, since he is concerned only with the advice ultimately rendered by UPSC to his department and not that the noting meant for consideration of the Commission.

6. Section 8(1) (e)(g) and (j) of the Act reads as under:

> **"Section 8(1)(e) in The Right To Information Act, 2005**
>
> Exemption from disclosure of information.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
>
> xxx
>
> (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;
> xxx
>
> (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;;
>
> 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."

7. Fiduciary Relationship:

The question which arises for consideration is as to whether UPSC is placed in a fiduciary relationship vis-à-vis the department which seeks its advice and the information provided by the department is held by UPSC in trust for the said department or not. The expression 'fiduciary relationship' came to be considered by the Hon'ble Supreme Court in *Central Board of Secondary Education and Another* versus *Aditya Bandopadhyay & Ors.* [Civil Appeal No.6454 of 2011] and the following view was taken:

> 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 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. ...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. .."

The aforesaid expression also came up for consideration of the Apex Court in *Bihar Public Service Commission* versus *Saiyed Hussain Abbas Rizwi & Anr.* [Civil Appeal No.9052 of 2012] and the following view was taken by the Apex Court:

> "22....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).
> xxx
> 24...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..."

8. The advice from UPSC is taken by the Disciplinary Authority, as a statutory requirement under the service rules applicable to an employee and wherever the Disciplinary Authority takes such an advice into consideration while recording its findings in the matter. The concerned employee is entitled to supply of such advice to him, as a matter of right. There is no relationship of master and agent or a client and advocate between the UPSC and the department which seeks its advice. The information which the department provides to UPSC for the purpose of obtaining its advice normally would be the information pertaining to the employee against whom disciplinary proceedings have been initiated. Ordinarily such information would already be available

with the concerned employee having been supplied to him while seeking his explanation, along with the charge-sheet or during the course of the inquiry. The UPSC, while giving its advice, cannot take into consideration any material, which is not available or is not to be made available to the concerned employee. Therefore, the notings of the officials of UPSC, would contain nothing, except the information which is already made available or is required to be made available to the concerned employee. Sometimes, such information can be a third party information, which qualifies to be personal information, within the meaning of clause (j), but, such information, can always be excluded, while responding to an application made to UPSC, under RTI Act. Therefore, when such information is sought by none other than the employee against whom disciplinary proceedings are sought to be initiated or are held, it would be difficult to accept the contention that there is a fiduciary relationship between UPSC and the department seeking its advice or that the information pertaining to such an employee is held by UPSC in trust. Such a plea, in my view, can be taken only when the information is sought by someone other than the employee to whom the information pertains.

9. The learned counsel for the petitioner has referred to the decision of this Court in *Ravinder Kumar* versus *CIC* [LPA No.418/2008 3.5.2011. The aforesaid LPA arose out of a decision of the learned Single Judge of this Court in W.P(C) No.2269/2011 decided on 5.4.2011, upholding the directions of the Commission to UPSC to provide photocopies of the relevant file notings concerning of two disciplinary cases involving the respondent to him, after deleting the name and other reference to the individual officer/ authority. As noted

by a learned Single Judge of this Court in *UPSC* versus *R.K. Jain* [W.P(C) No.1243/2011 dated 13.7.2012, the order passed by the Division Bench was an order dismissing the application for restoration of the LPA and was not an order on merit and, therefore, it was not a decision on any legal proposition rendered by the Court on merit. It was further held that mere prima facie observation of the Division Bench does not constitute a binding precedent. Therefore, reliance upon the aforesaid order in LPA No.418/2010 is wholly misplaced.

10. As regards the applicability of clause (g), it would be seen that the said clause exempts information of two kinds from disclosure – the first being the information disclosure of which would endanger the life or physical safety of any person and second being the information which would identify the source of information or assistance given in confidence for law enforcement or security purposes. The two parts of the clause are independent of each other – meaning thereby that exemption from disclosure on account of danger to the life or physical safety of any person can be ground of exemption irrespective of who had given the information, who was the person, to whom the information was given, what was the purpose of giving information and what were the terms – expressed or implied subject to which the information was provided. The aforesaid clause came up for consideration before the Hon'ble Supreme Court in *Bihar Public Service Commission*(supra) and the following view was taken:

> "28...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."

11. In my view, the apprehension of the petitioner that if the identity of the author of the file notings is revealed by his name, designation or in any other manner, there is a possibility of such an employee being targeted, harassed and even intimidated by the persons against whom an

adverse noting is recorded by him on the file of UPSC, is fully justified. Though, ultimately it is for the members of the UPSC who are to accept or reject such notings, this can hardly be disputed that the notings do play a vital role in the advice which UPSC ultimately renders to the concerned department. Therefore, the person against whom an adverse advice is given may hold the employee of UPSC recording a note adverse to him on the file, responsible for an adverse advice given by UPSC against him and may, therefore, harass and sometime even harm such an employee/officer of UPSC, directly or indirectly. To this extent, the officers of UPSC need to be protected. However, the purpose can be fully achieved by blocking the name, designation or any other indication which would disclose or tend to disclose the identity of the author of the noting. Denying the notings altogether would not be justified when the intended objective can be fully achieved by adopting such safeguards.

12. Personal Information

As regards clause (j), it would be difficult to dispute that the exemption cannot be claimed when the information is sought by none other than the person to whom the personal information relates. It is only when the information is sought by a third party that such an exemption can be claimed by UPSC. If, the notings recorded on the file and/or the correspondence exchanged between UPSC and the concerned department do contain any such information which pertains to a person other than the information seeker and constitutes personal information within the meaning of section 8(1)(j), the UPSC was certainly be entitled to refuse such information on the ground that it is exempted from disclosure under clause 8(1)(j) of the Act.

13. As regards the contention that the notings recorded by the employees of UPSC are not necessary for the information seeker since he is concerned with the ultimate opinion rendered by UPSC to his department and not with various notings which are recorded by the officer of the Commission, I find the same to be devoid of any merit. While seeking information under the Right to Information Act, the application is not required to disclose the purpose for which the information is sought nor is it necessary for him to satisfy the CPIO that the information sought by him was necessary for his personal purposes or for public purpose. Therefore, the question whether information seeker really needs the information is not relevant in the Scheme of the Act. The learned counsel for the petitioner drew my attention to the following observations made by the Apex Court in *Central Board of Secondary Education and Another* versus *Aditya Bandopadhyay & Ors.* (supra):

> "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."

However, when the file noting is sought by a person in respect of whom advice is rendered by UPSC cannot be said to be indiscriminate or all and sundry information, which would affect the functioning of UPSC. Such notings are available in the file in which advice is recorded by UPSC and, therefore, it would not at all be difficult to provide the same to the information seeker.

For the reasons stated hereinabove, the writ petitions are disposed of with the following directions:-

(i) the copies of office notings recorded in the file of UPSC as well as the copies of the correspondence exchanged between UPSC and the Department by which its advice was sought, to the extent it was sought, shall be provided to the respondent after removing from the notings and correspondence, (a) the date of the noting and the letter, as the case may be; (b) the name and designation of the person recording the noting and writing the letter and; (c) any other indication in the noting and/or correspondence which may reveal or tend to reveal the identity of author of the noting/letter, as the case may be;

(ii) if the notings and/or correspondence referred in (i) above contains personal information relating to a third party, such information will be excluded while providing the information sought by the respondent;

(iii) the information in terms of this order shall be provided within four weeks from today.

No order as to costs.

OCTOBER 10, 2013 V.K. JAIN, J.

RD/BG

IN THE HIGH COURT OF DELHI AT NEW DELHI

17

W.P.(C) 120/2010 and CM APPL 233/2010

UNION OF INDIA ..... Petitioner
Through Mr. Abhinav Rao, Advocate for Mr. S.K. Dubey, Advocate

versus

BALENDRA KUMAR ..... Respondent
Through Mr. Prashant Bhushan with Mr. Pranav Sachdeva, Advocate

CORAM: JUSTICE S.MURALIDHAR

O R D E R
29.09.2010

1. The challenge in this petition is to an order dated 14th September 2009 passed by the Central Information Commission (?CIC?) allowing the appeal filed by the Respondent and directing the information sought by the Respondent to be provided to him by the Petitioner by 5th October 2009 by using the severance clause 10 (1) of the Right to Information Act, 2005 (?RTI Act?).

2. The Respondent filed an application with the Ministry of External Affairs (?MEA?) on 16th September 2008 about the action taken report (?ATR?) on a complaint made to the Central Vigilance Commission (?CVC?) on 13th April 2007. Apparently the said complaint was forwarded by the CVC to the Central Vigilance Officer (?CVO?), MEA. The CVO submitted the ATR to the CVC on 24th July 2007. In this connection, the Respondent requested certified copies of the following documents:

?(a) copies of all departmental notings including recorded by CVO/Inquiry Officer/Cadre Controlling Authority/Disciplinary Authority/any other official(s), if any.

(b) copies of all correspondences between Department and alleged officer(s)/other officer(s) pertaining to the matter but excluding copies of complaint.

(c) copies of all notes recorded upon oral inquiry.?

3. On 11th November 2008 the Central Public Information Officer (?CPIO?), MEA wrote to the Respondent declining the information under Section 8(i)(j) of the RTI Act. The first appeal filed by the Respondent was rejected by the Appellate Authority of the MEA on 5th October 2008, concurring with the reasoning of the CPIO. The Respondent then filed a second appeal before the CIC.

4. Before the CIC the Respondent explained that the complaint was about certain incidents of alleged misuse of government money in the Embassy of India, Ankara, Turkey in March 2007. The Respondent had come to know that in the ATR submitted, the CPIO had held that most of the allegations were baseless and that some procedural error might have occurred but without any financial loss to the Government. The CPIO accordingly opined that the matter should be closed by the CVC. On the basis of the ATR, the CVC decided not to further proceed with the matter. The Respondent urged that it was a right of a citizen to know the action the concerned public authority had taken on the complaint made to it.

5. At the hearing on 18th May 2009, the CIC held that there was no merit in the CPIO?s denial of information as ?personal information? by invoking Section 8 (1)(j) of the RTI Act since ?the public interest in this case far outweighs any harm done to protected interests.? Accordingly, the CPIO was directed to provide all the information sought by the Respondent in his RTI application by 15th June 2009 under intimation to the Commission.

6. Thereafter, the CIC received a letter dated 15th June 2009 from the CPIO, MEA seeking review of its order 18th May 2009 in view of the objection raised by the ?Third Party? i.e. the Ambassador of India at Turkey during the relevant time. The MEA invoked the provisions of Section 11 of the RTI Act. Notice was sent to the Ambassador for the hearing on 17th August 2009. On that hearing the CVO file containing the enquiry report and other relevant documents were brought in a sealed cover to the office of the CIC. These were inspected by the Commissioner and returned to the representative of the MEA. The Ambassador was heard by the CIC on 28th August 2009. She also produced a few documents before the CIC clarifying the complaint against her and about the outcome of the investigation.

7. It was contended before the CIC by the representative of the MEA that since the information sought related to a case which had been closed after completion of the enquiry, the disclosure of the information sought would indicate ?lack of confidence in the investigations conducted by the MEA and the CVC.? The CIC rejected this contention on the ground that ?neither the RTI Act 2005 nor any other law in force in India states that information pertaining to a closed case cannot be disclosed.?

8. Thereafter, the CIC in the impugned order has set out the observations upon the inspection of the enquiry report and the notings from the file of the CVO. Most of the allegations have been found to be baseless and therefore, with the approval of the Foreign Secretary, and in view of the categorical report from the CVO, the CVC concurred in not pursuing the matter further. According to the

enquiry report, there were administrative procedural lapses, which however had not led to any loss to the government. Nevertheless, the same had been noted by the concerned officials for rectification and future compliance.

9. The impugned order of the CIC also notes that the CVO file was once again perused by the CIC on 28th August 2009. The observations of the CIC on the further examination are as under:
?The contents of the CVO file inspected by the Commission clearly indicate that the information therein are not by any stretch of imagination ?personal information? pertaining to the Ambassador. The allegations cast as well as the inquiry/investigation conducted were related to the Ambassador in her ?official capacity? and dealt with alleged complaints about misappropriation of government money. The transactions with respect to government money is anyway liable for a government audit, which has been noted even during the investigation by various officials, so there can be no confidentiality and/or secrecy in divulging such information since the expenditure of government money by a government official in the official capacity as office expenses cannot be termed/categorized as ?personal information?.

10. An apprehension was expressed by the MEA before the CIC that:

?the disclosure of such classified information could adversely impact the morale of the members of the Ministry. The Respondent expressed his apprehension that the distortion and/or improper reporting of the order declaring such disclosure of information, by the media, in order to make the same sensational, may damage the image and reputation of such a senior official as well as the Ministry. Hence the Ministry, the Commission from disclosure of the information categorizing the said information as ?personal information?.

11. The CIC negatived this apprehension by observing that :

?In the instant case the disclosure of information relating to alleged charges of corruption and misappropriation of government money, wherein after a detailed investigation/ inquiry, the name and reputation of the public official concerned, had been declared unblemished, is actually crucial in strengthening the public faith in the functioning of the Ministry and the CVC. Since the allegation and/or complaint, vigilance enquiry and the enquiry reports were in respect of the Ambassador in her official capacity and related to her office and acts/omissions therein and also because all the information sought by the Appellant exists in official records already, hence the information cannot be classified as personal nor exemption be sought on that ground.?

12. As far as the distortion of the CIC orders in the hands of the media is concerned, it was held that it could not be a ground for not disclosing the information. The CIC specifically dealt with the aspect of public interest in ordering disclosure of information pertaining to a third party under Section 11 of the RTI Act. The CIC observed as under:

?In this contention it is important to remember that the public interest has to be established in case the information sought otherwise merits non-disclosure, falling within one of the exempted categories and not vice versa. It has amply been discussed in the foregoing paragraphs that since the information sought relates to allegations of misappropriation of government money, public money being at stake, the information cannot be considered as personal information and hence the information does not fall under provisions of Section 8 (1) (j) of the RTI Act 2005.?

13. Consequently, the CIC directed that:

?the information as sought by the Appellant be provided by 5th October 2009, while using the severance clause 10 (1) of the RTI Act, if required, to severe parts exempted from disclosure in the enquiry report, under intimation to the Commission.?

14. The submissions of Mr. Abhinav Rao, learned counsel appearing for the Petitioner and Mr. Prashant Bhushan, learned counsel for the Respondent have been heard.

15. Placing reliance upon the judgment of this Court in Arvind Kejriwal v. Central Information Commission 2010 VI AD (Delhi) 669 it was submitted by Mr. Rao that the defence of privacy in a case like the present one cannot be lightly brushed aside and that in the present case the rights of the Ambassador against whom the complaint was made outweighed the public interest in ordering disclosure.

16. This Court is unable to accept the above submission. The judgment in Arvind Kejriwal was in the context of the information seeker wanting copy of the ACRs of Government officers from the level of Joint Secretary and above. The CIC in this context directed disclosure without even considering the applicability of Section 11 of the RTI Act. It was in the above context that this Court observed that where the information sought related to a third party the procedure under Section 11 (1) of the RTI Act could not be dispensed with. Consequently, the appeals filed by Mr. Kejriwal were restored to the file of the CIC for compliance with the procedure outlined under Section 11 (1) of the RTI Act.

17. In the present case, as has been noticed hereinbefore, on a request of the MEA to review its order on the basis of Section 11 (1) of the RTI Act, the matter was heard on 25th August 2009 and 28th August 2009 and notice was issued to the Ambassador for personal hearing on 28h August 2009. The Ambassador was heard by the CIC. It was after carrying out this exercise under Section 11 (1) of the RTI Act that the CIC came to the conclusion that the public interest in disclosure of the information sought outweighed any right to privacy claimed by the Ambassador. Therefore, the decision in Arvind Kejriwal is of no assistance to the Petitioner.

18. It was then submitted that once on perusal of the records, the CIC itself came to the conclusion that most of the allegations made in the complaint were

found to be baseless, there was no justification in directing disclosure of such report.

19. This Court would like to observe that where, upon enquiry, it has been found that the allegations made in the complaint were baseless and that the matter did not require to be enquired any further, such a report can hardly be said to be a document the disclosure of which would violate any privacy right of the person complained against. This Court concurs with the observations of the CIC that in the circumstances the information sought was not personal to the Ambassador. The complaint itself is about matters relating to her in an official capacity. The information on the expenditure of government money by a government official in an official capacity cannot be termed as ?personal information?.

20. This Court is satisfied that after a detailed examination of the report of the CVO and notings on the file, the CIC has come to the correct conclusion that the public interest in ordering disclosure outweighed any claim to the contrary with reference to Section 11 (1) read with Section 8 (1)(j) of the RTI Act. This Court notices that the CIC has also exercised a degree of caution in permitting the MEA to use Section 10 (1) of the RTI Act and if so required, severe those parts which might compromise the sources of the MEA. The procedure followed by the CIC with reference to Section 11 (1) of the RTI Act and its reasoning cannot be faulted. The apprehension expressed before the CIC about the possible misuse of the information by the Respondent was also expressed before this Court. No authority can proceed on the assumption that an information ordered to be disclosed will be misused. The mere expression of an apprehension of possible misuse of information cannot justify non-disclosure of information.

21. This Court finds no ground having made out for interference with the impugned order of the CIC.

22. The writ petition and the pending application are dismissed.

S. MURALIDHAR,
J
SEPTEMBER 29, 2010
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WP (Civil) No. 120/2010 Page 1 of 8

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 23.10.2013
Judgment pronounced on : 25.10.2013

\+ W.P.(C) 2794/2012
TELECOM REGULATOORY AUTHORITY OF INDIA
…… Petitioner
Through: Mr Saket Singh, Adv.

versus

YASH PAL ..... Respondent
Through: Respondent in person.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The respondent Yashpal applied to the CPIO of the petitioner-Telecom Regulatory Authority of India (TRAI), seeking the following information:-

> "1. Certified copy of the call details of the following numbers. Call details should include incoming as well as outgoing details. Registration details of the following numbers (name, address, date of activation, etc).
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> a) 9210023535 (From April 2006- till date).
> b) 9716682799 (From April 2009- till date).
> c) 011-26215249 (From April 2005- till date)
>
> 2. Certified copy of the SMS details (send and

received) of the following numbers:-

a) 9210023535 (From April 2006- till date).
b) 9716682799 (From April 2009- till date)."

The CPIO having refused to provided the information on the ground that he was seeking a third party information, the respondent preferred an appeal which came to be dismissed by the First Appellate Authority. Being aggrieved, the respondent preferred the Second Appeal before the Central information Commissioner (hereinafter referred to as 'the Commission'). Vide impugned order dated 29.12.2011, the Commission directed the petitioner to write to the Service Provider concerned in exercise of its power under Section 12(1) of the TRAI Act, 1997, call for the requisite information subject to its availability with the Service Provider and pass on the same to the respondent. Being aggrieved from the aforesaid direction, the petitioner is before this Court by way of this writ petition.

2. Two issues primarily arise for consideration in this petition; the first being as to whether the information sought by the respondent, if available with the Service Provider can be accessed by the petitioner in exercise of the powers conferred upon it by Section 12(1) of TRAI Act

and secondly whether the information sought by the respondent is exempt from disclosure under Section 8(1)(j) of the Right to Information Act.

3. Section 2(f) of the Right to Information Act defines 'Information' to mean, inter alia, any information relating to any private body which can be accessed by Public Authority under any law for the time being in force. Section 12(1) of the TRAI Act, 1997 empowers the said Authority, if considered expedient by it to do so, inter alia, to call upon any Service Provider to furnish in writing such information or explanation relating to its affairs as the Authority may require. The functions of the Authority are prescribed in Section 11 of the aforesaid Act. I find merit in the contention of the learned counsel for the petitioner that the power to call for information or explanation from the Service Provider can be exercised by the Authority only if such information or explanation is required for discharge of the functions assigned to it. The aforesaid power, in my view, cannot be exercised for the purposes which are alien to the functions of the Authority specified in Section 11 of the Act. Taking a contrary view will lead to the Authority assuming unbridled power to call for information from a Service Provider irrespective of whether such information is necessary for an efficient discharge of the functions

assigned to the Authority or not. To provide information in respect of the subscribers of mobile telephones such as their names and addresses, their call details and copies of the SMSs sent by them certainly are not amongst the functions assigned to the Authority under Section 11 of the Act. The Authority was established primarily for the purpose of regulating the telecommunication services, adjudicating disputes, protecting the interests of service providers and consumers of telecom sectors and to promote and ensure orderly growth of the said sector. Providing information of the above-referred nature is not one of the purposes for which Authority was constituted. Moreover, the information under Section 12(1) can be sought only in relation to the affairs of the Service Provider and not the affairs of a subscriber to telecom services. The call details of the subscriber and the SMSs sent by him is an information relating to the affairs of the subscriber and to the affairs of the Authority. If I take the view that an information of this nature can be requisitioned by TRAI, that would result in a situation where the Authority is able to violate with impunity the fundamental right of a citizen to his privacy by knowing with whom he has been communicating as well as the contents of the messages sent by him.

Therefore, in my view, the information which the respondent had sought from the CPIO of the petitioner cannot be accessed by the petitioner in exercise of the powers conferred upon it by Section 12(1) of the TRAI Act, 1997.

4. Even if I proceed on the assumption that the information which the respondent had sought from the petitioner can be obtained by TRAI from the Service Provider in exercise of the power conferred upon it by Section 12(1) of the Act, being personal information of the subscriber, who is a third party, and its disclosure having no relationship to any public activity or interest of the subscriber and also because its disclosure would cause unwarranted invasion of the privacy of the subscriber, it is exempt from disclosure under Section 8(1)(j) of the Right to Information Act.

5. The question as to what constitutes 'personal information' under Section 8(1) (j) and to what extent it is protected, if it relates to a third party came up for consideration before this Court in *W.P.(C) No. 3444/2012,* ***Union of India vs. Hardev Singh*** decided on 23.8.2013 and the following view was taken:-

> "It would thus be seen that if the information sought by the applicant is a personal information relating to a third party, it cannot be disclosed, unless the information relates to any public activity

of a third party who has provided the said information or it is in public interest to disclose the information desired by the applicant. It further shows that a personal information cannot at all be disclosed if its disclosure would cause unwarranted invasion of the privacy of the third party which has provided the said information, unless the larger public interest justifies such disclosure.

In ***UPSC versus R.K. Jain*** [W.P(C) No.1243/2011] decided on 13.7.2012 the following view was taken by this Court:

> "19. Therefore, "personal information" under the Act, would be information, as set forth above, that pertains to a person. As such it takes into its fold possibly every kind of information relating to the person. Now, such personal information of the person may, or may not, have relation to any public activity, or to public interest. At the same time, such personal information may, or may not, be private to the person.
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> 24. "Public activity" qua a person are those activities which are performed by the person in discharge of a public duty, i.e. in the public domain. There is an inherent public interest involved in the discharge of such activities, as all public duties are expected to be discharged in public interest. Consequently, information of a person which is related to, or has a bearing on his public activities, is not exempt from disclosure under the scheme and provisions of the Act, whose primary object is to ensure an informed citizenry and transparency of information and also to contain corruption. For example, take the case of a surgeon employed in a Government Hospital who performs surgeries on his patients who are coming to the government hospital. His personal information, relating to discharge of his public duty, i.e. his public activity, is not exempt from disclosure under the Act.
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> 27.... whenever the querist applicant wishes to seek information, the disclosure of which can be made only

> upon existence of certain special circumstances, for example- the existence of public interest, the querist should in the application (moved under Section 6 of the Act) disclose/ plead the special circumstance, so that the PIO concerned can apply his mind to it, and, in case he decides to issue notice to the concerned third party under Section 11 of the Act, the third party is able to effectively deal with the same. Only then the PIO/appellate authority/CIC would be able to come to an informed decision whether, or not, the special circumstances exist in a given case.
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> 28. I may also observe that public interest does not mean that which is interesting as gratifying curiosity or love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their rights or liabilities are affected...
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> xxx
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> 34. It follows that the „privacy" of a person, or in other words his "private information", encompasses the personal intimacies of the home, the family, marriage, motherhood, procreation, child rearing and of the like nature. "Personal information", on the other hand, as aforesaid, would be information, in any form, that pertains to an individual. Therefore, „private information" is a part of "personal information". All that is private is personal, but all that is personal may not be private."

6. With whom a subscriber communicates and what messages he sends or receives are the personal affairs of a subscriber, disclosure of which is bound to impinge on his privacy. The information sought by the respondent, therefore, was personal information of a third party, exempt from disclosure under Section 8 (1) (j) of the RTI Act.

7. During the course of hearing the respondent, who appeared in person, expressed a grievance that he is being harassed by his daughter-in-law and the information sought by him was required in connection

with various cases instituted by her against him. If that be so, the appropriate remedy available to the respondent would be either to approach the concerned investigating agency, which is looking into the complaint made against him or to apply to the concerned Court at an appropriate stage, for summoning the record of the Service Provider. The respondent expressed an apprehension that by the time his matter reaches the Court, the information required by him may no more be available with the Service Provider since such information is preserved for a limited period. If that be so, the respondent can avail such remedy as is open to him in law for a suitable direction to the Service Provider in this regard, but, seeking such an information under the provisions of Right to Information Act is certainly not an appropriate relief.

8. For the reasons stated hereinabove, the impugned order dated 29.12.2011 passed by the Commission cannot be sustained and the same is hereby set aside. The writ petition stands disposed of. No order as to costs.

V.K.JAIN, J

OCTOBER 25, 2013
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 903/2013

THDC INDIA LTD ..... Petitioner
Through: Mr. Neeraj Malhotra with Mr. Prithu Garg, Advs.

versus

R.K.RATURI ..... Respondent
Through: Mr. R.K. Saini, Adv.

% Date of Decision : 08th July, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present writ petition has been filed challenging the order dated 04th January, 2013 passed by the Central Information Commission (for short 'CIC') whereby the petitioner has been directed to provide photocopies of the DPC proceedings including the comparative grading statement pertaining to the recommended candidates as well as ACRs of the appellant himself for the period mentioned by him in his RTI application.

2. The relevant portion of the impugned order is reproduced hereinbelow:-

> *"4. We have carefully considered the contents of the RTI application and the response of the CPIO. The objective of the Right to Information (RTI) Act is to bring about*

transparency in the functioning of the public authorities. All decision making in the government and all its undertakings must be objective and transparent. It is only by placing the details of all decision making in the public domain that such objectivity and transparency can be ensured. Therefore, we do not see any reason why the DPC proceedings, specially, the comparative gradings of those recommended for promotion should not be disclosed. It is not at all correct to claim that such information is held in a fiduciary capacity. After all, the DPC operates as a part of the administrative decision making process in any organisation. The material that it considers is also generated within the organisation. Therefore, it is not correct to say that the DPC proceedings including the recommendations made by it can be said to be held by the public authority in a fiduciary capacity. About the ACRs of the Appellant, the Supreme Court of India has already held that the civilian employees must be allowed access to their confidential rolls, specially when these are held out against them in the matter of their career promotion. Following the Supreme Court order, the Department of Personnel and Training, we understand, has already issued a circular for disclosure of ACR."

3. Mr. Neeraj Malhotra, learned counsel for the petitioner submits that the impact of the impugned order passed by CIC is that the petitioner would be required to give information pertaining to DPC proceedings including the comparative grading statement pertaining to the recommended candidates, which information is excluded under the provisions of Sections 8(1)(e) and 8(1)(j) of the RTI Act. He emphasizes that the information directed to be released pertaining to other employees of the petitioner is being held by the petitioner in fiduciary capacity and would amount to disclosure of personal information.

4. Sections 8(1)(e) and 8(1)(j) of the RTI Act are reproduced hereinbelow:-

> *"8. Exemption from disclosure of information. —(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*
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> *xxx xxx xxx*
>
> *(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;*
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> *xxx xxx xxx*
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> *(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:*
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> *Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."*

5. Mr. Malhotra also submits that as some of the information sought for pertains to third party, provisions of Sections 11(1) and 19(4) of the RTI Act would be applicable. Sections 11(1) and 19(4) of the RTI Act are reproduced hereinbelow:-

> *"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.

xxx xxx xxx

19. Appeal.-

xxx xxx xxx

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party."

6. On the other hand, Mr. Saini, learned counsel for the respondent submits that it is difficult to comprehend that any public interest would be served by denying information to the respondent with regard to DPC proceedings including the comparative grading statements pertaining to the

recommended candidates as also photocopy of respondent's ACR containing the remarks of the reporting and the reviewing officers as well as accepting authority.

7. Mr. Saini points out that the respondent himself is a Government servant working in the same corporation and was considered by the selection committee for promotion in the said DPC proceedings. Hence, according to him, the respondent has a right to seek information regarding DPC proceedings including the comparative grading statements pertaining to the recommended candidates.

8. In support of his submission, Mr. Saini relies upon a judgment of the Supreme Court in ***Dev Dutt v. Union of India and Others (2008) 8 SCC 725*** wherein it has been held as under:-

> *"36. 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."*

9. Mr. Saini lastly submits that there is no question of compliance of pre-condition and pre-requisite of Section 11(1) read with Section 19(4) of

the RTI Act.

10. Having heard learned counsel for the parties, this Court finds that in the case of ***Arvind Kejriwal v. Central Public Information Officer AIR 2010 Delhi 216***, a Coordinate Bench of this Court has held that service record of a Government employee contained in the DPC minutes/ACR is "personal" to such officer and that such information can be provided to a third party only after giving a finding as regards the larger pubic interest involved. It was also held in the said judgement that thereafter third party procedure mentioned in Section 11(1) of the RTI Act would have to be followed. The relevant portion of the judgment in ***Arvind Kejriwal*** is reproduced hereinbelow:-

> *"21. This Court has considered the above submissions. It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would be a defense available to a person about whom information is being sought. Such defence could be taken by a third party in a proceeding under Section 11(1) when upon being issued notice such third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there cannot be a disclosure of information pertaining to or which „relates to" such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a given case.*

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> *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."*

11. This Court is also of the opinion that the finding of public interest warranting disclosure of the said information under Sections 8(1)(e) and 8(1)(j) of the RTI Act and the procedure contemplated under Sections 11(1) and 19(4) of the RTI Act are mandatory in nature and cannot be waived. In the present case, CIC has directed the petitioner to provide DPC minutes to the respondent without considering the defence of the petitioner under Section 8(1)(e) of the RTI Act and without following the procedure specified under Sections 11(1) and 19(4) of the RTI Act. It is pertinent to mention that Sections 11(1) and 19(4) of the RTI Act incorporate the principles of natural justice. Further, in the present case no finding has been given by CIC as to whether public interest warranted such a disclosure.

12. However, this Court is of the view that the respondent is entitled to the contents of his own ACR after redaction of the names of the reviewing, reporting and accepting officers. In fact, another coordinate Bench of this Court in ***THDC India Ltd. v. T. Chandra Biswas 199(2013) DLT 284*** has held as under:-

> *"9. While the learned counsel for the respondent has contended before me that the respondent ought to have been supplied with the ACRs for the period 2004 to 2007, the respondent has not assailed that part of the order of the CIC. In my view, while the contention of the respondent has merit, which is that she cannot be denied information with regard to her own ACRs and that information cannot fall in the realm of any of the exclusionary provisions cited before me by the learned counsel for the petitioner i.e. Section 8(1)(d), (e) and (j), there is a procedural impediment, in as much as, there is no petition filed to assail that part of the order passed by the CIC.*
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> *9.1. In my view, the right to obtain her own ACRs inheres in the respondent which cannot be denied to the respondent under the provisions of Section 8(1)(d), (e) and (j) of the RTI Act. The ACRs are meant to inform an employee as to the manner in which he has performed in the given period and the areas which require his attention, so that he may improve his performance qua his work.*
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> *9.2 That every entry in the ACR of an employee requires to be disclosed whether or not an executive instruction is issued in that behalf – is based on the premise that disclosure of the contents of ACR results in fairness in action and transparency in public administration. See Dev Dutt vs Union of India (2008) 8 SCC 725 at page 732, paragraph 13; page 733, paragraph 17; and at page 737, paragraphs 36, 37 and 38.*

9.3 Mr Malhotra sought to argue that, in Dev Dutt's case, the emphasis was in providing information with regard to gradings and not the narrative. Thus a submission cannot be accepted for more than one reason.

9.4 First, providing to an employee gradings without the narrative is like giving a conclusion in judicial/quasi-judicial or even an administrative order without providing the reasons which led to the conclusion. If the purpose of providing ACRs is to enable the employee to assess his performance and to judge for himself whether the person writing his ACR has made an objective assessment of his work, the access to the narrative which led to the grading is a must. [See State of U.P. Vs. Yamuna Shankar Misra and Anr., (1997) 4 SCC 7]. The narrative would fashion the decision of the employee as to whether he ought to challenge the grading set out in the ACR.

9.5 Second, the fact that provision of ACRs is a necessary concomitant of a transparent, fair and efficient administration is now recognized by the DOPT in its OM dated 14.05.2009. The fact that the OM is prospective would not, in my view, impinge upon the underlying principle the OM seeks to establish. The only caveat one would have to enter, is that, while providing the contents of the ACR the names of the Reviewing, Reporting and the Accepting Officer will have to be redacted."

13. Consequently, this Court is of the view that ACR grading/ratings as also the marks given to the candidates based on the said ACR grading/ratings and their interview marks contained in the DPC proceedings can be disclosed only to the concerned employee and not to any other employee as that would constitute third party information. This Court is also of the opinion that third party information can only be disclosed if a

finding of a larger public interest being involved is given by CIC and further if third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act is followed.

14. Accordingly, the present writ petition is allowed and the matter is remanded back to CIC for consideration of petitioner's defences under Sections 8(1)(e) and Section 8(1)(j) of the RTI Act and if the CIC is of the view that larger public interest is involved, it shall thereafter follow the third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act.

15. With the aforesaid observations and directions, the present writ petition is disposed of.

MANMOHAN,J

JULY 08, 2014
NG

IN THE HIGH COURT OF DELHI AT NEW DELHI

10
W.P. (C) 5525/2008

UNION OF INDIA .....
Petitioner
Through: Mr. Ambar Qamaruddin with Mr. Nakib Ur Rahman, Advocates

versus

SITA RAM VERMA and ANR .....
Respondents
Through: Ms. Priyanka Tyagi with Mr. Vipin Kalra, Advocates

CORAM: JUSTICE S. MURALIDHAR

O R D E R
04.05.2011

1. The grievance of the Petitioner essentially is that the impugned order dated 11th January 2008 was passed by the Central Information Commission (?CIC?) without hearing the Petitioner. It is contended that a copy of the petition before the CIC was also not served on the Petitioner.

2. Respondent No. 1, a retired Senior Administrative Grade (?SAG?) Officer of the Indian Railway Service of Mechanical Engineers (?IRSME?), was aggrieved by the delay in his promotion to the SAG. Accordingly, he filed
WP (C) 5525/2008 page no
1/3
an application under the Right to Information Act, 2005 (?RTI Act 2005?) seeking the following:
(i) information on reasons recorded by the Departmental Promotion Committee (?DPC?) for non-inclusion of his name in SA Grade panel of 1998; and

(ii) the notings on file on which his representations and reminders against non-inclusion of his name in SA Grade?

3. Mr. Ambar Qamaruddin, learned counsel appearing for the Petitioner points out that the information requested for above at serial No. (ii) information had been provided to Respondent No. 1. The stand of the Petitioner is that as regards the information requested for above at serial No. (i), ?DPC proceedings are by their very nature, confidential documents? and the disclosure did not relate to any public interest or public activity and are, therefore, exempt from disclosure

under Section 8 (1) (j) of the RTI Act, 2005.

4. The contention of learned counsel for the Petitioner that the matter should be sent back to the CIC for giving the Petitioner an opportunity of being heard is rejected in view of the stand taken by the Petitioner as regards the WP (C) 5525/2008 page no
2/3
disclosure of information as sought by Respondent No. 1. No purpose will be served in sending back the matter to the CIC as the stand of the Petitioner before the CIC would be no different. Accordingly, this Court proceeds to consider the submissions on merits.

5. The Petitioner is seeking information concerning the DPC proceedings in which his case was considered for promotion. The disclosure of such DPC proceedings to the Petitioner cannot in the circumstances be denied. It is not covered under the exemptions under Section 8 (1) (j) of the RTI Act, 2005. The identity of the

officers, who may have taken part in the deliberations at the DPC may be withheld by applying Section 10 of the RTI Act, 2005. With the above limited modification to the impugned order of the CIC, the writ petition is disposed of.

7. Order be given dasti.

S. MURALIDHAR, J
MAY 04, 2011
rk

WP (C) 5525/2008 page no
3/3
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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.12.2014

+ W.P.(C) 1842/2012 & CM No. 4033/2012

THE REGISTRAR, SUPREME COURT OF INDIA ..... Petitioner

versus

SUBHASH CHANDRA AGARWAL AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sidharth Luthra, Sr. Advocate with
Ms Maneesha Dhir, Mr K. P. S. Kohli,
Mr Satyam Thareja and Ms Neha Singhj.

For the Respondents : Mr Pranav Sachdeva for Mr Prashant Bhushan.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner impugns an order dated 01.02.2012 (hereafter the impugned order') passed by Central Information Commission (hereafter 'CIC') *inter alia* directing that records of reimbursement of medical bills of judges of the Supreme Court (whether serving or retired) be maintained separately for each judge so as to ensure that the summary of such expenses for each judge are available separately. The Central Public Information Officer of Supreme Court (hereafter 'CPIO') was directed to place the impugned order before the competent authority so as to ensure compliance of the same.

2. Briefly stated, the relevant facts of the case are that on 25.10.2010, respondent no.1 - Subhash Chandra Agarwal filed an application under the

Right to Information Act, 2005 (hereafter the 'Act') with the Central Public Information Officer, Department of Justice, Government of India, *inter alia*, seeking the following information:-

> "5. Details of medical-facilities availed by individual judges (including of their family-members) of Supreme Court in last three years mentioning also expenses on private treatment in India or abroad. Honourable Delhi High Court has recently ruled (probably on 11.10.2010) that "The information on the expenditure of the government money in an official capacity cannot be termed as personal information."). I do not want information on nature of diseases but only detailed information about expenses on medical-facilities on judges and their families at public-expenses."

3. The application on the above said point was transferred to CPIO under Section 6(3) of the Act. By an order dated 02.02.2011, CPIO rejected the said application on the ground that the information as sought for by the respondent is personal information and is exempted from disclosure under Section 8(1)(j) of the Act and in view of the decision of the Supreme Court in ***Central Public Information Officer, SCI & Anr. v. Subhash Chandra Agarwal*: Civil Appeal No.10044/2010, decided on 26.11.2010**, there is a stay on the disclosure of the information relating to the judges. The respondent preferred an appeal (No.47/2011) before the First Appellate Authority (hereafter 'FAA') challenging the order dated 02.02.2011. By an order dated 07.03.2011, FAA dismissed the appeal.

4. The respondent, thereafter, preferred an appeal before the CIC challenging order of the FAA dated 07.03.2011. By an order dated 03.08.2011, the CIC directed CPIO to provide *"the total amount of medical expenses of individual judges reimbursed by the Supreme Court during the*

last three years, both in India and abroad, wherever applicable. The CIC also directed CPIO to bring the order to the notice of the competent authority in the Supreme Court for ensuring that arrangements are made in future for maintaining such information.

5. By an order dated 30.08.2011, CPIO provided the total amount reimbursed on medical treatment from the budget grant for three years in respect of Judges (sitting & retired) and employees of the Supreme Court. CPIO also informed that the judge-wise information was not maintained as the same was not required to be maintained. Dissatisfied with the reply of CPIO, the respondent filed an appeal before the CIC for compliance of order dated 03.08.2011 passed by the CIC. The said appeal was disposed of by the impugned order.

6. The learned senior counsel for the petitioner contended:-

6.1 That the information that can be disclosed or can be directed to be disclosed under the Act is the information which exists and is held by the public authorities in material form and no directions can be issued by the authorities under the Act to the public authorities to create, hold and maintain the information in any other manner. The Act does not cast any obligation on any public authority to collate such non-available information for the purpose of furnishing it to an RTI Applicant. Reliance was placed on ***CBSE v. Aditya Bandopadhyay*: (2011) 8 SCC 497**.

6.2 That the powers under sub-section (8)(a)(iv) of Section 19 of the Act cannot be stretched for creation of new record and the words 'maintenance and management' under the said provision relates to the records which are

available and cannot be interpreted in a manner to include creation of information.

6.3 That the impugned order impinges upon the power entrusted upon the Supreme Court under Article 145 of the Constitution of India to make suitable rules for regulating the practice and procedure of the Supreme Court by directing the authority to maintain the records in a particular manner. He submitted that the impugned order has the effect of directing amendment of the rules framed under Article 145 of the Constitution of India.

6.4 That the CIC in the case of in case of ***Shri Mani Ram Sharma v. The Public Information Officer*****: C1C/SM/A/2011/000101-AD, decided on 18.07.2011** had held that if the required information was not maintained in the manner as asked for, the CPIO could not be asked to compile the data. It was submitted that a bench cannot overrule the decision of a co-ordinate bench.

7. The learned counsel for the respondent contended:-

7.1 That the information which exists and is held by the public authority but is not being compiled or kept in a manner in which it is accessible in a transparent manner then a direction can be given to the public authorities to maintain and provide the information in a particular manner so as to achieve the object and purpose behind the Act.

7.2 That the validity of sub-section (8)(a)(iv) of Section 19 of the Act has not been challenged and the CIC as a guardian of the Act would ensure

the proper implementation of the Act and can pass a direction to achieve the object of the Act.

7.3 That the information regarding the functioning of public institutions is a fundamental right enshrined under Article 19 of the Constitution of India. Reliance was placed on ***State of U.P. v. Raj Narain*: AIR 1975 SC 865, *Union of India v. Association for Democratic Reforms*: AIR 2002 SC 2112** and ***PUCL v. Union of India*: (2003) 4 SCC 399**.

7.4 That the information needs to be disseminated to the public to ensure transparency and avoid misuse or abuse of authority. Reliance was placed on ***S.P. Gupta v. President of India & Ors.*: AIR 1982 SC 149.**

7.5 That the rules made under Article 145 of the Constitution of India are subject to any law being made by Parliament and Act is a law made by Parliament that is binding on all public authorities including the executive, legislatures and the judiciary.

8. At the outset, it is relevant to note that the information sought by the respondent is with regard to expenses incurred on medical facilities of Judges (retired as well as serving). Concededly, information relating to the medical records would be personal information which is exempt from disclosure under Section 8(1)(j) of the Act. The medical bills would indicate the treatment and/or medicines required by individuals and this would clearly be an invasion of the privacy.

9. Apparently, the CIC has passed the impugned order in exercise of powers under Section 19(8)(a)(iv) of the Act, as explained by the Supreme

Court in ***Aditya Bandhopadhyay*** *(supra)*. The power under Section 19(8)(a)(iv) of the Act is to ensure compliance with Section 4(1)(a) of the Act. Section 4(1)(a) of the Act reads as under:-

> "**4. Obligations of public authorities.-**(1) 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 network all over the country on different systems so that access to such records is facilitated;"

10. It is apparent from the above that directions for maintenance of records can be issued only to facilitate the right to information under the Act. Since the medical records are excluded from the purview of the Act by virtue of the *non obstante* clause contained in the opening words of Section 8(1) of the Act, the question of issuing any directions under Section 19(8)(a)(iv) of the Act to facilitate access to such information does not arise.

11. The impugned order indicates that the CIC proceeded on the basis that "…*the citizens can always seek the copies of the medical bills of individual judges and find out the same information. Therefore, it is better that the public authority should maintain such records in a manner that it should be possible to find out the details of expenditure in each individual case. Or else, the CPIO would be constrained to make photocopies of all such bills and provide to the information seeker, an exercise both more cumbersome and expensive."* Clearly, this assumption is erroneous as medical records are not liable to be disclosed unless it is shown that the

same is in larger public interest. In the present case, the CIC has completely overlooked this aspect of the matter.

12. Further, the extent of medical reimbursement to an individual is also, in one sense, personal information as it would disclose the extent of medical services availed by an individual. Thus, unless a larger public interest is shown to be served, there is no necessity for providing such information. Thus, clearly, a direction for maintaining records in a manner so as to provide such information is not warranted.

13. I had pointedly asked the learned counsel for the respondent if there was any larger public interest that was being pursued and he fairly did not answer in the affirmative.

14. The information sought by the respondent is financial and indisputably, the same would be available in the financial records. The contention that the petitioner does not have such information is erroneous, as each item of expenditure or reimbursement would be maintained in the financial records and in a given circumstance, where larger public interest was involved, the petitioner could be called upon to provide the same.

15. The basic financial data can be accessed to generate innumerable reports depending on the exigencies and requirements of an organization. A direction by the CIC to maintain such records to generate reports, merely because an individual information seeker has sought such information, is not warranted as the same would multiply with each information seeker seeking information in different form. A direction to maintain records in a

particular manner must be occasioned by considerations of public interest, which is admittedly absent in this case.

16. Since the impugned order is limited to directing maintenance of records in a particular manner, it is not necessary to examine other contentions.

17. Accordingly, the petition is allowed and the impugned order is set aside. Pending application stands disposed of.

VIBHU BAKHRU, J

DECEMBER 19, 2014
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 34/2015 & C.M.No.1287/2015

Reserved on: 09.04.2015
Pronounced on: 17.04.2015

SUBHASH CHANDRA AGARWAL ..... Petitioner
Through: Mr. Prashant Bhushan with Mr. Syed Musaib & Mr. Pranav Sachdeva, Advs.

Versus

THE REGISTRAR, SUPREME COURT OF INDIA & ORS ..... Respondents
Through: Mr. Sidharth Luthra, Sr. Adv. with Mr. Jasmeet Singh, CGSC, Mr. Simon Benjamin, Mr. Satyam Thareja & Mr. Vasundara Nagrath, Advs. for R-1.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE DEEPA SHARMA

Ms.G.ROHINI, CJ

1. This appeal is preferred against the order dated 19.12.2014 whereunder the learned Single Judge allowed W.P.(C) No.1842/2012 filed by the respondent herein and set aside the order dated 01.02.2012 passed by the Central Information Commissioner (CIC) under the Right to Information Act, 2005 (for short 'RTI Act').

2. The facts in brief are as under:-

3. The appellant herein filed an application under the RTI Act with the Central Public Information Officer, Department of Justice, Government of India seeking the information relating to the details of the

medical facilities availed by the individual judges and their family members of the Supreme Court in last three years including the information relating to expenses on private treatment in India or abroad. The CPIO, to whom the said application was transferred under Section 6(3) of the Act rejected the same by order dated 02.02.2011 on the ground that it is an exempted information under Section 8(1)(j) of the Act. The appeal preferred by the appellant herein was dismissed by the First Appellate Authority by order dated 07.03.2011. However, the further appeal to the CIC was allowed and by order dated 03.08.2011, the CIC directed the CPIO to provide the total amount of medical expenses of individual judges reimbursed by the Supreme Court during the last three years both in India and abroad wherever applicable. There was also a direction that the CPIO shall bring to the notice of the competent authority in the Supreme Court and ensure that arrangements are made in future for maintaining the information as expected in Section 4(1)(a) of the RTI Act. In pursuance thereof, by letter dated 30.08.2011, the CPIO while furnishing the actual total expenditure for the years 2007-08, 2008-09 and 2009-10, informed the appellant herein that the judge-wise information regarding actual total medical expenditure is not required to be maintained and is not maintained. Contending that the information furnished by CPIO is not in compliance with the order dated 03.08.2011, the appellant herein had again approached the CIC and thereupon by order dated 01.02.2012 the CIC reiterated its directions dated 03.08.2011.

4. Aggrieved by the said order, the appellant herein filed W.P.(C) No.1842/2012. By the order under appeal, the learned Single Judge allowed the writ petition holding that the order passed by CIC

purportedly in exercise of power under Section 19(8)(a)(iv) of the Act is erroneous. While taking note of the fact that the information sought by the respondent/appellant herein was with regard to expenses incurred on medical facilities of judges retired as well as serving and that the said information is personal information which is exempted from disclosure under Section 8(1)(j) of the RTI Act and that the medical bills would indicate the treatment and/or medicines required by individuals and the same would clearly be an invasion of the privacy, the learned Single Judge held that the question of issuing any directions under Section 19(8)(a)(iv) of the Act to facilitate access to such information does not arise.

5. Assailing the said order, Sh.Prashant Bhushan the learned Counsel appearing for the appellant vehemently contended that the information pertaining to expenditure of public money on a public servant is not exempted under Section 8(1)(j) of the RTI Act. It is submitted by the learned counsel that only the information which relates to personal information which has no relation to any public activity or interest or which would cause unwarranted invasion of privacy of the individual is exempt from disclosure under Section 8(1)(j) and that the same is not attracted to the case on hand since the medical bills of the judges are reimbursed from the public money. Placing reliance upon the decisions in ***State of UP Vs. Raj Narain,*** **AIR 1975 SC 865**, ***S.P.Gupta Vs. President of India & Ors.,*** **AIR 1982 SC 149** and ***Union of India Vs. Association for Democratic Reforms,*** **AIR 2002 SC 2112** it is further contended by the learned counsel that the object and purpose of the RTI Act being promoting transparency and accountability in spending the

public money to strengthen the core constitutional values of a democratic republic, the information sought by the appellant relating to reimbursement of medical bills of the individual judges, under no circumstances, can be termed as exempted information under Section 8(1)(j) of the Act.

6. On the other hand, it is submitted by Sh.Siddharth Luthra, the learned Senior Advocate appearing for the respondents No.1 & 2 that the information sought by the appellant would cause unwarranted invasion of privacy of the individual judges and, therefore, the learned Single Jude has rightly held that Section 8(1)(j) is attracted. To substantiate his submission, the learned Senior Counsel relied upon ***Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors.*** **2011 (8) SCC 497** and ***Girish Ramchandra Deshpande Vs. Central Information Commissioner & Ors***. **(2013) 1 SCC 212**.

7. We have given our thoughtful consideration to the rival submissions made by the parties. It is no doubt true that the RTI Act, 2005 is aimed at providing access to the citizens to information under the control of public authorities in order to promote transparency and accountability in the working of the every public authority. However, as held in the case of ***Aditya Bandopadhyay & Ors. (Supra)*** the RTI Act contains certain safeguards by providing exemption from disclosure of certain information including the information which would cause unwarranted invasion of the privacy of the individual except where the larger public interest justifies the disclosure of such information.

8. In the case on hand, the CPIO by his letter dated 30.08.2011 has admittedly furnished the amount that has been reimbursed on medical

treatment from the budget grant of each year for the period from 2007 to 2010 making it clear that during the said period no reimbursement for medical treatment abroad was made. It was also specifically mentioned by the CPIO that the judge-wise information was not maintained as the same was not required to be maintained.

9. It is no doubt true that Section 19(8)(a)(iv) empowers the appellate authority to require the public authority to make necessary changes to its practices in relation to the maintenance, management and destruction of record for the purpose of securing compliance with the provisions of the RTI Act. However, as rightly held by the learned Single Judge the said power cannot be invoked to direct creation of information but the same can be only with regard to the existing information.

10. The information sought by the appellant includes the details of the medical facilities availed by the individual judges. The same being personal information, we are of the view that providing such information would undoubtedly amount to invasion of the privacy. We have also taken note of the fact that it was conceded before the learned Single Judge by the learned counsel for the appellant herein that no larger public interest is involved in seeking the details of the medical facilities availed by the individual judges. It may also be mentioned that the total expenditure incurred for the medical treatment of the judges for the period in question was already furnished by the CPIO by his letter dated 30.08.2011 and it is not the case of the appellant that the said expenditure is excessive or exorbitant. That being so, we are unable to understand how the public interest requires disclosure of the details of the medical facilities availed by the individual judges. In the absence of any such

larger public interest, no direction whatsoever can be issued under Section 19(8)(a)(iv) of the Act by the appellate authorities. Therefore on that ground also the order passed by the CIC dated 01.02.2012 is unsustainable and the same has rightly been set aside by the learned Single Judge.

11. For the aforesaid reasons, the appeal is devoid of any merits and the same is accordingly dismissed. No order as to costs.

CHIEF JUSTICE

DEEPA SHARMA, J

APRIL 17, 2015
'anb'

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 6086/2013

UNION PUBLIC SERVICE COMMISSION ..... Petitioner

Through : Mr. Naresh Kaushik, Adv. With

Mr.Vardhman Kaushik, Adv.

versus

HAWA SINGH ..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

21.11.2014

1. The petitioner impugns an order dated 18.06.2013 passed by the Central Information Commission (hereinafter referred to as ?CIC?) whereby the petitioner was directed to disclose certain information relating to other candidates who were subject to the selection process undertaken by the petitioner.

2. The question to be adressed is whether the petitioner was obliged to disclose information relating to other candidates i.e. the third party information under the Right to Information Act, 2005 (hereinafter referred to as the ?Act?).

3. The brief facts of the present case are that the respondent was working as a Senior Administrative Officer (Legal) in the office of Controller and Auditor General of India (hereafter ?CAG?) and had appeared before the Departmental Promotion Committee (hereinafter ?DPC?) for the selection to the post of Deputy Director (Legal) in the office of CAG. The respondent had filed an application dated 05.11.2012 under the Act inter alia seeking certain information relating to the said selection process which included the Bio Data as well as other information relating to other candidates.

4. While most of the information was supplied by the petitioner, the

information relating to other candidates and certain other information was declined by the petitoner. This led the respondent to file an appeal before the first appellate authority, which was rejected by an order dated 07.01.2013. Aggrieved by the same, the respondent preferred an appeal before CIC. The CIC considered the appeal and directed the petitioner to supply the following information:-

?i. The biodata of the candidates recommended by the Selection Committee for deputation;

ii. the marks awarded to both the selected candidates as well as to the Appellant during the selection process;

iii the copy of the pro forma and comparative statement of eligibility placed before the Selection Committee, if any:

iv. a statement showing the period for which the ACRs/APARs of various candidates had been considered by the Selection Committee including the grading of the selected candidates as well as that of the Appellant and

v. The copy of the reserve list prepared by the Selection Committee provided the selected candidate has already joined her duty.?

5. Aggrieved by the direction of CIC to provide the Bio Data of the candidates recommended by the Selection Committee for deputation, the petitioner has preferred this petition.

6. Learned counsel for the petitioner submits that the information sought by the respondent is a third party information and thus cannot be disclosed except in public interest and after following the due procedure under Section 11 and Section 19(4) of the Right to Information Act, 2005. The learned counsel referred to a decision of the Supreme Court in Union Public Service Commission v. Gouhari Kamila: Civil Appeal No. 6362/2013, decided on 06.08.2013 whereby the Supreme Court following its earlier decision rendered in CBSE v. Aditya Bandopadhyay: (2011) 8 SCC 497 held as under:-

?12. 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.

13. 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.?

7. In view of the above, the submission of the learned counsel for the

petitioner that the present case is covered by the decision of the Supreme Court in Gouhari Kamila (supra) is well founded. Clearly, the Bio Data of the other selected candidates is a third party information and is exempt from disclosure under Section 8(1)(e) and under Section 8(1)(j) of the RTI Act.

8. The impugned order does not indicate that disclosure of this information was vital in larger public interest. Further, it does not appear that the CIC had issued any notice under Section 19(4) of the RTI Act to other candidates before directing the disclosure of the information.

9. Accordingly, the petition is allowed and the impugned order, in so far as it relates to disclosure of ?Bio Data of candidates recommended by the Selection Committee for deputation? is concerned, is set aside. No order as to costs.

VIBHU BAKHRU, J

NOVEMBER 21, 2014/j

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7954/2007

CANARA BANK ..... Petitioner
Through: Ms. Hetu Arora Sethi, Advocate with
Mr. Shravan Sahny, Advocate.

versus

P.N.SHUKLA & ANR ..... Respondents
Through: Respondent No.1 in person.

% Date of Decision: 18th January, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the order dated 05th March, 2007 passed by the Central Information Commission as well as the order dated 01st June, 2007 whereby the Central Information Commission had asked the petitioner to file its response within ten days with regard to the issues raised in the said letter.

2. Learned counsel for petitioner states that the information directed to be released by the Central Information Commission vide the impugned order dated 05th March, 2007 is exempt from disclosure under Section 8(1)(j) of the Right to Information Act, 2005.

3. It is pertinent to mention that the Central Information Commissioner in the impugned order has held that when a citizen seeks information about his own case, the same cannot be denied to him under Section 8(1)(j) of the Right to Information Act, 2005.

4. In fact, the issue raised in the present writ petition is no longer *res integra*. A Coordinate Bench of this Court in ***State Bank of India vs. Mohd. Shahjahan***, ***W.P.(C) 9810/2009*** while dealing with a similar issue has held as under:-

> *"24. It was urged by Mr. Kapur that marks given in the PAF by the Superior Officer of the Respondent was information held by the SBI in a fiduciary capacity and that disclosure of such information, even to the Respondent, would be in breach of the fiduciary relationship that the SBI has with the superior officer. In the considered view of this Court, this is a misreading of Sections 8 (1) (e) and (j) of the RTI Act. The fiduciary relationship, if at all, is between the employer and the employee. The information which is expected to be kept exempt from disclosure is the information concerning the employee, in this case, the Respondent herein. The exemption is from disclosure to a third party and certainly not to the Respondent himself. In fact, as explained in Dev Dutt, if the intention of making an adverse entry is to enable the Respondent to improve his performance, then that purpose is not served by keeping the information from him. Unless the adverse entry is communicated to the employee and he is allowed to explain his position, the purpose of getting him to improve his performance will not be achieved.*
>
> *25. The submission that the disclosure of such information would jeopardize the relationship between the Respondent and the superior officer who recorded the entry is also misconceived. The Respondent already*

knows who his superior officer is and that it is the superior officer who has recorded the adverse entry. That fact is not a secret as far as the Respondent is concerned. Therefore, this can hardly be the ground to deny the Respondent information concerning the adverse entry made in the Respondent's ACR or his PAF. If the object is that the Respondent should improve his performance, then it is in the best interests of the organisation itself and the Respondent that such information is disclosed to the Respondent. In the considered view of this Court, the information sought by the Respondent concerning himself, and which has been directed to be disclosed by the CIC, is not protected from exemption under Section 8 (1) (e) of the RTI Act. This is also the tenor of the judgment of the learned Single Judge of this Court in Union of India v. Central Information Commission 165 (2009) DLT 559 where while interpreting Section 8 (1) (e) of the RTI Act it was explained that where information can be furnished without compromising or affecting confidentiality and identity, it should be supplied and the bar under Section 8 (1) (e) cannot be invoked. There is no question, therefore, of not providing the information concerning the Respondent to the Respondent himself.

26. The provision of Section 8(1) (j) is also not attracted. The disclosure to the Respondent of the information concerning himself can hardly be said to be an unwarranted invasion of his privacy. This is information about himself which he needs to know as it provides the reason why he was not considered for promotion. Therefore, the information directed to be disclosed by the SBI to the Respondent is only the "disaggregated marks awarded to him in the promotion process" and cannot be stated to be covered under Section 8 (1)(j) of the RTI Act."

5. Keeping in view the aforesaid mandate of law, the petitioner's plea with regard to exemption under Section 8(1)(j) of the Right to

Information Act, is rejected.

6. This Court is also of the view that the other impugned order dated 01st June 2007 is only in the nature of show cause and if the petitioner has good reason not to disclose the information directed in the notice dated 01st June, 2007, it can raise its pleas and defences before the Central Information Commission.

7. With the aforesaid observations, present writ petition is dismissed.

MANMOHAN, J

JANUARY 18, 2016
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 29.10.2013

\+ W.P.(C) 4190/2013

CENTRAL BANK OF INDIA ..... Petitioner
Through: Mr. Yogesh Pachauri, Adv.

versus

UNION OF INDIA & OTHERS ..... Respondents
Through: Ms. Sweety Manchanda, CGSC.
Counsel for Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The respondent No.2 before this Court, who is the brother of respondent No.3, Sonia Mendiratta, sought the following information from the CPIO of the petitioner-Central Bank of India:

> "1. On what date this loan was disbursed?
>
> 2. On which property/stock/security the said loan/money was given to Think Communication at G-23, Triveni Complex.
>
> 3. Whether Sonia Mendiratta had information you that this is a disputed/suit property and there is a stay granted by the Hon'ble High Court of Delhi vide order dated 14.09.2006."

2. The information was denied by the PIO on the ground that the said information was exempt from disclosure under Section 8 (1) (j) of the Right to Information Act, 2005 (for short 'RTI Act'). The first

appeal filed by respondent No.2 having been dismissed, he preferred a second appeal before the Central Information Commission. Vide impugned order dated 27.5.2013, the Commission directed the petitioner to disclose the information sought by respondent No.2.

3. The case of respondent No.2 is that property No.G-23, Triveni Commercial Complex, Sheikh Sarai, Phase-I, New Delhi was owned by late Smt. Trilochan Kaur who was the mother of respondents 2 & 3 and on her demise the aforesaid property devolved on four legal heirs of Smt. Trilochan Kaur including respondents 2 & 3. Thus, respondent No.2 claims to be one of the co-owners of the aforesaid property.

4. Notice of the writ petition was issued to respondent No.3 as well and she has been duly served through her brother but she is not present in the Court and nor has she filed any counter affidavit.

5. The provisions of Section 8 (1) (j) RTI Act on which reliance was placed by the CPIO would not apply in case the information is sought by the person to whom it pertains. Such an exemption can be claimed only when the 'personal information' relates to a third party. Since according to respondent No.2 he is one of the co-owners of the said property, in case any information with respect to mortgage of the said property with the bank is provided, that would not be a personal information related only to respondent No.3, she being only one of the co-owners and would equally a personal information of the other co-owners, including respondent No.2. Consequently providing such an information, to a co-owner of the property will not be the exemption under Section 8 (1) (j) of the Act, therefore, will not be available, when the information of this

nature is sought by a co-owner of the property derogation of the provisions contained in Section 8 (1) (j) of the RTI Act.

6. The writ petition is, therefore, disposed of with the direction to the petitioner to inform respondent No.2 as to whether property No.G-23, Triveni Commercial Complex, Sheikh Sarai, Phase-I, New Delhi was mortgaged with it by respondent No.2 and if so, what was the amount of loan which was taken by respondent No.2 against mortgage of the aforesaid property and on which date. The petitioner-Bank shall also intimate respondent No.2 as to whether respondent No.3 had submitted information to the Bank that the aforesaid property was a disputed property and there was a stay granted by this Court in respect of the aforesaid property. In case the loan was not obtained against the mortgage of property at G-23, Triveni Commercial Complex, Sheikh Sarai, Phase-I, New Delhi, the petitioner-Bank would only inform respondent No.2 accordingly without disclosing the particulars of the property mortgaged with it.

The writ petition accordingly stands disposed of

OCTOBER 29, 2013 V.K. JAIN, J.
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2776/2013 and CM Nos.5239/2013 and 15346/2013

THE INSTITUTE OF COST

ACCOUNTANTS OF INDIA ..... Petitioner

Through: Mr Balraj Dewan, Advocate.

versus

CENTRAL INFORMATION COMMISSION

and ORS. ..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

08.09.2014

The petitioner impugns the order dated 09.04.2013 passed by the Central Information Commission (CIC) whereby the CIC had directed the Central Public Information Officer (CPIO) to provide certain information sought by the respondent. The respondent had filed an application under the Right to Information Act, 2005 (RTI Act) with the petitioner and had sought the following information:-

?1. Copies of answer sheets of atleast 10 nos of students for each slab mentioned below, appeared from Pune centre in finance management and International Finance paper of December 2011 exam of Group III who secured in following slabs.

31-40 Marks

41-50 Marks

51-60 Marks

2. Copy of decision of committee to give grace marks due to wrong questions (i.e. not relevant to subject) in finance management and

international finance paper of December 2011 exam of Group III.

3. Regarding above, please provide copies of the minutes of all meetings of exam committee which were carried out for December 2011 exam.?

The petitioner by an e-mail dated 18.05.2012 declined to provide information as sought, for the reason that the concerned person-Director (Examination), had indicated that the information could not be furnished immediately due to examinations, which were scheduled to be held in June 2012. Respondent no.1 being aggrieved by denial of the information preferred an appeal before First Appellate Authority (FAA) which was disposed of by an order dated 30.07.2012. The FAA held that the information as to the minutes of the Examination Committee (Item No. 2 and 3 above) was exempt by virtue of Sections 8(1)(g) and 8(1)(j) of the RTI Act.

Respondent no.1 challenged the order dated 30.07.2012 passed by the FAA, in appeal before the CIC. The CIC allowed the appeal, by the impugned order, and directed the petitioner to provide the said information after severing the non-disclosable portions, such as names of students, examiners, examination committee members etc.

The learned counsel for the petitioner submitted that the CIC had grossly erred in directing disclosure of information which was otherwise exempt under Section 8(1)(i) and (j) of the Act.

In my view, the petitioner?s contention is bereft of any merit. Clause (i) of the Section 8(1) of the RTI Act has no application to the information sought by respondent no.1 as it relates to cabinet papers, including records of deliberations of Council of Ministers, Secretaries and other officers.

Clause (j) of Section 8(1) of the RTI Act exempts disclosure of personal information. Mindful of this exemption, CIC has directed that the information relating to the names of persons be severed and not disclosed to respondent no.1. The learned counsel for the petitioner has been unable to point out as to how information as directed to be provided by CIC (after severing the names of students, examiners, examination committee members etc.) would qualify as personal information. The decisions as to the marking scheme, policy of moderation, policy decisions for awarding grace marks etc. are decisions that would affect and concur all students who had appeared in the examinations in question.

I find no infirmity in the impugned order. However, it is necessary to clarify that in addition to omitting all names of students, examiners, examination committee members, the petitioner will also black out such

information which may reveal the identity of those persons. The writ petition is, accordingly, disposed of.

VIBHU BAKHRU, J

SEPTEMBER 08, 2014

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2952/2016 & C.M.No.12344/2016

RAHUL KESARWANI ..... Petitioner

Through Mr.Prag Chawla with Mr.Abhay Narula, Advocates.

versus

CENTRAL INFORMATION COMMISSION & ANR ..... Respondents

Through None

% Date of Decision : 5th April, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed with the following prayers :-

(a) This Hon'ble Court may issue a writ of Certiorari and or any other appropriate Writ and or direction to set aside the order of the Respondent No.1 dated 7.1.2016 passed in Rahul Kesarwani Vs. CPIO/Joint Commissioner of Income Tax, Income Tax Department CIC/RM/A/2014/903298/ BS/9466.

(b) This Hon'ble Court may issue a writ of mandamus and or any other appropriate writ and or direction against the Respondent No.2 directing them to provide the Action Taken Report on the Tax Evasion petition filed by the Petitioner alongwith documents including representations and replies filed by Ms.Sunita Bhuyan.

(c) *Direct the Respondent No.2 to produce the said record before the Court of Ms.Charu Gupta, Ld. Metropolitan Magistrate, Saket District Court, New Delhi pressing over the proceedings of FIR No.198 of 2012.*

(d) *Any other order or direction which this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case may also be passed.*

2. It has been averred in the petition that vide impugned order dated 7th January, 2016 passed by respondent no. 1-CIC, the information sought by the petitioner regarding action taken report in reference to his letter dated 21st February, 2014 was rejected on the ground that information sought is exempt under Section 8(1)(j) of the Right to Information Act, 2005 (for short 'RTI Act, 2005').

3. It has been stated in the petition that an FIR No. 198/2012 was registered against the petitioner under Sections 498A/406 IPC by his wife Ms. Sunita Bhuyan. It has been further stated that petitioner filed a tax evasion petition before the Chief Commissioner of Income Tax to investigate the allegations of Ms. Sunita Bhuyan relating to her alleged income and expenditure during the wedding.

4. Learned counsel for the petitioner states that the information sought is crucial for the adjudication in the aforesaid criminal case pending against the petitioner. In support of his submissions, he relies upon the judgment of the Division Bench in ***Director of Income Tax (Investigation) and Anr. Vs. Bhagat Singh and Anr. in LPA No.1377/2007 decided on 17th December, 2007***, wherein it has been held as under:-

> "…….*It is for the appellant to show how and why investigation will be impeded by disclosing information to the*

appellant. General statements are not enough. Apprehension should be based on some ground or reason. Information has been sought for by the complainant and not the assessed. Nature of information is not such which interferes with the investigation or helps the assessed. Information may help the respondent No. 1 from absolving himself in the criminal trial. It appears that the appellant has held back information and delaying the proceedings for which the respondent No. 1 felt aggrieved and filed the aforesaid writ petition in this Court. We also find no reason as to why the aforesaid information should not be supplied to the respondent No. 1. In the grounds of appeal, it is stated that the appellant is ready and willing to disclose all the records once the same is summoned by the criminal court where proceedings under Section 498A of the Indian Penal Code are pending. If that is the stand of the appellant, we find no reason as to why the aforesaid information cannot be furnished at this stage as the investigation process is not going to be hampered in any manner and particularly in view of the fact that such information is being furnished only after the investigation process is complete as far as Director of Income Tax (Investigation) is concerned. It has not been explained in what manner and how information asked for and directed will hamper the assessment proceedings."

5. After hearing the learned counsel for the petitioner, this Court is of the view that as the criminal proceeding filed by the petitioner's wife is still pending and her cross-examination is not complete, the petitioner can cross-examine her with regard to her income-tax returns and/or the petitioner can file an appropriate application for production of the relevant income tax records. The petitioner can also summon the witnesses from the income-tax department with regard to the tax evasion petition filed by him. Needless to say, the said request shall be considered by the Trial Court in accordance with law.

6. Consequently, as the petitioner has an alternative efficacious remedy for seeking the documents, this Court is of the view that no further orders are called for in the present writ petition.

7. This Court also clarifies that the Division Bench judgment relied upon by learned counsel for the petitioner in ***Director of Income Tax (supra)*** only refers to Section 8(1)(h) and not 8(1)(j) of the RTI Act, 2005. Accordingly, the present writ petition and the application are dismissed.

MANMOHAN, J

APRIL 05, 2016
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 08.11.2013

\+ W.P.(C) 5812/2010

UPSC ..... Petitioner

Through: Mr Vardhman Kaushik and Mr Naresh Kaushik, Advs.

versus

PINKI GANERIWAL .... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

Vide application dated 12.09.2008, the respondent sought the following information from the CPIO of the petitioner-UPSC:-

> "a) Subject matter of information:-
>
> Selection list of eleven number of Dy Director of Mines Safety (Mining) by UPSC in pursuance of ref no of F.I./287/2006/R-VI contained in advertisement no 8/03 (Employment News 28 April-4May 2007)
>
> (b) The period to which the information relates:-
>
> Year 2008-09

(c) Specific details of information required:-
Please provide the seniority cum merit list of selected eleven number of Dy Director of Mines Safety (Mining) by UPSE in pursuance of ref no of F.I./287/2006/R-VI contained in advertisement no 08/03 (Employment News 28 April-4 May 2007) for appointment in Director General of Mines Safety, Dhanbad under Ministry of Labour and Employment, New Delhi. The list should contain the details of date of birth, institution & year of passing their graduation, field experience of company and marks obtained in interview and caste of the candidate.

2. The information (a) and (b) above has already been provided to the respondent. As regards information at (c) above, the petitioner has already provided the list of the recommended candidates along with their *inter se* seniority-cum-merit and the same is available at page 43 of the paper book. The petitioner, however, has declined to provide information such as date of birth, institution and year of passing graduation, field experience, marks obtained in interview and the caste of the selected candidates.

3. The Central Information Commission vide impugned order dated 07.06.2010, while dealing with the plea of the petitioner that being personal information of the selected candidates, the aforesaid

information is exempt from disclosure under Section 8(1)(j) of the Right to Information Act, *inter alia*, held as under:-

> "In this case although the information can arguably be treated as personal information, under no circumstances can information given for participation in a public activity like a public examination be deemed to have no relationship to such public activity.
>
> Shri Kamal Bhagat, Jt. Secretary, has argued that it is not the practice in the UPSC to disclose interview results for those candidates as are not selected. In this case, however, appellant Ms. Pinki Ganeriwal has asked for information only regarding 'selected' candidates. This information which was not received by the appellant on the ground taken by the CPIO, UPSC, will now be provided to appellant Ms. Pinki Ganeriwal within 10 working days from the date of receipt of this decision notice. The appeal is thus allowed. There will be no costs, since appellant has not been compelled to travel to be heard, and the responses of CPIO, although held to be inadequate, were made according to the time mandated and as per CPIO's genuine understanding of the law, and therefore not liable to penalty."

4. A similar issue came up for consideration before this Court in *W.P.(C) No. 6508/2010* titled ***UPSC vs. Mator Singh***, where the

respondent before this Court had *inter alia* sought information such as particulars (name, qualification and experience) of eligible applicants for appointment to 7 post of Principal (female) reserved for Scheduled Castes in response to UPSE special advertisement No. 52/2006. The CPIO declined to provide the aforesaid information and the first appeal filed by the respondent was also dismissed. In a second appeal filed by the respondent, the Central Information Commission directed disclosure of the aforesaid information. Setting aside the order passed by the Commission, this Court, *inter alia*, held as under:-

> "5. A similar issue came up for consideration before the Hon'ble Supreme Court in Union Public Service Commission Vs. Gourhari Kamila 2013 (10) SCALE 656. In the aforesaid case, the respondent before the Apex Court had sought *inter alia* the following information:
>
> "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."

The Central Information Commission directed the petitioner-UPSC to supply the aforesaid information. Being aggrieved from the direction given by the Commission, the petitioner filed WP (C) No.3365/2011 which came to be dismissed by a learned Single Judge of this Court. The appeal filed by the UPSC also came to be dismissed by a Division Bench of this Court. Being still aggrieved, the petitioner filed the aforesaid appeal by way of Special Leave. Allowing the appeal filed by the UPSC, the Apex Court *inter alia* held as under, relying upon its earlier decision in Bihar School Examination Board Vs. Suresh Prasad Sinha (2009) 8 SCC 483:

"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."
>
> The Apex Court held that the Commission committed a serious illegality by directing the UPSC to disclose the information at points 4 & 5 and the High Court also committed an error by approving the said order. It was noted that neither the CIC nor the High Court recorded a finding that disclosure of the aforesaid information relating to other candidates was necessary to larger public interest and, therefore, the case was not covered by the exception carved out in Section 8 (1) (e) of the RTI Act.
>
> 6. In the case before this Court no finding has been recorded by the Commission that it was in the larger public interest to disclose the information with respect to the qualification and experience of other shortlisted candidates. In the absence of recording such a finding the Commission could not have directed disclosure of the aforesaid information to the respondent."

5. In the present case, the information such as date of birth, institution and year of passing graduation, field experience and caste is

personal information of the selected candidates. There is no finding by the Commission that it was in larger public interest to disclose the aforesaid personal information of the recommended candidates. Even in his application seeking information, the respondent did not claim that any larger public interest was involved in disclosing the aforesaid information. In the absence of such a claim in the application and a finding to this effect by the Commission, no direction for disclosure of the aforesaid personal information could have been given.

6. For the reasons stated hereinabove, the impugned order dated 07.06.2010 passed by the Central Information Commission is hereby set aside.

The writ petition stands disposed of. No order as to costs.

V.K. JAIN, J

NOVEMBER 08, 2013
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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 08.11.2016

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\+ W.P.(C) 8975/2015 & CM No.20240/2015 (for interim relief)

UNION OF INDIA MINISTRY OF RAILWAYS ..... Petitioner

versus

KISHAN LAL MEENA ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Prerna Mehta, Advocate.

For the Respondents : None.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
08.11.2016

SANJEEV SACHDEVA, J. (ORAL)

1. Notice in the petition was issued to the respondent on 18.09.2015. By order dated 24.02.2016, this Court recorded that despite service none had appeared for the respondent. The respondent was proceeded ex-parte.

2. The petitioner seeks quashing of order dated 04.06.2015, passed by the Central Information Commission allowing the appeal of the respondent and directing the petitioner to provide information sought for by the respondent.

3. The petitioner by his application filed under the Right to

Information Act, 2005 (hereinafter referred to as 'the Act') had sought for *inter alia* the information being copies of the files pertaining to investigation against one Sh. Akhilesh Kumar, Senior DME, Ajmer.

4. The provision of the said information was declined on the ground that the same was exempted under Section 8(1)(g) and (j) of the Act being personal information and there being no public interest involved.

5. On an appeal by the respondent, the first Appellate Authority upheld the decision of the CPIO and held that the information was exempted from being disclosed.

6. The Central Information Commission, by the impugned order, has directed the petitioner to provide the information to the respondent.

7. Perusal of the impugned order dated 04.06.2015 shows that the CIC has merely recorded the contentions of the appellant as well as the respondent and has passed a one line order which reads as under:-

> *"9. Respondent is directed to provide to the appellant, within 30 days of this order, the information sought in the RTI application."*

8. The Central Information Commission has not returned any finding as the infirmity in the orders of the CPIO and the first appellate authority. The CIC has not recorded any finding as to how the information, sought for by the respondent, is not exempted under

Section 8 of the Act. There is no reasoning given by the Central Information Commission in the order as to the errors committed by the CPIO as well as the First Appellate Authority.

9. Reliance may be also had to the decision of the Supreme Court in ***Girish Ramchandra Deshpande vs. Central Information Commissioner & Ors.*: (2013) 1 SCC 212**, wherein the Supreme Court held as under:-

> *"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."

10. The Supreme Court in ***Girish Ramchandra Deshpande*** (*supr*a) has held that the performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and would normally be 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. The Supreme Court has also held that disclosure of such information would cause unwarranted invasion of privacy of that individual. The Supreme Court has, however, noted that, in a given case, if the CPIO or the State Public Information Officer or the Appellate Authority is satisfied that larger public interest justifies disclosure of such information, appropriate orders could be passed.

11. In the present case, there is no finding returned by the Central Information Commission that there is a larger public interest which justices the disclosure of the information, in fact, there is no reasoning or rationing accorded in the impugned order except to direct the petitioner to furnish the information.

12. In view of the above, the impugned order, is not sustainable. The same is, accordingly quashed. The writ petition is allowed in the above terms. There shall be no order as to costs.

SANJEEV SACHDEVA, J

NOVEMBER 08, 2016
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IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.08.2017

\+ **W.P.(C) 13219/2009 & CM 14393/2009**

MUNICIPAL CORPORATION DELHI ..... Petitioner

Versus

RAJBIR ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Biji Rajesh and Ms Eshita Baruah, Advocate for Gaurang Kanth.

For the Respondent : Mr V.K. Sharma.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereafter 'MCD') has filed the present petition, *inter alia*, impugning an order dated 06.10.2009 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC'). By the impugned order, the CIC has allowed respondent's appeal and has directed MCD to disclose the information sought by him. The MCD claims that the information which it is called upon to disclose is exempt from such disclosure under Section 8(1)(j) of the Right to Information Act, 2005 (hereafter 'the Act').

2. Briefly stated, the relevant facts necessary to address the controversy in this petition are as under:-

2.1 On 18.02.2009, respondent filed an application under the Act seeking information relating to one Dr Ashok Rawat (one of the employees of MCD). The contents of the said application indicating the information sought by respondent are set out below:-

> "Kindly provide the Assets and Liabilities of D.H.O. Shahdara North Zone Mr Ashok Rawat Ji.
>
> 1. Monthly salary
> 2. Details of his children with age; how many are school going; their monthly school fee and other expenditure; name of school
> 3. Whether any transportation is availed of by the children; if yes, give details
> 4. Whether he is in possession of his own house or in Govt. Accommodation; if it is on private rent the details of the rent agreement be supplied.
> 5. Whether he has any immovable property in his name, his wife's name or in the name of his children.'
> 6. Whether any immovable property was purchased after entering into service in MCD in Delhi.
> 7. Details of property which was disclosed by him at the time of joining.
> 8. Details of anything more than Rs.10,000/- which was purchased by him during his service, with date when the appropriate disclosure was made to the department and the same was duly assessed in his assessment of the financial year.
> 9. Whether the Government vehicle was being utilised for personal use or not."

2.2 Initially, by a letter dated 17.03.2009, the Public Information officer (PIO) of MCD declined to provide any information, *inter alia,* stating that

the information as sought by respondent was not 'information' as defined under Section 2(f) of the Act.

2.3 The respondent's application was transferred to the concerned PIO by a letter dated 25.05.2009. Thereafter, the concerned PIO of MCD sent a letter dated 18.06.2009 declining to provide information sought at serial nos.5, 6 and 7 in the RTI application, for the following reasons:-

> "The information sought for by the applicant through this point, being secret documents/information which cannot be disclosed in the absence of a general or special order, under provisions of GIO (S.O.114) under sub-rule (1) of Rule 18 of CCS (Conduct) rules. 964 Clause 110 of the "Manual of Office Procedure", Rule 11 of CCS (Conduct) Rules, 1964 as the information sought for herein covers under section 8(j) of the RTI Act, 2005."

2.4 Aggrieved by the same, respondent preferred an appeal before the First Appellate Authority (hereafter 'the FAA') impugning the action of the PIO in denying the information sought. The FAA partially allowed the appeal by an order dated 20.05.2009 directing disclosure of information sought at serial nos.2 and 3 in the RTI application.

2.5 Aggrieved by the non-disclosure of the complete information as sought, respondent preferred a second appeal under Section 19(3) of the Act.

2.6 The said appeal was allowed by the impugned order and the CIC has directed disclosure of all information pertaining to queries at serial nos.1 and 4 to 9. The CIC rejected MCD's contention that the information as sought for by respondent was exempt from disclosure under Section 8(1)(j) of the Act. The CIC was of the view that disclosure of information

pertaining to assets of public servants which is collected by a public authority cannot be construed as invasion of the privacy of an individual.

3. Ms Biji Rajesh, learned counsel for the MCD contended that information regarding the personal assets of its employees is required to be treated as confidential and merely because employees of MCD are required to disclose their assets to MCD, the same would not exclude such information from the scope of Section 8(1)(j) of the Act. She referred to the decision of a Coordinate Bench of this Court in ***Allahabad Bank v. Nitesh Kumar Tripathi*: *2013 SCC OnLine Del 2491*** in support of her contention. She also referred to the decisions of the Supreme Court in ***Girish Ramchandra Deshpande v. Central Information Commission &Ors.*: *2013 (1) SCC 212*** and ***R. K. Jain v. Union of India & Anr.*: *(2013) 14 SCC 794***.

4. Mr V K Sharma, the learned counsel for the respondent stated that he was no longer pressing for disclosure of the information as initially sought by the respondent and had limited his request to information sought at serial nos.5, 6 and 7 in his RTI application. The said information being (a) whether Dr Ashok Rawat held any immovable property in his name; (b) whether any immovable property was purchased by him after entering service with MCD in India including Delhi; and (c) the details of his properties at the time of joining of service with MCD. Mr Sharma further stated that although at serial no.5, respondent had sought information as to the immovable property in the name of Dr Ashok Rawat's wife and children as well; he was no longer seeking that information.

5. In view of the above, the only question required to be addressed is whether MCD is obliged to disclose details of the immovable properties

held by its employees or whether such information is exempt from disclosure under Section 8(1)(j) of the Act.

6. Before proceeding further, it would be relevant to refer to Section 8 (1)(j) of the Act which reads 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
>
> (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."

7. It is apparent from a plain reading of Clause (j) of Section 8(1) of the Act that personal information which has no relationship to any public activity or interest would be exempt from disclosure. However, such information can be disclosed provided that the PIO or the Appellate Authority under the Act is satisfied that larger public interest justifies such disclosure. In the present case there is no reason to believe that disclosure of information sought by respondent is for some larger public interest. Respondent has not provided any credible justification for seeking information regarding the personal assets of the MCD employee in question. Although, it has been contended that disclosure of assets of public servants and their families would serve to stem corruption, however, in the present case, no particular facts have been disclosed by respondent which will indicate that the information sought would serve a larger public purpose. In view of the above, the only question that needs to be answered is whether the information sought by respondent qualifies to be "personal

information", the disclosure of which has no relationship with any public activity or interest.

8. In ***Girish Ramchandra Deshpande*** (*supra*), the Supreme Court had examined the question whether the CIC was correct in denying information pertaining to service career, details of assets and liabilities and movable and immovable properties of the respondent therein (who was employed as an enforcement officer) on the ground that the information sought, fell within the scope of 'personal information'. Answering the aforementioned question in the affirmative, the Supreme Court held that the said details sought for, which were denied by the CIC, qualified to be personal information as defined in Clause (j) of Section 8(1) of the Act.

9. In ***Secretary General, Supreme Court of India v. Subhash Chandra Agarwal: AIR 2010 Del 159***, a full Bench of this Court observed that the objective of freedom of information and objective of protecting personal privacy would often conflict when an applicant seeks access to personal information of a third party. The Court held that the Act had recognized the aforesaid conflict and had exempted personal information from disclosure under Section 8(1)(j) of the Act. However, such bar preventing disclosure of personal information could be lifted if sufficient public interest was shown. The relevant extract of the said decision is reproduced below:-

> "114. There is an inherent tension between the objective of freedom of information and the objective of protecting personal privacy. These objectives will often conflict when an applicant seeks access for personal information about a third party. The conflict poses two related challenges for law makers; first, to determine where the balance should be struck between these aims; and, secondly, to determine the mechanisms for dealing with requests for such information. The conflict between the right to personal privacy and the public interest in the disclosure of personal information was recognized by the legislature by

exempting purely personal information under Section 8(1)(j) of the Act. Section 8(1)(j) says that disclosure may be refused if the request pertains 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." Thus, personal information including tax returns, medical records etc. cannot be disclosed in view of Section 8(1)(j) of the Act. If, however, the applicant can show sufficient public interest in disclosure, the bar (preventing disclosure) is lifted and after duly notifying the third party (i.e. the individual concerned with the information or whose records are sought) and after considering his views, the authority can disclose it. The nature of restriction on the right of privacy, however, as pointed out by the learned single Judge, is of a different order; in the case of private individuals, the degree of protection afforded to be greater; in the case of public servants, the degree of protection can be lower, depending on what is at stake. This is so because a public servant is expected to act for the public good in the discharge of his duties and is accountable for them.

115. The Act makes no distinction between an ordinary individual and a public servant or public official. As pointed out by the learned single Judge "----- an individual's or citizen's fundamental rights, which include right to privacy - are not subsumed or extinguished if he accepts or holds public office." Section 8(1)(j) ensures that all information furnished to public authorities – including personal information [such as asset disclosures] are not given blanket access. When a member of the public requests personal information about a public servant, - such as asset declarations made by him – a distinction must be made between personal data inherent to the person and those that are not, and, therefore, affect his/her private life. To quote the words of the learned single Judge "if public servants ---- are obliged to furnish asset declarations, the mere fact that they have to furnish such declaration would not mean that it is part of public activity, or "interest". ----- That the public servant has to make disclosures is a part of the system's endeavour to appraise itself of potential asset acquisitions which may have to be explained properly. However, such acquisitions can be made legitimately; no law bars public servants from acquiring properties or investing their income. The obligation to disclose

> these investments and assets is to check the propensity to abuse a public office, for a private gain." Such personal information regarding asset disclosures need not be made public, unless public interest considerations dictates it, under Section 8(1)(j). This safeguard is made in public interest in favour of all public officials and public servants."

10. There can be no doubt that the information sought by respondent is personal information concerning an employee of MCD. Such information could be disclosed only if respondent could establish that disclosure of such information was justified by larger public interest. Even if the PIO was satisfied that disclosure of such information was justified, the PIO was required to follow the procedure given under Section 11 of the Act; that is, the PIO was required to give a notice to the concerned employee stating that he intends to disclose the information and invite the employee to make submissions on the question whether such information ought to be disclosed.

11. In view of the above, the impugned order directing the disclosure of personal information relating to the employee of MCD cannot be sustained. The impugned order is, accordingly, set aside.

12. MCD has already paid cost of ₹5000/- and this Court does not consider it apposite to direct refund of the same.

13. The petition along with the pending application is disposed of.

VIBHU BAKHRU, J

AUGUST 24, 2017
MK

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 7218/2016**

KAMAL BHASIN ..... Petitioner

Through: In person

versus

RADHA KRISHNA MATHUR & ANR. ..... Respondents

Through: Mr. Ruchir Mishra and Mr. Abhishek Rana, Advocates for UOI

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 01.11.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 05.04.2016 (hereafter 'the impugned order') passed by the Central Information Commission (CIC), whereby the petitioner's second appeal preferred under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act') against the order dated 13.03.2014 passed by the First Appellate Authority (hereafter 'FAA'), was rejected. By the said order dated 13.03.2014, the FAA had in turn rejected the petitioner's appeal against denial of information by the CPIO.

2. The petitioner and several other persons including PFC Officers Association had filed complaints against Sh Satnam Singh, who was then Chairman-cum-Managing Director of M/s Power Finance Corporation Ltd (hereafter 'PFC'). The petitioner sought certain information relating to the manner in which the complaints were dealt with and action taken on the complaints made. His request was denied on the ground that disclosure of such information was exempted by virtue of Section 8(1)(j) of the Act. The

petitioner being aggrieved by the non-disclosure of the information has filed the present petition. Although, the petitioner has also sought information regarding notings in the file etc., the petitioner has restricted his request only for the information regarding the action taken on the complaints. Thus, the limited controversy involved in the present petition is whether the information regarding action taken pursuant to complaints can be denied to the complainant under Section 8(1)(j) of the Act.

3. Briefly stated, the relevant facts necessary to address the present controversy are as under:-

2.1 The PFC Officers Association had filed a complaint dated 03.09.2010 seeking a probe regarding the allegations of irregularities and dubious conduct against the then Chairman-Cum-Managing Director (hereafter 'CMD') of PFC, which was stated to have been forwarded to respondent no.2. One of the principal allegations made against the then CMD of PFC was that he had been running a private limited company, M/s Legendry Legal & Management Services Private Limited, from the residential accommodation leased by PFC. It was alleged that this was impermissible. In addition, it was also alleged that PFC had suffered a loss of about ₹27 crores with regard to settlement of disputes with one of its borrowers which was at the instance of the then CMD. Further, there was also an allegation of sexual harassment against the CMD.

2.2 The petitioner filed an application dated 11.11.2013 seeking information regarding the complaints made and in reference to various letters referred to in the application. Essentially, the petitioner requested for

records, files, notings and action taken report in respect of the complaints against the then CMD as referred to above.

2.3 The CPIO of respondent no.2 responded to the aforesaid request by stating that all complaints (except complaint dated 10.01.2013 which had not been received in the office) were placed before the Group of Officers constituted vide OM No. 15(1)/2010-DPE(GM) dated 11.03.2010 to look into the complaints against Chief Executives and Functional Directors of Public Sector Enterprises, in different meetings and were disposed of . The CPIO declined to provide any further information by referring to the decision of the Supreme Court in ***Girish Ramchandra Deshpande v. CIC : 2013 (1) SCC 212*** and claiming that the information sought was in nature of "personal information" and thus, exempt from disclosure under Section 8 (1) (j) of the Act.

2.4 Aggrieved by the denial of information, the petitioner preferred a first appeal under Section 19 of the Act before the FAA, which was also rejected by an order dated 17.02.2014. Aggrieved by the same, the petitioner preferred a second appeal under Section 19(3) of the Act before the CIC. The said appeal was also rejected by the impugned order and this has led the petitioner to file the present petition.

4. In its rejoinder, the petitioner has clarified that it is not seeking any personal information and "all that the petitioner wants to know is as to what action was taken by the Cabinet Secretariat on the letter dated 02.03.2012 of the Ministry of Power and letters of the petitioner".

5. The learned counsel appearing for respondent no.2 submitted that the

complaints had been placed before the Group of Officers and a decision had been taken to follow the advice for initiating disciplinary proceedings. He stated that as to what happened thereafter is not available with respondent no.2. He also referred to the decision of the Supreme Court in ***Girish Ramchandra Deshpande*** (*Supra*) and stated that memos, show-cause notices and censure/punishment awarded by an employer to his employee is a matter of 'personal information' and is, therefore, exempt from disclosure under Section 8(1)(j) of the Act. In the facts of the present case, the reliance placed on the decision in the case of ***Girish Ramchandra Deshpande*** (*supra*) is misplaced. In that case the petitioner had sought various details regarding an officer (respondent no.3 therein) who was employed as an Enforcement Officer in the Sub-Regional Office, Akola. The information sought included the details of his appointment, salary, information regarding his promotion, show cause notice and censure issued to him, copies of his income tax returns, assets and liabilities etc. A bare perusal of the information sought clearly indicated that disclosure of such information would be a serious invasion to the privacy of the employee concerned. It is in this context that the Supreme 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 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.

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 Section8(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."

6. In the present case, the petitioner stands as a relator party as he is also one of the complainants. The petitioner is not seeking any personal information regarding respondent no.3, but merely seeks to know the outcome of the complaint made by him and other such complaints. The PFC Officers Association had pointed out certain conduct which according to them was irregular and warranted disciplinary action; thus, they would be certainly entitled to know as to how their complaints have been treated and

the results thereof.

7. Section 8 (1) (j) of the Act reads as under:-

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

8. It is apparent from the plain reading of the aforesaid clause that in order to claim exemption from disclosure of any information, the essential conditions that must be satisfied are: (i) that it is personal information the disclosure of which has no relationship to any public activity or interest; or (b) that it would cause unwarranted invasion of the privacy of the individual. However, even if the aforesaid conditions are satisfied, the Central Public Information Officer or the State Public Information Officer or the Appellate Authority may disclose the information if they are satisfied that the larger public interest justifies the disclosure of such information.

9. The proviso of Section 8 (1) of the Act is also important and reads as under:

> " Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to

any person."

10. By virtue of the aforesaid proviso to Section 8(1) of the Act, it is enacted that information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. In the present case, it was doubtful whether information as to the fate of the complaints can be considered as personal information that has no relationship with public interest or public activity. The activity of the Central Vigilance Department includes investigation and taking action in cases of corruption. Secondly, the complaint related to the allegations of misconduct and how these complaints were treated were clearly matter of public interest.

10. In the circumstances, this Court directs the respondent to disclose to the petitioner as to what action had been taken pursuant to his complaint and other similar complaints made against the then CMD. The petitioner would not be entitled to any notings and deliberations of the Group of Officers or Disciplinary Authority but only information as to what action was taken in relation to the complaints in question.

11. Let the said information be provided within a period of four weeks from today.

12. The petition is disposed of with the aforesaid direction.

VIBHU BAKHRU, J

NOVEMBER 01, 2017
pkv

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 29.01.2018

\+ **W.P.(C) 5057/2015**

SATPAL ..... Petitioner

Versus

CENTRAL INFORMATION COMMISSION & ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Dr Vijendra Mahndiyan and Ms Pallavi Awasthi.

For the Respondents :

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 13.11.2014 passed by the Central Information Commission (hereafter 'the CIC'), whereby the information sought by the petitioner was denied on the ground that the same was in the nature of personal information and was exempted under section 7(9), 8(1)(e) and 8(1)(j) of the Right to Information Act, 2005 (hereafter 'the Act').

2. Briefly stated, the relevant facts necessary to address the controversy involved in the present petition are as under:-

2.1 The petitioner filed an application under the Act seeking caste certificates of the employees who were promoted from Group D to Group C under the reserved category of SC/OBC. By the letter dated 28.03.2013, the aforesaid information was denied by the CPIO, Executive Director (Southern Region), Air India (respondent no.2) on the ground that it relates to personal information and, thus, was exempt from disclosure under Section 8(1)(j) of the Act.

2.2 In the meanwhile, the petitioner filed another application (the second application) dated 05.04.2013. The information sought by the petitioner therein was denied by respondent no.3 by a letter dated 30.04.2013, on the ground that the same was exempted from its disclosure under section 8(1)(e) of the Act.

2.3 Thereafter, on 03.06.2013, the petitioner filed an appeal under section 19 of the Act, before the First Appellate Authority (FAA) against the response dated 28.03.2013. On the same day, the petitioner also filed another application (the third application) with respondent no.2 seeking the same information as was sought by the earlier two applications.

2.4 The appeal preferred by the petitioner was disposed of by the FAA by an order dated 13.06.2013. The petitioner's application (the third application) dated 03.06.2013 was also rejected by a communication dated 03.07.2013.

2.5 The petitioner preferred another appeal to the FAA against the communication dated 30.04.2013. The appeal was disposed of by an

order dated 17.07.2013, whereby the decision to deny the information sought by the petitioner was upheld.

2.6 Aggrieved by the denial of information, the petitioner preferred a second appeal under section 19(3) of the Act impugning the order dated 17.07.2013 passed by the FAA. The petitioner also filed an appeal before the FAA against the order dated 13.06.2013. This appeal was not considered and therefore the petitioner preferred another second appeal to the CIC.

2.7 The aforesaid appeals were disposed by the CIC by a common order dated 13.11.2014 (hereafter 'the impugned order'); the CIC concurred with the CPIO that the information sought by the petitioner is exempt from disclosure, as no larger public interest is involved. The relevant extract of the impugned order is set out below:-

> "As per the appellant, he requires this information in public interest. The commission has perused the definition of 'Public Interest' mentioned in Stroud's Judicial Dictionary. Volume 4 (IV Edition). The same is reproduced below:-
>
> *"a matter of public or general interest does not mean that which is interesting as gratifying curiosity or love of information or amusement but that in which a class of community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."*
>
> In the instant case, the appellant, except for stating that he is seeking this information in public interest, has established the same. As per the above definition, he has neither established a class/community having a

pecuniary interest or interest by which their legal right/liabilities are affected.

xxxx xxxx xxxx

It is fairly obvious that the caste and educational certificates of an employee are in the of personal information about a third party. The employee might have filed these documents before the appointing authority for the purpose of seeking employment, but that is not reason enough for this information to be brought in to the public domain to which anybody could have access."

3. The principal question that falls for consideration of this Court is whether the caste certificates submitted by employees for seeking the benefit of reservations in favour of OBC Category are exempt from disclosure under Section 8 (1)(e) & 8(1)(j) of the Act.

4. Section 8(1)(e) & 8(1)(j) of the Act reads 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

(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;

xxxx xxxx xxxx xxxx

(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."

5. It is apparent from the plain language of Clause (e) of Section 8 (1) of the Act that only such information which is available to a person in a fiduciary relationship is exempt from disclosure. In ***Central Board of Secondary Education v. Aditya Bandopadhyay & Ors***: ***(2011) 8 SCC 497***, the Supreme Court considered the question whether an examining body holds evaluated answer books in a fiduciary relationship and consequently exempt from disclosure under Section 8(1)(e) of the Act. The Supreme Court referred to various decisions explaining the term "fiduciary" and "fiduciary relationship" and held as under:-

> "39. 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.
>
> 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."

6. It is apparent from the above that personal information or details submitted by an employee to an employer for the purposes of his employment are expected to be kept confidential. Plainly, the same cannot be available to all and sundry. However, if the competent authority is satisfied that a larger public interest warrants the disclosure of such information, the same can be disclosed, notwithstanding, that the same was available with the person in a fiduciary capacity.

7. It can hardly be disputed that the information relating to the caste of a person would also fall within the definition of "personal information" and, thus, this would also be exempt from disclosure under Section 8(1)(j) of the Act.

8. At this stage, it is also important to note that even though the information available to any person in a fiduciary capacity is exempt from disclosure in terms of Section 8(1)(e) of the Act; the said exemption is not absolute. If the competent authority is satisfied that a larger public interest warrants disclosure of such information, the same would have to be disclosed. The width of the exclusionary provision of Section 8(1)(e) of the Act does not extend to information, the disclosure of which is warranted in public interest.

9. Similarly, in terms of Section 8(1)(j) of the Act, the personal information which is otherwise exempt from disclosure, can be disclosed if a larger public interest justifies such disclosure.

10. In the present case, respondent no.1 has not indicated any material to justify that disclosure of the information sought by the petitioner is warranted in larger public interest.

11. In this view, this Court finds no reason to interfere with the impugned order. However, it is clarified that if the petitioner is able to establish any special circumstances which would warrant disclosure of information sought by him in larger public interest, he would be at liberty to approach the concerned CPIO for such information. Merely stating that disclosure of the information sought would be in the

interest of transparency and, thus, in public interest is plainly insufficient.

12. The petition is disposed of with the aforesaid directions. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JANUARY 29, 2018
pkv/**RK**

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 09.07.2013**

\+ **W.P.(C) 906/2012 and CM No.2025/2012**

ALLAHABAD BANK ..... Petitioner

Through:Mr.Rajesh Kumar, Advocate

versus

NITESH KUMAR TRIPATHI ..... Respondent

Through: None

AND

\+ **W.P.(C) 1191/2012 and CM No.2578/2012**

ALLAHABAD BANK ..... Petitioner

Through:Mr.Rajesh Kumar, Advocate

versus

GYANENDER KUMAR SHUKLA ..... Respondent

Through: None

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

In WP(C) No.906/2012, the respondent before this Court filed an application seeking certain information, including details of the assets declared by all officers above Scale-III of the petitioner bank. The said application was responded by the CPIO of the petitioner bank on 12th August, 2011. However, even before receipt of

the reply from the CPIO, the respondent had already preferred an appeal before the first Appellate Authority. Vide order dated 26th August, 2011, the First Appellate Authority noticing that the appeal had been preferred even before disposal of the application by CPIO, directed that a copy of the reply of the CPIO be sent to the appellant before him. In compliance of the said order, the petitioner bank provided a copy of its earlier decision to the respondent vide its letter dated 5th September, 2011. The respondent before this Court preferred a Second Appeal before the Central Information Commission and also made a complaint to it under Section 18 of the RTI Act. Vide impugned order dated 1st February, 2012, the Commission, inter alia, directed as under:-

> "….. Therefore we can state that disclosure of information such as assets of a Public servant, which is routinely collected by the Public authority and routinely provided by the Public servants, - cannot be construed as an invasion on the privacy of an individual. There will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone-tapping. Any other exceptions would have to be specifically justified. Besides the Supreme Court has clearly ruled that even people who aspire to be public servants by getting elected have to declare their property details. If people who aspire to be public servants must declare their property details it is only

> logical that the details of assets of those who are public servants must be considered to be diclosable. Hence the exemption under Section 8(i)(j) cannot be applied in the instant case."

Being aggrieved from the order passed by the Commission, the petitioner is before this Court by way of this petition.

2. In WP(C) No.1191/2012, the respondent before this Court preferred an appeal under Section 19 of the RTI Act before the First Appellate Authority alleging therein that no information had been supplied to him pursuant to his application dated 18/19 May, 2011, though the statutory period of 30 days had already expired. The First Appellate Authority, vide its letter dated 19th August, 2011 informed the respondent that no such application had actually been received by their PIO. Thereupon, the respondent made a complaint dated 18th August, 2011 to the Central Information Commission alleging therein that no information had been provided to him pursuant to his application dated 18th May, 2011 addressed to the CPIO of the petitioner bank. A copy of the said complaint was forwarded to the petitioner by the Under Secretary of the Commission for giving its explanation in the matter. On receipt of the copy of the complaint of the respondent, the CPIO of the petitioner responded by its communication dated 1st October, 2011. However, the information with respect to assets and liabilities of the officers in Gramin Bank, Triveni, Gramin Bank, Head Office Orrai and

Allahabad UP Gramin Bank, Head Office Banda was not supplied to the respondent. The said complaint was disposed of by the Commission, vide its order dated 10th February, 2012. During the course of hearing of the complaint, the Commission noted the contention of the petitioner that it had supplied the required information except the information with respect to the assets and liabilities of the employees and details of the TA Bills. The Commission, vide impugned order dated 10th February, 2012 directed the PIO of the petitioner bank to provide information as about assets to the complainant.

3. Thus, the only question involved in these petitions is whether the information with respect to the assets and liabilities which an employee furnishes to his employer can be directed to be disclosed under RTI Act.

Section 8(1) (j) of the Act reads as under:-

> " (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."

It would, thus, be seen that an information which has no relationship to any public activity or interest of the employee concerned or which would cause some unwarranted invasion of the privacy of the individual cannot be directed to be disclosed unless the CPIO/PIO or the Appellate Authority is satisfied that larger public interest justifies the disclosure of such information.

4. The question whether information with respect to the assets and liabilities of an employee exempted under Section 8(1)(j) of the Act or not came up for consideration before the Apex Court in **Girish Ramchandra Deshpande Vs. Cen. Information Commr. and Ors. (2013) 1 SCC 212.** In the case before the Supreme Court, the Commission had denied details of the assets and liabilities, movable and immovable property of an employee on the ground that the information sought qualified to be 'personal information;, as defined in Clause (j) of Section 8 (1) of the Act. Aggrieved by the order passed by the Commission, the appellant before the Supreme Court, preferred a writ petition which came to be dismissed by the Single Judge. An appeal preferred by him was also dismissed by a Division Bench of the High Court. Being aggrieved form the order passed by the Division Bench, he approached the Apex Court by way of Special Leave. Dismissing the Special Leave Petition, the Apex Court, inter alia, held as under:-

> "…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."

5. It would, thus, be seen that the information with respect to the assets and liabilities of an employee, which he discloses to his employer in compliance of the Service Rules applicable to him qualifies as personal information within the meaning of Section 8(1)(j) of the Act and such information cannot be directed to be disclosed unless the CPIO/PIO/Appellate Authority is satisfied that larger public interest justifies disclosure of such information. It goes without saying that such satisfaction needs to be recorded in writing before an order directing disclosure of the information can be passed. A perusal of the impugned orders would show that in neither of these cases, the Commission was satisfied that larger public interest justified disclosure of the information sought by the applicant/respondent. Without being satisfied that larger public interest justified disclosure of the information sought in this regard, the Commission could not have passed an order directing disclosure of information of this nature. The orders passed by Central Information Commission are, therefore, liable to be set aside on this ground alone. The impugned orders are accordingly set aside.

The writ petition stands disposed of. There shall be no orders as to costs.

6. The petitioner had deposited Rs.5000/- each which could be incurred by the respondent. Since the respondent has not put in appearance despite service, there will be no justification for paying the said amount to him. It is, therefore, directed that the aforesaid amount shall be deposited by the Registry with Delhi High Court Legal Services Committee.

V.K. JAIN, J

JULY 09 , 2013
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 394/2012

ORIENTAL BANK OF COMMERCE ..... Petitioner

Through: Mahabir Singh Kasana, Advocate

versus

SUNITA SHARMA ..... Respondent

Through: Mr. Pardeep Dhingra and Mr. Varun Chandiok, Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

30.01.2013

1. This writ petition has been filed to assail the order of the Central Information Commission (in short CIC) dated 30.12.2011.

2. The petition has been filed in the background of the following facts :-

2.1 The respondent who is the employee of the petitioner bank had filed an application on 23.05.2011 seeking the following information :-

?..The copy of final annual performance appraisal along marks awarding details of the rating and the reviewing authorities of all the branch incumbents of your region for the year 2008-2009 and 2009-2010...?

2.2 The CPIO of the petitioner-bank, however, vide order dated 10.06.2011 denied the information to the respondent on the ground that it pertained to a third party and hence was exempted from disclosure under section 8(1)(j) of the Right to Information Act, 2005 (in short RTI Act).

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2.3 The respondent, it appears approached the CIC directly against the order of the CPIO, whereupon the CIC vide order dated 10.08.2011 remanded the matter for consideration by the First Appellate Authority, in accordance with, Section 19 of the RTI Act.

2.4 Accordingly, the petitioner approached the First Appellate Authority. Vide order dated 19.09.2011, the First Appellate Authority rejected the appeal and sustained the order of the CPIO.

2.5 Being aggrieved, the petitioner filed an appeal with the CIC. By virtue of the impugned order dated 30.12.2011, the CIC has disposed of the appeal directing that the information sought by the respondent ought to be given to her.

3. Undoubtedly, the information sought by the respondent pertains to annual performance of her colleagues, which is a third party information. This court in the case of Arvind Kejriwal Vs. Central Public Information

Officer, Cabinet Secretariat, 172 (2010) DLT 124 had an occasion to deal with the similar issue. The court after analysing the arguments raised before it made the following crucial observations :-

21. This Court has considered the above submissions. It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would be a defense available to a person about whom information is being sought. Such defence could be taken by a third party in a proceeding under Section 11(1) when upon being issued notice such third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there

W.P.(C) 394/2012 page 2 of 4

cannot be a disclosure of information pertaining to or which relates to. such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a given case.

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-a-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

W.P.(C) 394/2012 page 3 of 6

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??

3.1 The aforementioned judgment of the Single Judge was challenged before the Division Bench. The Division Bench vide judgment dated 30.09.2011 passed in LPA No.719/2010 dismissed the appeal. Also see the judgment of the Division Bench of this court in R.K. Jain Vs. Union of India; dated 20.04.2012, passed in LPA No.22/2012.

4. An argument was raised that some parts of the information was released to certain other persons employed with the petitioner who were similarly circumstanced as the respondent herein. During the course of the argument, learned counsel for the respondent says that this was information pertaining to marks awarded qua interviews by the authority

tasked with the job of selecting candidates in the post of Manager Scale-II for the year 2008-2009 and 2009-2010. It was, therefore, argued that, all that the respondent required was, marks awarded to her compatriots, who were assessed alongwith the respondent for the years 2008-2009 and 2009-2010 for the post of Manager Scale II; as appearing in their respective ACRs. In other words, the argument was, since some part of the information had been supplied to the other persons, without adhering to the rigour of Section 11 of the RTI Act, the remaining information could also be supplied to the respondent.

5. This was the precise argument which was raised before the learned

W.P.(C) 394/2012 page 4 of 6

Single Judge in the case of Arvind Kejriwal (supra). The learned Judge repelled this contention by observing that mere fact that inspection of certain files was permitted without following the mandatory procedure provided under section 11(1) of the RTI Act, the said procedure could not be waived (see para 24 to 26 of the said judgment).

6. In view of the observations of this court, the impugned judgment of the CIC has to be reversed. It is ordered accordingly. As observed by a Single Judge of this court that it is not as if the information is completely exempt, all that the holder of information in this case, the petitioner-bank would have to do is, to follow the procedure under Section 11 of the RTI Act. Notice will have to be given to third parties to whom such information is related to.

7. For this purpose, the respondent would have to move an application before the petitioner-bank who would then issue notice to the third party and after hearing the third party, a decision would be taken by the concerned CPIO. The third party would be entitled to plead the defence of privacy; the petitioner-bank may for good reason over rule such defence. As observed by the learned Judge in the aforementioned judgment, it is open to disclose the information if the public interest outways the objections of the third party to the disclosure of information.

8. Therefore, while setting aside the impugned order of the CIC dated 30.12.2011, it would be in order to permit the respondent to move an appropriate application under Section 11 for disclosure of information whereupon the petitioner-bank will take the consequential steps in the matter

W.P.(C) 394/2012 page 5 of 6

in accordance with law. It is ordered accordingly.

9. I may only note that an argument was advanced that the information sought, pertained to the colleagues of the petitioner and hence did not fall within the ambit of the expression ?third party?. It also was sought to be contended that unless such information was supplied, no comparative assessment could be made as to whether or not the petitioner was unfairly treated i.e., downgraded. In my opinion, there is no reason why the expression third party appearing in Section 11 should be read to include only those who are unconnected with the concerned organisation, which is, the repository of information. Therefore, this submission is clearly unmerited. However, what could perhaps be said in favour of the respondent is that, when the repository of information, in this case the petitioner, is required to consider the aspect of public interest, it will take a view as to whether denial of information will impinge upon public weal.

10. With the aforesaid directions, the writ petition is disposed of.

RAJIV SHAKDHER, J

JANUARY 30, 2013

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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 23rd March, 2012**

\+ **LPA No. 900/2010**

BHARAT SANCHAR NIGAM LTD. ..... Appellant
Through: Mr. Sameer Agarwal, Advocate

Versus

SHRI CHANDER SEKHAR ..... Respondent
Through: Mr. Surinder Bir, Advocate.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the judgment dated 03.05.2010 of the learned Single Judge dismissing W.P.(C) No.2946/2010 preferred by the appellant. The said writ petition was preferred impugning the order dated 10.11.2009 of the Central Information Commission (CIC) allowing the appeal filed by the respondent and directing the appellant to disclose the information sought.

2. The appellant had floated a tender titled 'GSM Phase-VI' for the installation of 93 million GSM lines in four parts. M/s KEC International Ltd. was one of the bidders in the said tender. The respondent, claiming to be one of the shareholders of the said KEC International Ltd., on 02.07.2009 applied under the provisions of the Right to Information Act, 2005 seeking the following information:

"a. Copy of the complete Report of Evaluation of Tender on the Financial Bids received from various bidders against Part 3 of Tender No. IMPCS/PHASE VI/WZ/CGMT-MH/2008-09/1 dated 01.05.2009 opened on 28.02.2009 for West Zone;

b. Copy of the complete Report of Evaluation of Tender on the Financial Bids received from various bidders against Part 3 of Tender No.CTD/IMPCS/TENDER/ PHASE VI/2008-09 dated 01.05.2009 opened on 28.02.2009 for East Zone;

c. Copy of the complete Report of Evaluation of Tender on the financial Bids received from various bidders against Part 3 of Tender No. CMTS/PB/P&D/PHASE VI/25M/TENDER/2008-09 dated 01.05.2009 opened on 28.02.2009 for North Zone;

d. Copy of the complete Report of Evaluation of Tender on the Financial Bids received from various bidders against Part 3 of Tender No. TA/Cellone/SZ/2008/01 dated 01.05.2009 opened on 28.02.2009 for South Zone."

The respondent further claimed that by then the financial bids had been opened in February, 2009 and evaluation thereof was over.

3. The CPIO of the appellant vide letter dated 30.07.2009 declined the request of the respondent for information on the ground that the information

sought was of "commercial confidence" in nature and claiming exemption from disclosure under Section 8(1)(d) of the Act.

4. The respondent preferred first appeal contending that, the appellant was a Government of India enterprise carrying on works in public interest, utilizing government funds; that the tenders were open tenders; the financial bids were already read out to other bidders at the time of opening of the bids and nothing confidential remained therein; that the bidding process having attained finality, no issues of commercial confidence remained. The first appellate authority however vide order dated 08.09.2009 confirmed the order of the CPIO, also for the reason of the appellant having signed Non Disclosure Agreements with all the participating vendors and the disclosure of the information sought being in violation of the said agreement.

5. The CIC in its order dated 10.11.2009 allowing the appeal of the respondent observed / held, i) that the evaluation process stood completed and thus the commercial position of any of the bidders could not be adversely affected by such disclosure; ii) the exemption under Section 8(1)(d) of the Act is not available since the information was already in public domain owing to the finalization and completion of the bidding process and evaluation and cannot pose a threat to the competitive position of any of the bidders; iii) it was in the larger public interest to disclose such information; iv) that the Non Disclosure Agreements were valid only for the "Confidentiality Period" i.e. till the opening of the bids; v) even otherwise such Non Disclosure Agreements debarring access to information and thereby disrupting the transparency and accountability of the public authority were in violation of the very spirit of the Act and therefore illegal

to the extent they prevented disclosure beyond what was exempted under the Act; vi) that thus the Non Disclosure Agreements if prevented disclosure beyond the confidentiality period also, were illegal; vii) that the public interest "far outweighs the weak contentions put up by the appellant to protect the so called private interests"; viii) that even though the tender process had been challenged in some of the High Courts but the same also did not entitle the appellant to exemption. Accordingly, directions for disclosing the information were issued.

6. The learned Single Judge dismissed the writ petition preferred by the appellant impugning the order aforesaid of the CIC observing / holding, a) that the writ petition filed by KEC International Ltd. impugning the tender process had been finally dismissed by the Supreme Court finding no illegality in the decision making process and declaring the party which was awarded the contract as the lowest bidder – thus the objection to disclosure of information on the ground of the matter being *sub judice* did not survive; b) that the plea of the appellant of the confidentiality period as per the Non Disclosure Agreements being in vogue for the reason of the formal contract having not been entered into with the successful bidder was of no avail since the bidding process was complete and the selection of the successful bidder stood finalized; c) again for the reason of the bidding process having stood completed, the question of the commercial interest of any of the bidders being adversely affected by the disclosure did not arise; d) Section 22 of the Act gives effect to the provisions of the Act 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 the RTI Act - consequently the Non Disclosure Agreements cannot be used by the appellant to defeat the right to information under the Act; e) even otherwise the Non Disclosure Agreements cannot be said to extend beyond the confidentiality period defined in the agreement itself as the period between the opening of the tender and the finalization of the bids.

7. It was the contention of the appellant before this Bench that the bids in the tender aforesaid had never been given the shape of the contract and had been cancelled. This Bench before issuing notice of the appeal directed the filing of an affidavit in this regard by the Chairman of the appellant. An affidavit dated 24.01.2011 has been filed informing that the bids were evaluated and L1, L2 etc. selected for Part-III and price negotiations held with L1; that after negotiations the rates were recommended by the Negotiation Committee to the competent authority for finalization / approval; that since the case pertaining to GSM Phase-VI was being examined qua the allegation of irregularity, the competent authority in its wisdom cancelled / scrapped the tender; as a result of the scrapping, no contract came into existence and even the Advance Purchase Order was not issued; that thus no question of giving any kind of information arose; that making public the confidential information of the tenderers particularly in view of signing of the Non Disclosure Agreements would certainly affect the goodwill of the appellant and would result in reduction in number of participating vendors / tenderers in subsequent tenders floated by the appellant and which would further result in monetary loss as due to reduction in competition there would be an increase in prices.

8. The appellant during the hearing has placed reliance on judgment of this Court in ***Exmar NV Vs. Union of India*** 2006 (1) RAJ 229 (DB) on the aspect of when the contract can be said to be concluded. It has further been contended that the learned Single Judge has failed to notice Clause 18 of the Non Disclosure Agreement whereunder the obligations of confidentiality were to survive the expiration or termination of the agreement, for a period of two years from the date the confidential information was disclosed or the completion of business purpose, whichever is later. It is yet further urged that the learned Single Judge has wrongly assumed that the contract stood awarded to the successful bidder.

9. Per contra, the respondent in the reply filed to the appeal has pleaded that the appellant inspite of numerous representations and Court cases averring irregularities, stonewalled and did not come clean; that ultimately on representations to the Prime Minister's Office, a High Powered Committee was constituted which found irregularities in the evaluation process and recommended the scrapping of the tender; that the objection of the appellant to disclosure of information is not for protection of the commercial and confidential information furnished by any of the bidders but to safeguard its own misdeeds during the evaluation process; that the Non Disclosure Agreements signed by the appellant with the bidders are contrary to the spirit of the Act and illegal; that the reluctance of the appellant to disclose information relating to the tender which had already been scrapped was incomprehensible; that the commercial confidentiality of bids is over once the financial bids are opened and prices of all items of all the bidders including other details are disclosed to all the bidders; that in fact in one of

the writ petitions aforesaid in other High Courts challenging the tender such information had already been brought in public domain. The counsel for the respondent during the hearing has also relied on the judgment dated 02.07.2009 of the High Court of Punjab & Haryana in W.P.(C) No.9474/2009 titled ***Nokia Siemens Networks Pvt. Ltd. Vs. Union of India*** and on ***Canara Bank Vs. The Central Information Commission*** AIR 2007 Kerala 225. He has also drawn attention to the proviso after Section 8(1)(j) of the Act laying down that the information which cannot be denied to the Parliament or State Legislature shall not be denied to any person. It is contended that the information aforesaid cannot be denied to the Parliament and hence the exemptions provided in Section 8(1) of the Act would not be attracted.

10. We, at the outset, deem it appropriate to discuss the issue generally as the same is likely to arise repeatedly. Confidentiality or secrecy is the essence of sealed bids. The same helps the contract awarding party to have the most competitive and best rates / offer. The essential purpose of sealed bidding is that the bids are secret bids that are intended by the vendor and expected by bidders to be kept confidential as between rival bidders until such time as it is too late for a bidder to alter his bid. Sealed bidding means and must be understood by all those taking part in it to mean that each bidder must bid without actually knowing what any rival has bid. The reason for this, as every bidder must appreciate, is that the vendor wants to avoid the bidders bidding (as they would do in open bidding such as at an auction) by reference to other bids received and seeking merely to top those bids by the smallest increment possible. The vendor's object is to get the bidders to bid

"blind" in the hope that then they will bid more than they would if they knew how far other bidders had gone. Additionally, from each bidder's point of view his own bid is confidential and not to be disclosed to any other bidder, and he makes his bid in the expectation, encouraged by the invitation to submit a sealed bid, that his bid will not be disclosed to a rival. If, therefore, a rival has disclosed to him by the vendor the amount of another's bid and uses that confidential information to pitch his own bid enough to outbid the other, this is totally inconsistent with the basis on which each bidder has been invited to bid, and the rival's bid is not a good bid; likewise if the rival adopts a formula that necessarily means that he is making use of what should be confidential information (viz. the bid of another) in composing his own bid. In such a case, the amount of the other's bid is being constructively divulged to him. The process of inviting tenders has an element of secrecy − since nobody knows what would be the bid of the competitor, every one will try to show preparedness for the best of the terms which will be acceptable to the institution calling the tenders. This requires ensuring that the tenders are not tampered with, the offers are not leaked to another bidder or even to the officers of the institution for which the tenders are called. Secret bids thus promote competition, guard against favouritism, improvidence, extravagance, fraud and corruption and lead to award of contract, to secure the best work at the lowest price practicable.

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

institution to evaluate the suitability and reliability of the contracting party. The bidders are often required to, in their bids disclose information about themselves, their processes, turnover and other factors which may help the tender calling institution to evaluate the capability of the bidder to perform the contracted work. The secret bids/tenders are often divided into technical and financial parts. The bidders in the technical part may reveal to the tender calling institution their technology and processes evolved and developed by them and which technology and processes may not otherwise be in public domain and which the bidder may not want revealed to the competitors and which technology/processes the bidder may be using works for the other clients also and which technology/processes if revealed to the competitors may lead to the bidder losing the competitive edge in subsequent awards of contracts. If it were to be held that a bidder by virtue of participating in the tender becomes entitled to all particulars in the bids of all the bidders, the possibility of unscrupulous businessmen participating in the tender merely for acquiring such information, cannot be ruled out. Such disclosure may lead to the competitors undercutting in future bids. We may at this stage notice that the Freedom of Information Act prevalent in United States of America as well as the Freedom of Information Act, 2000 in force in United Kingdom, both carve out an exception qua trade secrets and commercial or financial information obtained from a person and which is privileged or confidential. The tests laid down in those jurisdictions also, is of 'if disclosure of information is likely to impair government's ability to obtain necessary information in future or to cause substantial harm to competitive position of person from whom information is obtained'. It has been held

that unless persons having necessary information are assured that it will remain confidential, they may decline to cooperate with officials and the ability of government to make intelligent well-informed decisions will be impaired. Yet another test of whether the information submitted with the bids is confidential or not is of 'whether such information is generally available for public perusal' and of whether such information 'is customarily made available to the public by the business submitter'. If it is not so customarily made available, it is treated as confidential.

12. Though the report of the appellant of evaluation of tenders, is a document of the appellant but the evaluation therein is of the tenders of the various bidders and the report of evaluation may contain data and other particulars from the bids and which data/particulars were intended to be confidential. If any part of the bids is exempt from disclosure, the same cannot be supplied obliquely through the disclosure of evaluation report.

13. What thus emerges is that a balance has to be struck between the principle of promoting honest and open government by ensuring public access to information created by the government on the one hand and the principle of confidentiality breach whereof is likely to cause substantial harm to competitive position of the person from whom information is obtained and the disclosure impairing the government's ability to obtain necessary information in future on the other hand. Also, what has been discussed above may not apply in a proceeding challenge wherein is to the evaluation process. It will then be up to the Court before which such challenge is made, to decide as to what part of the evaluation process is to be disclosed to the challengers.

14. Questions also arise as to the information contained in the bids / tenders of the unsuccessful tenderers. Often it is found that the same is sought, to know the method of working and to adversely use the said information in future contracts. Generally there can be no other reason for seeking such information.

15. Once we hold that the information of which disclosure is sought relates to or contains information supplied by a third party and which the third party may claim confidential, the third party information procedure laid down in Section 11 of the Act is attracted. The said aspect has not been considered either by the CIC or by the learned Single Judge.

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

process, of commercial confidence and containing trade secret or intellectual property of the bidders whose bids were evaluated.

17. Though in the light of the view taken by us hereinabove, the question of validity of the agreement need not to be adjudicated but since we have heard the counsels, we deem it our duty to adjudicate upon the said aspect also. Section 22 of the Act relied on by the learned Single Judge though giving overriding effect to the provisions of the Act still saves the instruments "having effect by virtue of any law other than this Act". This Court in ***Vijay Prakash v. Union of India*** AIR 2010 Delhi 7 has held that though Section 22 the Act overrides other laws, the opening non-obstante clause in Section 8 confers primacy to the exemptions enacted under Section 8(1). Thus, once the information is found to be exempt under Section 8(1), reliance on Section 22 is misconceived. Whether the information is of such nature as defined in Section 8(1)(d) of the Act, can be adjudicated only by recourse to Section 11 of the Act.

18. We however do not deem it necessary to adjudicate on the proviso after Section 8(1)(j) of the Act and leave the same to be adjudicated in an appropriate proceedings. We may however notice that a Division Bench of the Bombay High Court in ***Surupsingh Hrya Naik Vs. State of Maharashtra*** AIR 2007 Bombay 121 has held that the proviso has been placed after Section 8(1)(j) and would have to be so interpreted in that context and the proviso applies only to Section 8(1)(j) and not to other sub-sections.

19. The appeal is therefore partly allowed. The matter is remanded back to the CIC. If the respondent is still desirous of the information sought, the CIC shall issue notice to the parties whose bids are evaluated in the evaluation process information qua which is sought by the respondent and decide the request of the respondent after following the procedure under Section 11 of the Act.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 23, 2012
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 903/2013

THDC INDIA LTD ..... Petitioner
Through: Mr. Neeraj Malhotra with Mr. Prithu Garg, Advs.

versus

R.K.RATURI ..... Respondent
Through: Mr. R.K. Saini, Adv.

% Date of Decision : 08th July, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present writ petition has been filed challenging the order dated 04th January, 2013 passed by the Central Information Commission (for short 'CIC') whereby the petitioner has been directed to provide photocopies of the DPC proceedings including the comparative grading statement pertaining to the recommended candidates as well as ACRs of the appellant himself for the period mentioned by him in his RTI application.

2. The relevant portion of the impugned order is reproduced hereinbelow:-

> *"4. We have carefully considered the contents of the RTI application and the response of the CPIO. The objective of the Right to Information (RTI) Act is to bring about*

transparency in the functioning of the public authorities. All decision making in the government and all its undertakings must be objective and transparent. It is only by placing the details of all decision making in the public domain that such objectivity and transparency can be ensured. Therefore, we do not see any reason why the DPC proceedings, specially, the comparative gradings of those recommended for promotion should not be disclosed. It is not at all correct to claim that such information is held in a fiduciary capacity. After all, the DPC operates as a part of the administrative decision making process in any organisation. The material that it considers is also generated within the organisation. Therefore, it is not correct to say that the DPC proceedings including the recommendations made by it can be said to be held by the public authority in a fiduciary capacity. About the ACRs of the Appellant, the Supreme Court of India has already held that the civilian employees must be allowed access to their confidential rolls, specially when these are held out against them in the matter of their career promotion. Following the Supreme Court order, the Department of Personnel and Training, we understand, has already issued a circular for disclosure of ACR."

3. Mr. Neeraj Malhotra, learned counsel for the petitioner submits that the impact of the impugned order passed by CIC is that the petitioner would be required to give information pertaining to DPC proceedings including the comparative grading statement pertaining to the recommended candidates, which information is excluded under the provisions of Sections 8(1)(e) and 8(1)(j) of the RTI Act. He emphasizes that the information directed to be released pertaining to other employees of the petitioner is being held by the petitioner in fiduciary capacity and would amount to disclosure of personal information.

4. Sections 8(1)(e) and 8(1)(j) of the RTI Act are reproduced hereinbelow:-

> *"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*
>
> *(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;*
>
> *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."*

5. Mr. Malhotra also submits that as some of the information sought for pertains to third party, provisions of Sections 11(1) and 19(4) of the RTI Act would be applicable. Sections 11(1) and 19(4) of the RTI Act are reproduced hereinbelow:-

> *"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.

xxx xxx xxx

19. Appeal.-

xxx xxx xxx

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party."

6. On the other hand, Mr. Saini, learned counsel for the respondent submits that it is difficult to comprehend that any public interest would be served by denying information to the respondent with regard to DPC proceedings including the comparative grading statements pertaining to the

recommended candidates as also photocopy of respondent's ACR containing the remarks of the reporting and the reviewing officers as well as accepting authority.

7. Mr. Saini points out that the respondent himself is a Government servant working in the same corporation and was considered by the selection committee for promotion in the said DPC proceedings. Hence, according to him, the respondent has a right to seek information regarding DPC proceedings including the comparative grading statements pertaining to the recommended candidates.

8. In support of his submission, Mr. Saini relies upon a judgment of the Supreme Court in ***Dev Dutt v. Union of India and Others (2008) 8 SCC 725*** wherein it has been held as under:-

> *"36. 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."*

9. Mr. Saini lastly submits that there is no question of compliance of pre-condition and pre-requisite of Section 11(1) read with Section 19(4) of

the RTI Act.

10. Having heard learned counsel for the parties, this Court finds that in the case of ***Arvind Kejriwal v. Central Public Information Officer AIR 2010 Delhi 216***, a Coordinate Bench of this Court has held that service record of a Government employee contained in the DPC minutes/ACR is "personal" to such officer and that such information can be provided to a third party only after giving a finding as regards the larger pubic interest involved. It was also held in the said judgement that thereafter third party procedure mentioned in Section 11(1) of the RTI Act would have to be followed. The relevant portion of the judgment in ***Arvind Kejriwal*** is reproduced hereinbelow:-

> *"21. This Court has considered the above submissions. It requires to be noticed that under the RTI Act information that is totally exempt from disclosure has been listed out in Section 8. The concept of privacy is incorporated in Section 8(1)(j) of the RTI Act. This provision would be a defense available to a person about whom information is being sought. Such defence could be taken by a third party in a proceeding under Section 11(1) when upon being issued notice such third party might want to resist disclosure on the grounds of privacy. This is a valuable right of a third party that encapsulates the principle of natural justice inasmuch as the statute mandates that there cannot be a disclosure of information pertaining to or which „relates to" such third party without affording such third party an opportunity of being heard on whether such disclosure should be ordered. This is a procedural safeguard that has been inserted in the RTI Act to balance the rights of privacy and the public interest involved in disclosure of such information. Whether one should trump the other is ultimately for the information officer to decide in the facts of a given case.*

xxx xxx xxx

> *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."*

11. This Court is also of the opinion that the finding of public interest warranting disclosure of the said information under Sections 8(1)(e) and 8(1)(j) of the RTI Act and the procedure contemplated under Sections 11(1) and 19(4) of the RTI Act are mandatory in nature and cannot be waived. In the present case, CIC has directed the petitioner to provide DPC minutes to the respondent without considering the defence of the petitioner under Section 8(1)(e) of the RTI Act and without following the procedure specified under Sections 11(1) and 19(4) of the RTI Act. It is pertinent to mention that Sections 11(1) and 19(4) of the RTI Act incorporate the principles of natural justice. Further, in the present case no finding has been given by CIC as to whether public interest warranted such a disclosure.

12. However, this Court is of the view that the respondent is entitled to the contents of his own ACR after redaction of the names of the reviewing, reporting and accepting officers. In fact, another coordinate Bench of this Court in ***THDC India Ltd. v. T. Chandra Biswas 199(2013) DLT 284*** has held as under:-

> *"9. While the learned counsel for the respondent has contended before me that the respondent ought to have been supplied with the ACRs for the period 2004 to 2007, the respondent has not assailed that part of the order of the CIC. In my view, while the contention of the respondent has merit, which is that she cannot be denied information with regard to her own ACRs and that information cannot fall in the realm of any of the exclusionary provisions cited before me by the learned counsel for the petitioner i.e. Section 8(1)(d), (e) and (j), there is a procedural impediment, in as much as, there is no petition filed to assail that part of the order passed by the CIC.*
>
> *9.1. In my view, the right to obtain her own ACRs inheres in the respondent which cannot be denied to the respondent under the provisions of Section 8(1)(d), (e) and (j) of the RTI Act. The ACRs are meant to inform an employee as to the manner in which he has performed in the given period and the areas which require his attention, so that he may improve his performance qua his work.*
>
> *9.2 That every entry in the ACR of an employee requires to be disclosed whether or not an executive instruction is issued in that behalf – is based on the premise that disclosure of the contents of ACR results in fairness in action and transparency in public administration. See Dev Dutt vs Union of India (2008) 8 SCC 725 at page 732, paragraph 13; page 733, paragraph 17; and at page 737, paragraphs 36, 37 and 38.*

9.3 Mr Malhotra sought to argue that, in Dev Dutt's case, the emphasis was in providing information with regard to gradings and not the narrative. Thus a submission cannot be accepted for more than one reason.

9.4 First, providing to an employee gradings without the narrative is like giving a conclusion in judicial/quasi-judicial or even an administrative order without providing the reasons which led to the conclusion. If the purpose of providing ACRs is to enable the employee to assess his performance and to judge for himself whether the person writing his ACR has made an objective assessment of his work, the access to the narrative which led to the grading is a must. [See State of U.P. Vs. Yamuna Shankar Misra and Anr., (1997) 4 SCC 7]. The narrative would fashion the decision of the employee as to whether he ought to challenge the grading set out in the ACR.

9.5 Second, the fact that provision of ACRs is a necessary concomitant of a transparent, fair and efficient administration is now recognized by the DOPT in its OM dated 14.05.2009. The fact that the OM is prospective would not, in my view, impinge upon the underlying principle the OM seeks to establish. The only caveat one would have to enter, is that, while providing the contents of the ACR the names of the Reviewing, Reporting and the Accepting Officer will have to be redacted."

13. Consequently, this Court is of the view that ACR grading/ratings as also the marks given to the candidates based on the said ACR grading/ratings and their interview marks contained in the DPC proceedings can be disclosed only to the concerned employee and not to any other employee as that would constitute third party information. This Court is also of the opinion that third party information can only be disclosed if a

finding of a larger public interest being involved is given by CIC and further if third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act is followed.

14. Accordingly, the present writ petition is allowed and the matter is remanded back to CIC for consideration of petitioner's defences under Sections 8(1)(e) and Section 8(1)(j) of the RTI Act and if the CIC is of the view that larger public interest is involved, it shall thereafter follow the third party procedure as prescribed under Sections 11(1) and 19(4) of the RTI Act.

15. With the aforesaid observations and directions, the present writ petition is disposed of.

MANMOHAN,J

JULY 08, 2014
NG

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 459/2012 and C.M. No. 969/2012 (for stay)

ZOOM ENTERTAINMENT NETWORK LIMITED ..... Petitioner

Through: Mr. K. Datta and Mr.Atul Singh,

Advs.

versus

CENTRAL INFORMATION COMMISSION and ORS ..... Respondents

Through: Mr. Neeraj Chaudhari, CGSC with

Mr. Akshay Chandra and Mr.Ravjyot

Singh, Advs. for UOI.

Mr.Sanjiv K. Jha, respondent no.1 in

person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

O R D E R

08.05.2012

The petitioner has preferred the present writ petition under Article 226 of the Constitution of India to assail the order dated 29.12.2011 passed by the Central Information Commission in complaint No. CIC/SG/C/2011/000846, whereby the learned CIC has allowed the aforesaid complaint/appeal preferred by respondent no.1 and directed the disclosure of information sought by respondent no.1. The queries were made under three different categories i.e., (A), (B) and (C). While the queries under category (A) and (B) were of general nature and pertained to the operating TV channels, and applications pending in the Ministry of Information and Broadcasting of those who are seeking permission for

uplinking and downlinking, the querries under category (C) pertained specifically to the petitioner. The respondent-querist had sought, in relation to the petitioner ?photocopies of all the pages of file/files along with all documents, correspondence etc. and file noting of the Television channel named as ?MOVIES NOW? Telecasting movies.? The querist had also sought information with regard to the ?date on which the application for permission to telecast was received from ?MOVIES NOW? and the date on which the permission was granted?.

The submission of learned counsel for the petitioner Mr. K. Datta is that a perusal of the impugned order would show that the same is wholly unreasoned. The CIC has mechanically directed the provision of the information sought by the applicant under all the three categories without even examining whether the same would breach the confidentiality or trade secrets of the entities to whom the information related under Section 8(1)(d) of the RTI Act, even though the PIO had denied the application made by the querist by placing reliance on Section 8(1(d) of the Act.

The petitioner has set out in paragraphs 9 and 10 of the writ petition the nature of the information contained in the respondent?s file pertaining to the petitioner?s application to seek permission for uplinking/downlinking and, according to the petitioner, the information contained in the said file is of the following nature:

?9. It is submitted that while making an application for g rant of a license to operate a television channel, the Petitioner was required to provide intimate and extremely sensitive personal data pertaining to its Directors, including their PAN card number, passport details, residential addresses, personal telephone number, educational qualifications etc. The entire file pertaining to any Television channel with the Respondent No.3 contains several details and confidential personal information about directors of the company applying for permission to telecast.

10. Furthermore, the Petitioner had also disclosed its net worth, share holding pattern, cross-holding details, balance sheets, and profit and loss accounts of closely held companies. All the information submitted to Respondent No. 3 by Petitioner is in the nature of commercial confidence and trade secrets, being financial data, profit and loss statements, balance sheet, annual plans, business plans, distribution network, satellite contracts, shareholding pattern of Petitioner Company as well

its holding Company, BCCL. The information by its very nature is such that it is bound to give and edge to the competitors of Petitioner and harm its competitive position in an extremely competitive media industry. It is pertinent to note that the Petitioner and its holding Company, BCCL are unlisted Companies and the details of its shareholding pattern or net worth is not in public domain and therefore is even more confidential and sensitive.?

The further submission of Mr. Datta is that the CIC did not even adhere to the procedure prescribed in Section 11 of the Act, even though the information pertained to a third party i.e., the petitioner. Before issuing direction to grant information to the querist, notice ought to have been issued to the petitioner and consent/objections invited from the petitioner, which was not done. Mr. Datta submits that the impugned order being in gross violation of principles of natural justice is null and void.

On 20.01.2012 when the writ petition was entertained for the first time and notice was issued, it was directed that respondent no.2 (who has been renumbered as respondent no.1 upon deletion of CIC as a party respondent) shall not part with the information, or exploit the information sought by him and provided to him in response to query (C), in so far as it pertains to the financial transactions, shareholding pattern, distribution network, satellite plan of the petitioner.

Respondent no.1 who appears in person has submitted that he does not wish to file a counter affidavit and, therefore, he has argued the matter by making oral submissions. He submits that the reasoning adopted by the CIC can be found in its order at running Page 21 of the record. He submits that the CIC has observed that the said information is liable to be disclosed under Section 4 of the Act by the concerned department.

I have perused the impugned order and heard learned counsels for the parties. I am of the view that the impugned order cannot be sustained, and is liable to be set aside as it has been passed without recording any reasons whatsoever, and is clearly in breach of the petitioner?s rights under Section 11 of the Act. The impugned order having been passed in breach of the principles of natural justice, is null and void.

A perusal of the impugned order shows that no reasons whatsoever have been recorded while directing disclosure of the information sought by the querist. The defence of the PIO that the information could not be provided as it could be hit by Section 8(i)(d) has not been addressed at all. Even though information sought in category ?C? querries was specifically in relation to the petitioner, the petitioner was not noticed.

The argument of the querist, that the reasoning adopted by the CIC is that the information should be made available by the public authority suo moto under Section 4 of the Act is not correct. A perusal of the

relevant paragraph of the impugned order shows that the CIC has merely recorded the submission of the querist founded upon Section 4 of the Act.
There is no finding returned by the CIC, based on any discussion, that the information sought by the querist indeed is liable to be disclosable

under Section 4 of the Act.

In any event, since the information sought by the respondent querist pertained, inter alia, to the petitioner specifically, the petitioner ought to have been noticed under Section 11 of the Act.

Accordingly, the impugned order is set aside and the matter is remanded back to the CIC to reconsider the matter and pass a fresh reasoned order after granting hearing to the petitioner. Consequently, the respondent querist is directed to return the entire information received by him in terms of the impugned order of the CIC to the PIO of respondent no.3 without retaining any copy thereof.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

MAY 08, 2012

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th March, 2012

\+ **LPA 253/2012**

SHRI HARISH KUMAR ..... Appellant

Through: Mr. C.Hari Shankar & Mr. S. Sunil, Advs.

Versus

PROVOST MARSHAL-CUM-APPELLATE AUTHORITY & ANR ..... Respondents

Through: Mr. B.V. Niren, CGSC with Mr. Utkarsh Sharma & Mr. Prasouk Jain, Adv. for UOI

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

A.K. SIKRI, ACTING CHIEF JUSTICE

1. This Intra-Court appeal impugns the order dated 27th January, 2012 of the learned Single Judge dismissing W.P.(C) No. 554/2012 preferred by the appellant. The said writ petition was preferred assailing the order dated 14th September, 2011 of the Central Information Commission (CIC) dismissing the appeal preferred by the appellant.

2. The appellant had sought the following information under the Right to Information Act, 2005 with respect to his father-in-law:-

a. Name of the Office/Battalion/Regiment from where he retired?

b. On which date he was retired?

c. What is his pension?

d. As per records, of which caste he belongs?

e. Please provide me the photocopy of his caste certificate?

3. At this stage, it may be stated that there are disputes between the appellant and his wife.

4. The Central Public Information Officer (PIO) vide order dated 3rd December, 2010 informed the appellant that the information sought was a third party personal information, disclosure whereof was likely to cause undue invasion into the privacy of the individual concerned and the information also did not serve any public activity or interest and was therefore exempted from disclosure under Section 8 (1) (j) of the Act. The appellant was further informed that the information could be provided to the appellant subject to consent of third party i.e. his father-in-law and after following the procedure prescribed under Section 11(1) of the Act. The appellant was thus requested to provide postal address of his father-in-law, for the procedure under Section 11(1) to be followed.

5. The appellant however instead of providing address of his father-in-law, preferred an appeal. The said appeal was dismissed vide order dated 18th January, 2011 directing third party procedure under Section 11(1) to be followed, upon compliance by the appellant of the requisite formalities.

6. The appellant however was not wanting the said third party procedure to be followed and wanted the information, though pertaining to his father-in-law, but without his father-in-law having any chance to object to the

disclosure of the said information. The appellant with the said intent preferred the second appeal to the CIC. The CIC however dismissed the said appeal.

7. The learned Single Judge has dismissed the writ petition observing that the information sought was of personal nature and the appellant was unable to disclose any public interest in the disclosure thereof and disclosure of information sought by the appellant was to wreck vengeance on account of his matrimonial dispute.

8. The counsel for the appellant before us has argued that the learned Single Judge has erred in observing that there was no public interest in the disclosure sought by the appellant. It is argued that the same is irrelevant under the RTI Act.

9. What we find in the present case is that the PIO had not refused the information. All that the PIO required the appellant to do was, to follow third party procedure. No error can be found in the said reasoning of the PIO. Under Section 11 of the Act, the PIO if called upon to disclose any information relating to or supplied by a third party and which is to be treated as confidential, is required to give a notice to such third party and is to give an opportunity to such third party to object to such disclosure and to take a decision only thereafter.

10. There can be no dispute that the information sought by the appellant was relating to a third party and supplied by a third party. We may highlight that the appellant also wanted to know the caste as disclosed by his father-in-law in his service record. The PIO was thus absolutely right in, response

to the application for information of the appellant, calling upon the appellant to follow the third party procedure under Section 11. Reliance by the PIO on Section 8 (1) (j) which exempts from disclosure of personal information and the disclosure of which has no relationship to any public activity or interest and which would cause unwanted invasion of the privacy of the individual was also apposite. Our constitutional aim is for a casteless society and it can safely be assumed that the disclosure made by a person of his or her caste is intended by such person to be kept confidential. The appellant however as aforesaid, wanted to steal a march over his father-in-law by accessing information, though relating to and supplied by the father-in-law, without allowing his father-in-law to oppose to such request.

11. A Division Bench of this Court in ***Paardarshita Public Welfare Foundation Vs. UOI*** AIR 2011 Del. 82, in the context of Section 8(1)(j) (supra) and relying upon ***Gobind Vs. State of Madhya Pradesh*** (1975) 2 SCC 148, ***Rajagopal Vs. State of Tamil Nadu*** (1994) 6 SCC 632 and ***Collector Vs. Canara Bank*** (2005) 1 SCC 496 has held right to privacy to be a sacrosanct facet of Article 21 of the Constitution of India. It was further held that when any personal information sought has no nexus with any public activity or interest, the same is not to be provided. Finding the information sought in that case to be even remotely having no relationship with any public activity or interest and rather being a direct invasion in private life of another, information was denied. The full bench of this Court also in ***Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal*** AIR 2010 Del. 159 has held that the conflict between the right to personal privacy and public interest in the disclosure of personal

information is recognized by the legislature by incorporating Section 8(1)(j) of the Act. It was further observed that personal information including tax returns, medical records etc. cannot be disclosed unless the bar against disclosure is lifted by establishing sufficient public interest in disclosure and disclosure even then can be made only after duly notifying the third party and after considering his views. It was yet further held that the nature of restriction on right to privacy is of different order; in the case of private individuals, the degree of protection afforded is greater; in the case of public servants, the degree of protection can be lower, depending upon what is at stake; this is so because a public servant is expected to act for public good in the discharge of his duties and is accountable for them. This Court in ***Vijay Prakash Vs. UOI*** AIR 2010 Del 7 also, where information of an estranged wife's service record was sought, held that the transparency values have to be reconciled with legal interest protected by law, such as other fundamental rights, particularly the fundamental right to privacy; relying on ***O.K. Ghosh Vs. Ex. Joseph*** MANU/SC/0362/1962 it was held that an individual does not forfeit his fundamental rights by becoming a public servant; that a distinction has to be drawn between official information and private information and private details of date of birth, Personal Identification Number etc. are to be disclosed only if such disclosure is necessary for providing knowledge of proper performance of the duties and tasks assigned to the public servant; not finding any public interest in the disclosure of information sought, the order of the CIC denying the information was upheld.

12. We are even otherwise pained to find that the provisions of the RTI Act are being used for personal vendetta and owing whereto the PIOs are under huge load and strain.

13. We thus do not find any merit in this appeal. The same is dismissed. We refrain from imposing any costs on the appellant.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

MARCH 30, 2012
'pp'

Mr. Surupsingh Hrya Naik vs State Of Maharashtra Through ... on 23 March, 2007

Equivalent citations: AIR 2007 Bom 121, 2007 (109) Bom L R 844, 2007 (4) MhLj 573

Author: F Rebello

Bench: F Rebello, R Savant

JUDGMENT F.I. Rebello, J.

Page 0847

1. Rule. Heard forth with.

2. The petitioner is presently a Member of the Legislative Assembly of the State of Maharashtra. Contempt Proceedings had been initiated against the petitioner by the Honourable Supreme Court, which imposed on him imprisonment of one month, by judgment dated 10th May, 2006. The petitioner on 12th May, 2006 surrendered to the Police Authorities in Mumbai and was taken in custody. On 14th May, 2006 Petitioner was shifted to Sir J.J. Hospital, Mumbai on account of suspected heart problems as well as low sugar and blood pressure. According to the petitioner he underwent medical treatment at Sir J.J. Hospital, Mumbai for the period of 21 days and was discharged on 5th June, 2006. Petitioner served the remaining tenure of imprisonment till 11th June, 2006 in jail on which day he was released from custody on completing the period of sentence. The petitioner contends that he is suffering from various diseases such as diabetes, heart problem and also blood pressure from 1998-99 onwards and has been admitted to hospital on various occasions on account of his health problems.

Page 0848

3. The Respondent No. 5 is a private citizen who by an application dated May, 27, 2006 sought from the Respondent No. 4, the Public Information Officer of Sir J.J. Hospital, Byculla, Mumbai, the medical reports of the petitioner. In his application it was set out that it was in public interest to know why a convict is allowed to stay in an air conditioned comfort of the hospital and there had been intensive questioning about this aspect in the media and the peoples mind. There is, therefore, a legitimate doubt about the true reasons for a convict being accommodated in air conditioned comfort of the hospital, thereby ensuring that the convict escapes the punishment imposed on him and also denies a scarce facility to the needy. The information, sought was set out therein. On 20th June, 2006 the Public Information Officer addressed a letter to the General Administration Department, State of Maharashtra, seeking information of the legal aspects regarding the application made by respondent No. 5 under the provisions of the Right to Information Act. On 4th July, 2006 in response to the letter the respondent No. 4 clarified that the Right to Information Act is a Central Act and any clarification, assistance or doubt as to interpretation of the provisions of the Act will have to be sought from the Central Government. On 3rd July, 2006 the Respondent No. 4 addressed a letter to the petitioner, intimating him that information about the petitioners hospitalisation between 15th May, 2006 to 5th June, 2006 had been sought by the Respondent No. 5. The petitioner was called

upon to give his say as to whether the information should be given. There is nothing on record to indicate whether the petitioner replied to the said letter.

4. As the respondent No. 4 did not furnish the necessary information, the respondent No. 5, preferred an Appeal on 21st June, 2006 before the Respondent No. 3. On 3rd July, 2006 the Respondent No. 3 rejected the application on the ground that the same was not signed by the respondent No. 5. Respondent No. 5 preferred another Appeal to respondent No. 3 under Section 19(1) of the Act, which was rejected on 25th July, 2006. Aggrieved by the said order the respondent No. 5 preferred a Second Appeal before the Respondent No. 2. The Respondent No. 2 allowed the Appeal and for reasons disclosed in the order directed the respondent No. 4 to give information to the respondent No. 5. The petitioner on 5th March, 2007 submitted a letter to the Dean, Sir J.J. Hospital with a request that information relating to the petitioner should not be disclosed to anyone. On 8th March, 2007 the petitioner filed an application requesting for a copy of the application made by the respondent No. 5 and the order passed by the respondent No. 2 from Respondent No. 4. It is the petitioners case that on 8th March, 2007 he made a representation to the Respondent No. 2 as well as Respondent No. 3 stating that the disclosure of information would amount to invading the privacy of the petitioner and, therefore, he proposed to approach the higher authorities to ventilate his grievance and as such the copies of the documents sought for by him be made available. The respondent No. 3 informed the petitioner by communication of 9th March, 2007 that the order passed by the respondent No. 2 is not available. On 12th March, 2007 the petitioner through his Advocate once again sought for copy of the order and also prayed that the order be not executed. The petitioner on receiving a copy of the order preferred this petition.

5. At the hearing of this petition, the impugned order is challenged on various counts. We may summarise the grounds raised before us as under:

(a) The information sought for by the Respondent No. 5, it is submitted is private and as such could not have been disclosed to Respondent No. 5 without the consent of the petitioner.

(b) It is next submitted that considering Section 19(4) of the Right to Information Act before passing an order against the petitioner, the Respondent No. 2 was bound to give notice to the petitioner herein. Such notice has not been given and consequently the order passed by the respondent No. 3 is without jurisdiction and consequently is liable to be quashed and set aside.

6. We have heard the learned Counsel for the petitioner, the learned Associate Advocate General and the Respondent No. 5, who appears in person. 7. Before considering the arguments, it would be appropriate if we consider some of the provisions of the Right to Information Act. Section 2(f) which defines "information", reads as under:

2(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.

Section 2(j) which defines "right to information" reads 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 printout where such information is stored in a computer or in any other device.

Section 2(n) defines "third party" which reads as under:

2(n) "third party" means a person other than the citizen making a request for information and includes a public authority.

Section 3 of the Act reads as under:

3.Right to informationSubject to the provisions of this Act, all citizens shall have the right to information.

Section 4 deals with obligations of public authorities and the maintenance of records. A person who desires to obtain information can do so considering Section 6, by making a request in writing in the language set out therein.

Section 6(2) is material and reads as under:

6(2) An applicant making request for information shall not be required to give any reasons for requesting the information or any other personal details except those that may be necessary for contacting him.

Page 0850 Under Section 7, the concerned Public Information Officer as expeditiously as possible and in any case within 30 days of the receipt of the request either provide the information or reject the request for the reasons specified in Sections 8 and 9. We are really not concerned with Section 9 as it pertains to information involving infringement of copyright subsisting in a person other than the State. We then have for our consideration the relevant portion of Section 8, which reads as under:

8.(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

...

...

...

(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.

Section 11 deals with third party information and sets out, that where an Appropriate Information Officer 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 concerned Public Information Officer shall give a written notice to such third party of the request, informing that he intends to disclose the information on 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 mind while taking a decision about disclosure of information. Under Section 18 certain powers have been conferred on the appropriate Information Commission to receive and inquire into a complaint from any person. In doing so certain powers as vested in the Civil Court while trying a suit have been conferred on that authority. The next relevant provision is Section 19 which we shall reproduce to the extent necessary, which read as under:

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 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 State Public Information Officer, as the case may be, in each public authority.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the Page 0851 case may be, under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3)...

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

A consideration of these provisions would indicate that ordinarily the information sought for by a person like Respondent No. 5, must be made available and such person need not give reasons for the information he seeks. Another important aspect of the matter is that in respect of information relating to a third party the concerned Public Information Officer must give notice to the third party and if such third party makes submissions then to consider the said submissions.

8. On behalf of the petitioner, learned Counsel submits that the information sought for by Respondent No. 5 of the petitioners medical records is confidential, considering the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations 2002 framed under the provisions of the Indian Medical Council Act, 1956, which hereinafter are referred to as the Regulations. Regulation 2.2 which is relevant, reads as under:

2.2. Patience, Delicacy and Secrecy. Patience and delicacy should characterize the physician. Confidences concerning individual or domestic life entrusted by patients to a physician and defects in the disposition or character of patients observed during medical attendance should never be revealed unless their revelation is required by the law of the State. Sometimes, however, a physician must determine whether his duty to society requires him to employ knowledge, obtained through confidence as a physician, to protect a healthy person against a communicable disease to which he is about to be exposed. In such instance, the physician should act as he would wish another to act toward one of his own family in like circumstances.

It appears from this Regulation, that the information as sought, should not be revealed unless the revelation is required by the law of the State.

The next relevant Regulation is Regulation 7.14 which reads as under:

7.14. The registered medical practitioner shall not disclose the secrets of a patient that have been learnt in the exercise of his/her profession except:

(i) in a court of law under orders of the Presiding Judge;

(ii) in circumstances where there is a serious and identified risk to a specific person and/or community; and Page 0852

(iii) notifiable diseases. In case of communicable/notifiable diseases, concerned public health authorities should be informed immediately.

From this Regulation it follows that the Medical Practitioner shall not disclose the secrets of his patient that has been learnt in the exercise of his profession except in a Court of law and under orders of the Presiding Judge. The expression "Court of Law" and Presiding Judge have not been defined. Considering normal interpretive process, the expression "Court of Law" and orders of Presiding Judge should include both Courts and Tribunals.

9. Reliance was placed on the Declaration of Geneva, adopted by the 2nd General Assembly of the World Medical Association, Geneva, Switzerland, September, 1948 and as amended thereafter. Under this convention there is a provision pertaining to right to confidentiality of information about the patients health status, medical condition, diagnosis, prognosis and treatment and all other information of a personal kind with the exception, that descendants may have a right of access to information that would inform them of their health risk. Otherwise the confidential information can only be disclosed if the patient gives explicit consent or as expressly provided in the law. Clause 10 refers to right to dignity. Even if India is a signatory to the said declaration, Parliament has not enacted any law making the declaration a part of the Municipal Law. It is well settled that in the absence of Parliament enacting any law adopting the convention, the convention by itself cannot be enforced. It is only in the area of Private International law, in Jurisdictions like Admirality/Maritime, that international conventions are enforced based on customary usage and practice. That however, will be subject to the Municipal Law if there be any. In the absence of the convention being recognised by law duly enacted, the provisions of the convention cannot really be enforced. The only other way the convention can be enforced is, if it can be read into Article 21 of the Constitution. See Unnikrishnan J.P. v. State of A.P. .

10. The question that we are really called upon to answer is the right of an individual, to keep certain matters confidential on the one hand and the right of the public to be informed on the other, considering the provisions of the Right to Information Act, 2005.

In the instant case on facts we are dealing with the issue of to person convicted for contempt of Court. Do such a person during the period of incarceration, claim privilege or confidentially in respect of the medical records maintained by a public authority. The contention of the respondent No. 5 is that the larger public interest requires that this information be disclosed, as persons in high office or high positions or the like, in order to avoid serving their term in Jail/prison or orders of detention or remand to police custody or judicial remand with the connivance of officials get themselves admitted into hospitals. The public, therefore, it is submitted, has a right to know, as to whether such a person was genuinely admitted or admitted to avoid punishment/custody and thus defeat judicial orders. The publics right in such case, it is submitted, Page 0853 must prevail over the private interest of such third person. The Court must bear in mind the object of the Right to Information Act which is to make the public authorities accountable and their actions open. The contention that the information may be misused is of no consequence, as Parliament wherever it has chosen to deny such information has so specifically provided. As an illustration our attention is invited to Section 8 which provides for exemption from disclosure of information.

11. In support of the contention, that the information is private and confidential and ought not to be disclosed, the petitioner has invited our attention to various judgments. We may firstly refer to the judgment of the Supreme Court in Peoples Union For Civil Liberties v. Union of India . The issue arose in a matter of telephone tapping. The Supreme Court noting its judgment in Kharak Singh v. State of U.P. , held that "right" includes "right to privacy" as a part of the right to life under Article 21.Noticing various other judgments, including in R. Rajagopal v. State of T.N. the Court arrived at a conclusion that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens under 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." The Court then observed as under: "18. THE right to privacy - by itself - has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of ones home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone conversation is a part of modem mans life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a mans private life. Right to privacy would certainly include telephone conversation in the privacy of ones home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law."

12. Reliance was placed in Mr. "X", Appellant v. Hospital "Z", Respondent . The issue involved therein is disclosure of information of a patient affected by HIV. The person whose information was disclosed, sought an action in damages, by moving the National Consumer Disputes Redressal Commission which was rejected and hence the Appeal to the Supreme Court. Page 0854 In considering the duty to maintain confidentially, the Court traced its history to the Hippocratic Oath. The Court then noted that in India it is the Indian Medical Council Act which controls medical practitioners and the power to make regulations. The Court observed that in doctor-patient relationship, the most important aspect is the doctors duty of maintaining secrecy and the doctor cannot disclose to a person any information regarding his patient, which he has gathered in the course of treatment nor can the doctor disclose to anyone else the mode of treatment or the advice given by him to the patient. The Code of Medical Ethics, carves out an exception to the Rule of confidentiality and permits the disclosure in the circumstances enumerated in the judgment under which public interest would override the duty of confidentiality particularly where there is an immediate or future health risk to others. Dealing with the aspect of privacy, the Court observed as under:

27. Disclosure of even true private facts has the tendency to disturb a persons tranquillity. It may generate many complexes in him and may even lead to psychological problems. He may, thereafter, have a disturbed life all through. In the face of these potentialities, and as already held by this Court in its various decisions referred to above, the Right of Privacy is an essential component of right to life envisaged by Article 21. The right however, is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others.

13. The right to privacy now forms a part of right to life. It would, therefore, be apparent on a reading of Regulation 2.2 and 7.14 framed under the Medical Council of India Act that information about a patient in respect of his ailment normally cannot be disclosed because of the Regulations, which is subordinate legislation except where the Regulation provides for. The Right to Information Act, is an enactment by Parliament and the provisions contained in the enactment must, therefore, prevail over an exercise in subordinate legislation, if there be a conflict between the two. The exception from disclosure of information as contained in Section 8 has some important aspects. Section 8(1)(j)provides

that 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 shall not be disclosed 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. In other words, if the information be personal or would amount to invasion of privacy of the individual, what the concerned Public Information Officer has to satisfy is whether the larger public interest justifies the disclosure. In our opinion, the Regulations framed under the Indian Medical Council Act, will have to be read with Section 8(1)(J) of the Right to Information Act. So read it is within the competence of the concerned Public Information Officer to disclose the information in larger public interest or where Parliament or State Legislature could not be denied the information.

14. The next aspect of the matter is whether the proviso after Section 8(1)(j) applies in its entirety to Section 8(1)(a) to 8(1) or only to Section 8(1)(j). Does, therefore, the proviso apply to Section 8(1). Before answering the issue we may refer to the judgment of a learned single Judge of this Court in the Page 0855 case of Panaji Municipal Council v. Devidas J.S. Kakodkar and Anr. 2001 (Supp.2) Bom. C.R.544, to which our attention was invited by the learned Counsel for the petitioner. In that case what was in issue was the proviso to Section 5 of the Goa Rights of Information Act, 1997. The proviso there was placed after the various provisions. The learned Single Judge while construing the effect of the proviso, restricted it only to Sub-Sections 5(e) and not to Section 5(a),(b),(c) and (d) as otherwise according to the learned Judge the Section was liable to be struck down as being violative of Article 21of the Constitution of India. We do not propose to go into the correctness of the said judgment. Suffice it to say that in the Central Act, the proviso has been placed after Section 8(1)(j) and in that context it would have to be so interpreted. So reading the proviso applies only to Section 8(1)(j) and not to the other sub-sections of that Section.

15. The question then is what is the true import of the proviso, which sets out that the information which cannot be denied to Parliament or a State Legislature shall not be denied to any person. Are the medical records maintained of a patient in a public hospital covered by the provisions of the Act. Can this information be withheld to either Parliament or State Legislature as the case may be on the ground that such information is confidential. To our mind generally such information normally cannot be denied to Parliament or the State Legislature unless the person who opposes the release of the information makes out a case that such information is not available to Parliament or the State Legislation under the Act. By its very constitution and the plenary powers which the Legislature enjoys, such information cannot be denied to Parliament or State Legislature by any public authority. As the preamble notes, the Act is to provide for setting out a practical regime of right to information for citizens, to secure access to information under the control of public authorities as also to promote transparency and accountability in the working of every public authority. These objects of the legislature are to make our society more open and public authorities more accountable. Normally, therefore, all such information must be made readily available to a citizen subject to right of privacy and that information having no relationship to any public authority or entity. In the instant case the respondent No. 2 while granting the application of respondent No. 5, has given as reasons larger public interest and as that the information could not be with-held from Parliament or State

Legislature. The learned Associate Advocate General informed us that the State Assembly has not framed any Rules in the matter of receiving information.

The test always in such matter is between private rights of a citizen and the right of third person to be informed. The third person need not give any reason for his information. Considering that, we must hold that the object of the Act, leans in favour of making available the records in the custody or control of the public authorities.

16. In this case we are dealing with a case of a person who was sentenced for contempt of the Court at that time in respect of which the information is sought. In D.Bhuvan Mohan Patnaik and Ors. v. State of A.P. and Ors. Page 0856 the Supreme Court reiterated the rights of a convict and was pleased to hold that:

Convicts are not by mere reason of the conviction, denuded of all the fundamental rights which they otherwise posses.

The Court also held that the conviction may result in deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to "practice" a profession. But the Constitution guarantees other freedoms for the exercise of which incarceration can be no impediment. The convict is entitled to the precious right guaranteed by Article 21 of the Constitution of India. Therefore, under our constitution the right to personal liberty and some of the other fundamental freedoms are not totally denied to a convict during the period of incarceration.

16. In the instant case according to the respondent No. 5 the petitioner though a convict was admitted in the general ward of the hospital and was put up in an air conditioned room and not in the Prisoners Ward. The right to receive medical treatment as a part of right to life, could not have been denied to the petitioner. The reasons for the information sought by the respondent No. 5 need not be gone into, as the Act itself under Section 6(2) does not require the applicant to give any reasons for requesting the information. The contention on behalf of the petitioners, therefore, that information given may be misused really in our opinion would not arise considering the object behind Section 6(2) of the Act. The provisions of the Right to Information Act, will override the provisions of the Regulations framed under the Indian Medical Council Act to the extent they are inconsistent. The exercise of power under the Act in respect of private information is subject only to Section 8(1)(j) and the proviso.

17. The law as discussed may now be set out. The confidentiality required to be maintained of the medical records of a patient including a convict considering the Regulations framed by the Medical Council of India cannot override the provisions of the Right to Information Act. If there be inconsistency between the Regulations and the Right to Information Act, the provisions of the Act would prevail over the Regulations and the information will have to be made available in terms of the Act. The Act, however, carves out some exceptions, including the release of personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the right to privacy. In such cases a discretion has been conferred on the concerned Public Information Officer to make available the information, if satisfied, that the larger public interest justifies the disclosure. This discretion must be exercised, bearing in mind the facts of each case and

the larger public interest. Normally records of a person sentenced or convicted or remanded to police or judicial custody, if during that period such person is admitted in hospital and nursing home, should be made available to the person asking the information provided such hospital nursing home is maintained by the State or Public Authority or any other Public Body. It is only in rare and in exceptional cases and for good and valid reasons recorded in writing can the information may be denied.

Page 0857 In those cases where the information sought cannot be denied to either Parliament or State Legislature, as the case may be, then the information cannot be denied unless the third person satisfies the authority that Parliament/Legislature, is not entitled to the information. There is no discretion in such cases to be exercised by the concerned Information Officer. The information has to be either granted or rejected, as the case may be. Every public authority, whose expenditure is met partly or wholly from the funds voted by the Parliament/Legislature or Government funds are availed off is accountable to Parliament/Legislature, as they have interest to know that the funds are spent for the object for which they are released and the employees confirm to the Rules. The conduct of the employees of such an organisation subject to their statutory rights can also be gone into. If patients are to be admitted in hospital for treatment then those employees in the hospital are duty bound to admit only those who are eligible for admission and medical treatment. The records of such institution, therefore,, ought to be available to Parliament or the State Legislature. The Parliament/Legislature and/or its Committees are entitled to the records even if they be confidential or personal records of a patient. Once a patient admits himself to a hospital the records must be available to Parliament/Legislature, provided there is no legal bar. We find no legal bar, except the provisions of the Regulations framed under the Indian Medical Council Act. Those provisions, however, would be inconsistent with the proviso to Section 8(1)(j) of the Right to Information Act. The Right to Information Act would, therefore, prevail over the said Regulations.

18. Having said so, we are left with the other contention urged on behalf of the petitioner, that considering Section 19(4) of the Act which we have earlier reproduced the information could not have been given without giving a reasonable opportunity of being heard to the third party, in the instant case the petitioner. We may note the scheme of the Act. In so far as the Public Information Officer is concerned before giving any information an opportunity has to be given to the third party as can be seen from Section 11 of the Act. We then have Section 19(2) which provides for an Appeal against an order by a person aggrieved to disclose third party information. The right of Appeal is also conferred under Section 19(4). In such cases the Section requires that the third party should be given a reasonable opportunity. It, therefore, appears that before any order is passed a third party has to be given notice in order that he may be heard. The question is whether this provision is purely procedural and failure to give notice would not render the decision illegal. Learned Counsel relies on the judgment in the case of State Bank of Patiala and Ors. v. S.K. Sharma . The issue there pertained to a Departmental enquiry and the right to be heard or given an opportunity. While dealing with the issue the Court noted, adverting to the principles of natural justice, that there cannot be any hard and fast formula. If failure amounts to violation of a procedure the Court observed and prejudice has been occasioned, the same has to be repaired and remedied by setting aside Page 0858 the enquiry, if no prejudice is established no interference is called for. The Court then observed as under:

In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases....

The Section itself contemplates, that before giving information the third party has to be given an opportunity. It will, therefore, be difficult to accept the contention that this is merely a procedural requirement and that the party would not be prejudiced. As we have noted, normally the information sought about medical records of a convict and the like must be made available, yet it is possible that in a given case, a party may give sufficient reasons as to why the information should not be revealed. In the instant case considering that the petitioner was convicted for contempt and was sent to jail and thereafter spent larger part of his prison term in hospital the right of a public to be informed would normally outweigh the right of the petitioner to hold on to his medical records. But as noted by the Courts the right of hearing is not an empty formality. If the petitioner did not get a hearing before the Appellate Authority, it cannot be argued that the same can be cured by the petitioner getting an opportunity before this Court. A long term ago Meggarry J., in National Union of Vehicle Builders (1971) 1 Ch.34 observed as under:

If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless, have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body.

This proposition was approved by the Apex Court in Institute of Chartered Accountants of India v. L.K. Ratna AIR 1987 SC 72. In some cases in exercise of extra ordinary jurisdiction, the Court perhaps in order to avoid multiplicity of proceedings and the delay occasioned might without remanding the matter decide the matter provided all the material is on record. On the facts here petitioner had no opportunity of giving his say before the Appellate Authority. Hence we are not inclined to adopt that course on the facts of the case. Even otherwise the requirement of notice is not an empty formality. It gives an opportunity to the third party to put its point of view why the information Page 0859 should not be disclosed and be heard on the point. Admittedly in this case no notice was given to the petitioner by Respondent No. 2.

In the light of that in our opinion for the failure by the respondent No. 2 to give an opportunity to the petitioner the impugned order will have to be set aside and the matter remanded back to Respondent No. 2 to give an opportunity to the petitioner and thereafter dispose of the matter according to law. Considering the public element and interest

involved we direct the respondent No. 2 to dispose of the matter on remand within 30 days from today.

Rule to that extent made partly absolute. In the circumstances of the case there shall be no order as to costs.

Reliance Industries Ltd. vs Gujarat State Information ... on 16 August, 2007

Equivalent citations: AIR 2007 Guj 203

Author: D Patel
Bench: D Patel

ORDER D.N. Patel, J.

1. Learned Counsel for the respective parties waive service of notice of Rule on behalf of the respondents.

Important issues have been raised for the adjudication by this Court, under the Right to Information Act, 2005, viz.:

(I) Whether the third parry is entitled to get, written notice, of request of applicant (who is seeking information), so as:

(i) to allow/permit the third party to treat the information (relating to or supplied by the third party) as confidential, if so far not treated as confidential; and

(ii) to oppose the disclosure of such information i.e. information relating to or supplied by the third party and has been treated as confidential by the third party under Section 11(1) to be read with Section 7(7) of the Act 2005.

(II) Whether the third party is entitled to get an opportunity of personal hearing before disclosure of information relating to or supplied by the third party and has been treated as confidential by the third party under Section 11(1) to be read with Section 7(7) of the Act, 2005.

(III) Whether Public Information Officer should pass speaking order when he discloses information relating to or supplied by the third party and has been treated as confidential by the third party?

(IV) What satisfaction must be arrived at prior to the information relating to or supplied by third party and has been treated as confidential by that third party is disclosed?

(V) As right of first appeal as well as second appeal is given to third party under Sections 19(2) and 19(3), Whether upon request by third party, Public Information Officer should stay his order, giving information about third party at least, till appeal period is over, as like air or smell, information once disclosed, it will spread over, without there being further restrictions, and even if third party succeeds in first appeal/second appeal, it cannot be gathered back or cannot be ordered to be returned.

The aforesaid petitions have been preferred seeking a writ of mandamus, or any other appropriate writ, order or direction for quashing and setting aside the order dated 31st January, 2007 passed by respondent No. 1 i.e. Gujarat State Information Commission (Annexure 'C to the memo of the petition) as well as the order dated 9th March, 2007 passed

by respondent No. 2 i.e. Labour Commissioner and Appellate Authority (Annexure 'F' to the memo of the petition) under the Right to Information Act, 2005 (hereinafter referred to as 'the Act, 2005') as well as the communication dated 9th March, 2007 issued by respondent No. 4 i.e. Public Information Officer (Annexure 'G' to the memo of the petition) and also for a writ, order or direction for commanding respondent Nos. 1, 2 and 4 for recalling of information supplied to the original applicant-Rasiklal Mardia and for a direction upon the original applicant-Rasiklal Mardia, not to use such information for any purpose whatsoever and for a writ of prohibition or any other appropriate writ, order or direction restraining the respondent-authorities from further proceedings with the complaint of the original applicant i.e. Rasiklal Mardia under Section 18of the Act, 2005 being Complaint No. 541/06-07 and for a writ of mandamus or any other appropriate writ, order or direction commanding respondent Nos. 1 to 6 in Special Civil Application No. 17076 of 2007 not entertaining any application or proceeding at the instance of Mr. Rasiklal S. Mardia under the provisions of the Act, 2005, so far as it is pertaining to the petitioner and its group companies.

2. Summarised Facts of the case:

Several applications (as per arguments of learned senior counsel for the petitioner, there are about 55 applications by now) have been preferred by the original applicant i.e. Rasiklal S. Mardia for getting information about the petitioner and its group companies. One such application is dated 25th July, 2006, which was preferred by the said applicant under Section 6 of the Act, 2005 to respondent No. 3, who transferred the said application to the respondent No. 4 on 29th August, 2006. He also preferred an application to respondent No. 2 (first appellate authority) on 21st August, 2006. Meanwhile, respondent No. 3 wrote a letter dated 29th August, 2006 to the original applicant that he may contact respondent No. 4 for getting information and his application dated 25th July, 2006 has been transferred to respondent No. 4. Therefore, he preferred an application in the form of complaint under Section 18of the Act, 2005 to respondent No. 1, which is second appellate authority. Respondent No. 1 (second appellate authority) remanded the case to respondent No. 2, (who is first appellate authority) vide order dated 31st January, 2007, whereto this respondent No. 1 has already conveyed that whatever information demanded }s to be given and, therefore, respondent No. 2 has also directed Public Information Officer at Jamnagar that whatever information is demanded ought to be given. Thus, order dated 31st January, 2007 was followed scrupulously by respondent No. 2 and, thereafter by respondent No. 1. Order was passed on 9th March, 2007 by respondent No. 2, who is sitting at Ahmedabad and direction was given to Public Information Officer, who is stationed at Jamnagar. Whatever information was sought for by the original applicant was supplied by Public Information Officer, Jamnagar (which is: at distance approximately 350 kms.) on the very same day i.e. on 9th March, 2007. Thus, order passed by respondent No. 1 dated 31st January, 2007 is under challenge as well as order passed on 9th March, 2007 passed by respondent No. 1, Ahmedabad is also under challenge and information supplied by Public Information Officer, Jamnagar on 9th March, 2007 to the original applicant is also under challenge, which are at Annexures 'C, 'F and 'G' respectively to the memo of the petitions.

Informations demanded by the original applicant i.e. Rasiklal Mardia (in Special Civil Application No. 16073 of 2007), are as under:

(1) You have recommended for sales tax exemption as per Government Policy for Reliance Petrochemicals Ltd. and your department has confirmed that they have complied with terms and conditions of the Govt. as to local employment etc. Please provide complete copy, verification report done to the labourers working there with proof whatever is available with you and whether genuinely local people are employed is verified or not.

(2) Any complaint received by you that they have not complied with the local people and false certificate is issued by your office. If yes copies of all the correspondence and copy of compliance received by you.

(3) Year-wise inspection done by your Dept. and confirmation that local people are continuously checked, confirmed their eligibility for sales tax exemption benefits and other benefits given to them for putting up the industry.

(4) If they have not complied with the terms and conditions whatever action has been initiated by your Dept. and the recommendations made by your Dept. for action to be taken against the company for not complying with terms and conditions, entire copy of the correspondence and present status.

(5) Several people died during the time of construction of Refinery. Status of that and copy confirming how many people died, action initiated by your Dept. and the present status of the cases and copy of the case papers.

(Emphasis supplied) Thus, the aforesaid informations were demanded by the original applicant i.e. Rasiklal Mordia.

These Informations were pertaining to the petitioner-company and its group companies.

It also appears from the facts of the case that never any of the authorities have given any notice nor the petitioner was heard before supplying the information relating to the petitioner. It is averred by the petitioner that there is business/commercial rivalry by the original applicant-Rasiklal Mardia with the petitioner-company. This allegation is substantiated by further affidavit filed by the petitioner. Reference of Civil Suit No. 1431 of 2003 and Civil Suit No. 3189 of 2002 has been given. These suits are filed by the original applicant-Rasiklal Mardia (the applicant, who has applied for getting information under Section 6 of the Act, 2005, who is referred hereinafter as "the original applicant") for damages against ICICI Bank and in paras 6(A) and 7 in the respective plaints, reference of petitioner-company is also referred for pointing out commercial/business rivalry between the original applicant and the third party (petitioner).

It is also brought on record by way of further affidavit filed by the petitioner that the applicant is a defaulter and more than one dozen criminal cases have been filed by Union of India through Rabi Barua Officer, Serious Fraud and Investigation Officers, Ministry of Company Affairs, New Delhi (in short 'SFIO') for various offences viz. for improper calculation of depreciation and signing false annual accounts, for failure to maintain liquid assets and for failure to repay the matured deposit amounts. Details of these one dozen offences are annexed at Annexure 'J' to the affidavit filed by the petitioner on 25th July, 2006.

Total 32 applications were preferred for getting information about the petitioner and its group companies and during the course of arguments, this figure increased up to 55 in numbers. In this background, these petitions have been preferred alleging violation of principles of natural justice by the respondent-authorities and the information is obtained by the original applicant, who is having commercial rivalry with the petitioner.

3. Contentions advanced by learned senior counsel for the petitioners:

It is submitted by learned senior counsel Mr. Mihir Thakore with Mr. Dhaval Dave for the petitioners that there is commercial rivalry by the original applicant with the petitioner and its group companies and the suits have been filed by him as stated herein-above. There is a reference of the petitioner-company in the plaints of the suits. The applicant is a defaulter and several criminal complaints have been filed against him' by Union of India. Therefore, no such application may be entertained by the respondent-authorities, at the instance of Mr. Rasiklal S. Mardia under the provisions of the Act, 2005, so far as it is pertaining to the petitioner and its group companies. No opportunity of making a representation or written notice was given by the respondent-authorities as required under Section 11(1) of the Act, 2005 and no representation was considered by the Public Information Officer as per Section 7(7) of the Act, 2005. No opportunity of personal hearing was afforded by the respondent-authorities. Therefore, orders passed by respondent-authorities are unilateral/arbitrary and violative of Article 14 of the Constitution of India. It is also submitted that as per Section 11(1) of the Act, 2005, a written notice ought to be given to the petitioner to make a representation to the Public "Information Officer, which was never given. The petitioner is a third party as defined under Section 2(n) of the Act, 2005 and, therefore, the petitioner was required to be heard by the respondent-authorities before imparting information relating to the petitioner and its group companies. It is contended by learned Counsel for the petitioners that no reasons were given by the concerned respondent-authority before supplying the information relating to the petitioner. Totally non-speaking orders have been passed. While passing order, reasons are required, if the information is supplied about the third party, under Section 7(1) of the Act, 2005. The said order is an appealable order under Section 19(1) of the Act, 2005. As per Section 11(2), even third party can prefer an application. Public Information Officer is a quasi-judicial authority. It has also been contended by learned Counsel for the petitioners that the words under Section 11(1) "...has been treated as confidential by that third party..." means, before imparting the information, a third party can treat the information (sought for by the original applicant) relating to third party or supplied by third party, as confidential. In the facts of the present case, a letter was written by the petitioners dated 18th May, 2007 (Annexure 'A' to Civil Application No. 17067 of 2007) that information asked by the original applicant-Rasiklal S. Mardia about the petitioner and its group company is treated as confidential by the third party and request was also made to give an opportunity of being heard, to the petitioner, before disclosure of the information.

4. A reply was given by Public Information Officer, on 30th May, 2007 that the information asked by the original applicant was not pertaining to the petitioner and, therefore, there is no need to give an opportunity of being heard to the petitioner. It is also stated by learned Counsel for the petitioners that several applications were given to the concerned respondent-authorities i.e. Principal Secretary, Industry and Mines Department as well as to the Chief Secretary, Government of Gujarat about the information relating to the

petitioner, under the Right to Information Act, which was asked by Rasiklal Mardia, with a prayer that no such information should be given to Rasiklal Mardia about the petitioner and its group companies, without giving an opportunity of being heard to the petitioner as contemplated under Section 11 of the Act, 2005. A detailed list of such applications preferred by the original applicant is given along with Special Civil Application No. 17067 of 2007, especially at Annexure T to the memo of the petition. It is contended by learned Counsel for the petitioners that when arguments were over, the figure has crossed 55 in numbers. Thus, Rasiklal Mardia, because of commercial rivalry has applied under Section 6 of the Act, 2005 for the information relating to the petitioner and its group companies, which cannot be given to the original applicant, in breach of the provisions of the Act, 2005. It is also vehemently submitted by learned Counsel for the petitioners that the manner in which respondent No. 1 has decided the matter vide order dated 31st January, 2007 requires to be scrutinised accurately. It appears that without any appeal preferred before second appellate authority, respondent No. 1 remanded the matter to respondent No. 2, who is first appellate authority, with a clear direction in para 4 of the said order to provide information to the original applicant i.e. Rasiklal Mardia, free of charge and within 30 days from the date of order. This direction was given by second appellate authority to respondent No. 2, who is first appellate authority, who in turn, directed Public Information Officer at Jamnagar to supply the information, whatever are asked for, by the original applicant. The order was passed by the respondent No. 2 at Ahmedabad on 9th March, 2007 and direction was given to the Public Information Officer at Jamnagar. It is also contended by learned Counsel for the petitioners that on the very same day, Public Information Officer, Jamnagar, which is at long distance from Ahmedabad who obeyed the order even without reading it and supplied the information to the original applicant i.e. Rasiklal Mardia on the very same day.

5. Thus, method in which the orders piled by respondent Nos. 1,2 and 4 is such that, it requires a close scrutiny as the said orders are not only in defiance of the provisions of the Act, 2005 but are in violation of principles of natural justice. It is also contended by learned Counsel for the petitioners that in the facts of the present case, none of the authorities i.e. neither respondent No. 1 nor respondent No. 2 nor respondent No. 4 have arrived at a conclusion that public interest in disclosure outweighs harm or injury to the protected interest of third party. Nor a conclusion is arrived at that larger public interest warrants disclosure of such information. No such satisfaction is arrived at by any of the authorities and, therefore also, all three orders dated 31st January, 2007 passed by respondent No. 1; order dated 9th March, 2007 passed by respondent No. 2 and information supplied by respondent No. 4 vide letter dated 9th March, 2007 deserve to be quashed and set aside as they are in gross violation of the provisions of the Act, 2005 and the principles of natural justice. As the information is already supplied in defiance of the provisions of the Act, 2005, the same may be ordered to be recalled from the original applicant-Rasiklal Mardia or a direction may be given to the original applicant not to make use of said information for any purpose whatsoever.

6. Contentions advanced by learned Counsel for the original applicant-Rasiklal Mardia:

Learned counsel for the original applicant (Rasiklal Mardia) submitted that the petitioners have no locus standi to file these petitions. Nothing secret is revealed. No reasons are required to be given for seeking information. Right to get information is an absolute right.

Public Information Officer has no right to deny information on the ground of intention of the applicant. Only commercial competitor can best use the information to minimize corruption. No hearing is contemplated under Section 7 of the Act, 2005. At the most, Public Information Officer has to consider a representation given under Section 11(1) of the Act, 2005. Very rigid is time bound schedule given under the Act, 2005 for supply of the information and, therefore, time is an essence and drastic are the consequences, if application seeking information is not disposed of within time bound schedule. Penalties are provided under Section 20 of the Act, 2005 and, therefore, this dilutes the principles of natural justice. Even original applicant is not required to be heard under Section 7 of the Act, 2005. It is a matter entirely between the original applicant and Public Information Officer. It is contended by learned Counsel for the original applicant that the case is not covered under Section 11(1) of the Act, 2005, and, therefore, there is no need to follow any procedure by the Public Information Officer prescribed under Section 7(7) of the Act, 2005. There is also no need to hear third party, at the most, third party has a right to make a representation. Section 11 has been read and re-read by learned Counsel for both the parties and it is contended by learned Counsel for the original applicant that this Section 11 is entirely based upon confidentiality. If the test of confidentiality fails, Section 11 is not applicable and if Section 11 is not applicable, there is no question of inviting third party to make a representation. Consequently, there is no need to hear third party. Public Information Officer has not to hold any inquiry, not to hear the original applicant, not to hear the third party and not to follow the Court trappings and, therefore, his function is administrative in nature. It is contended by learned Counsel for the original applicant that if the petitioners are aggrieved by the order dated 9th March, 2007 passed by Public Information Officer, Jamnagar, an appeal has been provided under Section 19 of the Act, 2005 and, therefore, writ is not tenable at law. It is contended by learned Counsel for original applicant that it is upon the satisfaction of the Public Information Officer, which entitles the third party for show cause notice. If Public Information Officer is of the opinion that the case of the third party is not covered under Section 11(1)of the Act, 2005, there is no need to give any show cause notice to the third party. Only a trade and commercial secrets protected by law is excluded. In fact, the petitioner is not a third party. It is further submitted that second petition being Special Civil Application No. 17067 of 2007, is not tenable at law as the information has already been given, it has become infructuous and, therefore, no prayers can) be granted. No petitions can be filed on behalf of the group companies of the petitioner -company. Economically, they may be one but in the eye of law, they all are separate companies and, separate entities and, therefore, both these petitions deserve to be dismissed.

It is further stated that as the information has already been disclosed to the present petitioner and so, issuance of writ is futile and, therefore, petitions may not be entertained by this Court.

7. Contentions advanced by learned Counsel for respondent No. 1-Gujarat State Information Commission:

Learned counsel for respondent No. 1-Gujarat State Information Commission i.e. second appellate authority, submitted that these petitions are futile writ petitions. There is no applicability of principles of natural justice for passing an order under Section 7 of the Act, 2005. It is further submitted that Section 18 gives the width of power, the area of power

and the nature of power. Section 18(1) begins with words 'Subject to the provisions of this Act....' These words, enlarges, the scope of Section 18 of the Act, 2005. Section 19 of the Act, 2005 pertains to appeal. Therefore, Sections 18, 19 and 20 are to be read together. Section 18 is for the complaint. Section 19 is for the appeals (first appeal as well as second appeal) and Section 20 is for the penalty. It is further submitted that right to get information has travelled beyond the public authorities. It can go to the private authorities or to the Government authorities. He has also narrated the words used in Section 11(1) of the Act, 2005 that "...has been treated as confidential by that third party" and pointed out that though it is in continuous present tense. These words by themselves are not permitting the subsequent intention of the third party to treat the said information as a confidential. It is vehemently submitted that respondent No. 1 while exercising powers under Section 18 of the Act, 2005, is not supposed to give hearing to the third party and, therefore, the order passed on 31st January, 2007 is true, correct and in consonance with the facts of the case. He has also relied upon 'no prejudice' theory and pointed out that by giving information, no prejudice is going to cause to the petitioner and, therefore, hearing is an empty formality.

REASONS:

8. I have heard the learned Counsel for both the sides, who have read and re-read the following relevant provisions of the Right to Information Act, 2005 as well as the Gujarat Right to Information Rules, 2005, are as under:

Sections 2(n), 7(1), 7(7), 8(d) and 8(j) and 11(1), (2), (3) and (4) and Section 19 as well as Rule 6 of the Gujarat Right to Information Rules, 2005, read as under:

Section 2(n) "third party" means a person other than the citizen making a request for information and includes a public authority.

Section 7. Disposal of request.- (1) Subject to the proviso to Sub-section (2) of Section 5 or the proviso to Sub-section (3) of Section 6, the Central Public Information Officer or State Public Information Officer, as the case may be on receipt of a request under Section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9;

Provided that whether the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(7) Before taking any decision under Sub-section (1), the Central Public Information Officer or State Public Information Officer-as the case may be shall take into consideration the representation made by a third party under Section 11.

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

(a) to (c) ...

(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 large public interest warrants the disclosure of such information:

(e) to (i) ...

(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) and (3) ...

Section 11. Third party information.- (1) Where a Central Public Information Officer or the 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.

Section 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 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 State Public Information Officer, as the ease 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.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(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, within 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.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under Sub-section (1) or Sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(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.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

Rule 6 Appeal (1) Any person aggrieved by a decision of the Public Information Officer in Form D or Form F, or does not receive any decision, the case may be, he may prefer an appeal in Form G within thirty days from the date of receipt or non-receipt of such decision, to appellate authority appointed by the Government in this behalf.

(2) The applicant aggrieved by an order of the appellate authority under Sub-rule (1) may prefer the second appeal to the State Information Commission within ninety days from the date of the receipt of the order of the appellate authority giving following details:

(i) Name and address of the applicant;

(ii) Name and office address of the Public Information Officer;

(iii) Number, date and details of the order against which the second appeal is filed;

(iv) Brief facts leading to second appeal;

(v) Grounds for appeal;

(vi) Verification by the appellate;

(vii) Any information which commission may deem necessary for deciding the appeal.

(3) Every appeal made to the Commission shall be accompanied by the following documents:

(i) Certified copy of the order against which second appeal is preferred.

(ii) Copies of documents referred and relied upon by the appellant along with a list thereof.

(4) While deciding appeal the commission may.-

(i) take oral or written evidence on oath or an affidavit;

(ii) evaluate the record;

(iii) inquire through the authorized officer further details or truthfulness;

(iv) summon the Public Information Officer or the appellate authority who has heard the first appeal;

(v) hear the third party: and

(vi) obtain necessary evidence from the Public Information Officer or the appellate authority who has heard the first appeal.

(5) The Commission shall serve the notice in any one of the following mode ,-

(i) service by the party itself;

(ii) by hand delivery;

(iii) by registered post with acknowledgment due; or

(iv) through the Head of the Department or it's subordinate office.

(6) The Commission shall after hearing the parties to the appeal, pronounce in open proceedings its decision and issue a written order which shall be authenticated by the registrar or such officer as may be authorized by the Commission in this behalf.

(Emphasis supplied) The aforesaid provisions are repeatedly read out before this Court and pointed out that the information, if relates to or supplied by a third party and has been

treated as confidential by that third party, such third party should be given notice by the Public Information Officer before taking decision under Section 7(1) of the Act, 2005. Looking to Section 11(1), Public Information Officer if intends to disclose the information relating to or supplied by third party, has to give written notice to that third party as to information sought for by the original applicant. Looking to the provisions of the Act, 2005, a representation can be made by the third party as to confidentiality of information as to disclosure of information. This representation can be made orally or in writing. The words used under Section 11(1) of the Act, 2005 is 'submission. Third party can make a submission in writing or orally. This submission can be made orally only when opportunity of being heard is given. Looking to the provision of Section 7(7) of the Act, 2005, it is a duty cast upon Public Information Officer that he shall take into consideration a representation made by the third party under Section 11(1) of the Act, 2005. Here, words used is 'representation'. Thus, as per Section 11(1) of the Act, 2005, submission can be made by the third party orally and whenever a representation is made under Section 11(1) by a third party, it ought to be taken into consideration by the Public Information Officer. Looking to these two provisions and also keeping in mind the fact that third party has been given a right to prefer an appeal under Section 19(2) of the Act, as well as right of Second Appeal is also given under Section 19(3) and duty is cast upon the second Appellate Authority to give an opportunity of being heard to the third party, especially under Section 19(4) of the Act, 2005, therefore, in my opinion, it is a duty vested in the Public Information Officer to give an opportunity of personal hearing to the third party, to get his submissions, whether he treats the information as confidential and whether information should be disclosed, if the information is relating to or is supplied by the third party.

9. It is contended by learned Counsel for original applicant as well as by Gujarat State Information Commission that third party cannot treat the information as confidential subsequently. The words used...has been treated as confidential by that third party' do not give right to the third party to treat the information as confidential, subsequent in point of time. This contention is also not accepted by this Court, looking to the provision of Section 11(1) of the Act, 2005, the words, the information 'relating to or is supplied by the third party' are such that it is for the third party to point out to the Public Information Officer that the information sought for, to be disclosed supplied is treated as confidential or not. It may happen that when public body collects the information relating to or given by third party. It might not have been treated as confidential but, third party can make a submission that now it is treating the said information as confidential. More so. when information is 'relating to third party' it may not be even known to that third party when and what information relating to third party, was collected by public body. Therefore, Section 11(1) of the Act, 2005, gives mandate to Public Information Officer to give written notice to third party if he intends to disclose information relating to third party. Therefore, looking to nature of information to be disclosed, third party can make written or oral submission whether the information is confidential or not and whether the information should be disclosed or not,. Afflux or passage of time, sometime allows that third party to treat the information as confident, When third party starts business, it might have given several information to public body for getting permissions/licences. At that time, these information might not have been treated as confidential. By afflux of time, commercial rivalry/competition increases. Somebody starts similar business subsequently. If this man asks for information about the third party, Public Information Officer has to give notice to

third party and though information was not treated as confidential, initially, in my opinion, under Section 11(1). third party can treat the information supplied by it as confidential. Similarly, if any information relating to third party has collected by public body, third party may not be knowing that information, relating to it is collected by public body-Therefore, third party may not be knowing importance of such information collected by public body. If any person is asking for this information, relating to third party. in my opinion, as per Section 11(1). Public Information Officer has to give notice to third party and it can treat the information; relating to third party as confidential though it was not treated as confidential initially because, if may not be known to it what important information relating to third party is gathered/collected by public body, Complexity of commerce and trade or Development of economic transactions may compel a third party to treat an information 'relating to or supplied by third party as confidential. What is confidential to the third party is known to the third party alone-There may not be a rubber stamp upon the information that this is a confidential information. It is a right vested in the third party to treat any information 'relating to or supplied by the third party' as confidential. Confidentiality of information depends upon several factors like business of third party, nature of commercial transactions of the third party, etc. Therefore, as per Section 11(1) of the Act, 2005, a written notice is required to be issued to the third party by Public Information Officer, whenever an information to be disclosed is 'relating to the third party or is supplied by the third party'. The words 'relating to' are very general in nature. They take into their sweep, not only the documents, which are supplied by the third party but also any document is pertaining to third party or any document. which has direct nexus with the affairs of the third, party It Is for the third party to point out to the Public Information Officer upon receipt of the notice whether he treats the said information as confidential or not. Even grammatical meaning of the words...has been treated as confidential by that third party' leads to the same conclusion. It is present perfect tense. It is contended by learned Counsel for the petitioners that the information 'has been treated' is still a present tense before the nearest part. Few sentences explaining present perfect tense were pointed out as under:

(i) How long you have been married.

(ii) They have been living in the same house for 13 years.

(iii) Animals have been here for the centuries.

In the aforesaid three sentences, words have been used, they give the meaning that something is lasted for sometimes. Words used in Section 11(1) - '...and has been treated as confidential by that third party' is giving meaning that the third party can treat information 'relating to or supplied by him' as confidential information, at any point of time, before the Information disclosed or supplied by Public Information Officer. Whenever any information sought for, is relating to third party or supplied by third party, as per Section 11(1) of the Act, 2005, and if Public Information Officer intends to disclose the information, he had to give notice to the third party. Submissions can be made by the third party in writing or orally and this submission ought to be considered by the Public Information Officer, as per Section 7(7) of the Act. An opportunity of being heard ought to have been given by Public Information Officer. There is no express exclusion of hearing process. Submissions can be made even orally. Public Information Officer has to consider these submissions or representation. In view of these provisions, I am of the opinion that

Public Information Officer should give opportunity of personal hearing to third party before imparting information. In the facts of the present case, no such hearing was ever afforded before imparting the information relating to the petitioner and, therefore, the orders passed by respondent Nos. 1, 2 and 4 deserve to be quashed and set aside.

10. Speaking order to be passed, when information relating to or supplied by the third party and has been treated as confidential by that third party:

It is also contended by learned Counsel for the original applicant as well as by Gujarat State Information Commission that no reasons are required to be assigned under Section 7(1) of the Act, 2005, for passing an order for grant of information. This contention Is also not accepted by this Court, mainly for the reason that if the information supplied is pertaining to third party, reasons for imparting such information to the applicant ought to be given, otherwise, appellate authority cannot know the mind of Public Information Officer. An appeal is provided under Section 19(2) of the Act, 2005. Third party can prefer an appeal. Reasons reveal the mind of the Lower Authority. Reasons of an order is like soul of an order, without order must be declared ineffective. If the reasons are not given for disclosure of the information relating to third party or supplied by third party, the order can be known as non-speaking order. In the facts of the present case, the orders passed by the respondent authorities are totally non-speaking orders and, hence, deserve to be quashed and set aside.

11. It has been contended by learned Counsel for the original applicant that the Public Information Officer has not to decide dispute or lis nor to hold an inquiry nor has to follow the Court trappings and, therefore, his act is purely administrative in nature and has relied upon the decision rendered by Hon'ble Supreme Court reported in AIR 1963 SC 874 as well as AIR 1664 SC 1140 as well as AIR 1963 SC 677 and, therefore, decision of the Public Information Officer under Section 7 is purely administrative in nature and, hence, he is not required to pass a speaking order. This contention is not accepted by this Court for the reason that the Public Information Officer is disclosing the information relating to or supplied by a third party, which has been treated as confidential by that third party. As per Section 11(1) of the Act, 2005, show cause notice in writing ought to be given by him to a third party. Third party can object disclosure of the information. Thus, Public Information Officer, is deciding a dispute or lis between the applicant and a third party and, therefore, the said authority would be a quasi-judicial authority. His decision will prejudicially affect the rights of the third party. It has been held by Hon'ble Supreme Court in the case of Indian National Congress v. Institute of Social Welfare , especially in para 24, as under:

24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge, from the aforestated decisions are these:

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 Us 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.

Applying the aforesaid principle, we are of the view that the presence of a lis or contest between the contending parties before a statutory authority, in the absence of any other attributes of a quasi-judicial authority is sufficient to hold that such a statutory authority is quasi-judicial authority. However, in the absence of a lis before a statutory authority, the authority, would be quasi-judicial authority if it is required to act judicially.

(Emphasis supplied) Thus, in view of the aforesaid decision also, Public Information Officer is a quasi-judicial authority as is empowered under the statute i.e. the Act, 2005 to do an act (disclosing of information), which would affect prejudicially a third party. Third party can prefer an appeal under Section 19(2) of the Act, 2005. Therefore, such authority has to pass a reasoned order.

12. Proceedings under Sections 7 and 11 of the Act, 2005:

As per Section 6 of the Act, 2005, any applicant can apply for getting information and such application has to be disposed of, as per Section 7 of the Act, 2005. Section 7(7) of the Act, 2005, imposes a duty upon the Public Information Officer that he shall take into consideration a representation made by a third party under Section 11 of the Act, 2005. Section 11 is applicable when information to be disclosed is 'relating to or supplied by a third party' and has been treated as confidential, by that third party. To know, whether information 'relating to or supplied by the third party' has been treated as confidential by that third party, Public Information Officer has to give notice. Public Information Officer cannot unilaterally decide, on its own, that the information, sought for by the applicant, is confidential or not. Whether information has been treated as confidential, by the third party or not, that can be said only by the third party and upon getting such submission in writing or orally, Public Information Officer has to consider them while taking a decision about disclosure of information. Looking to the aforesaid provision of Section 7(7) read with Section 11 of the Act, 2005, it appears that which document or information has been treated as confidential by that third party that ought to be disclosed by the third party in reply of the show cause notice, which must be given by Public Information Officer as stated hereinabove. Submission can be made even orally before the Public Information Officer. These words are sufficient enough to impose duty upon Public Information Officer to give personal hearing to a third party. In fact, Public Information officer if discloses the information in violation of the provisions of the Act, 2005 and if the appeal is preferred by the third party and if he succeeds, it is difficult to get back such information from the original applicant. Public Information Officer or any authority under the Act, 2005 if is deciding the disclosure of the information relating to third party or supplied by the third party, which has been treated as confidential by that third party and if any application for stay of the order is applied, it ought to be granted for a reasonable period, so that the third party can prefer First Appeal or Second Appeal.

10. Whether time limit prescribed for imparting information dilutes the principles of natural justice:

It is vehemently submitted by learned Counsel for the original applicant that very rigid and time bound schedule has been given to the Public Information Officer, under the Act, 2005. No sooner did the application is received for getting in formation, the clock starts. If the information is not supplied within time bound schedule, drastic are the consequences. There

is a presumption under Section 7(2)that if the information is not supplied within time, it shall be deemed to have refused. Under Section 20of the Act, 2005, Public Information Officer or the responsible Officer is liable for the penalty and, therefore, there is no need by Public Information Officer to hear the third party. This contention is not accepted by this Court for the reasons as stated hereinabove and looking to Sections 7(7), 11(1), 11(3), 11(4) read with Section 19(2) and 19(4), it is the duty vested in Public Information Officer to invite a submission from a third party. Such submission can be in writing or orally. They must be considered by the Public Information Officer. Right to make oral submissions, means right of personal hearing. Even under Rule 6(4)(v) of the Gujarat Right to Information Rules, 2005, third party may be heard by First Appellate Authority and, under Section 19(4), explicitly and unequivocally, a right of personal hearing is given. As per the Act, 2005-

(i) written notice to third party must be given (as per Section 11(1));

(ii) third party can make submissions in writing or orally;

(iii) these submissions must be kept in view (as per Section 11(1)) or shall have to be considered (as per Section 7(7) by Public Information Officer;

(iv) Public Information Officer has to pass speaking order or Public Information Officer has to give reasons, if information 'relating to or supplied by third party and has been treated as confidential by that third party" is to be disclosed;

(v) copy of this order must be given to third party (as per Section 11(3));

(vi) third party has to be informed that he can prefer an appeal (as per Section 11(4));

(vii) right of First Appeal is given to third party (as per Section 19(2));

(viii) right of Second Appeal is also given to third party (under Section 19(3));

(ix) Under Rule 6(4)(v) of the Gujarat Information Rules, 2005, third party can get opportunity of personal hearing before First Appellate Authority.

(x) duty is also imposed upon Second Appellate Authority to provide opportunity of hearing to third party (as per Section 19(4)).

In view of these provisions under the Act, 2005. I am clearly of the opinion that time bound schedule given under the Act. 2005 is not ousting a right of hearing vested in a third party before imparting information to the applicant, 'relating to or supplied by that third party and has been treated as confidential'. Confidentiality of the information is such a vital subject that it requires proper understanding by Public Information Officer. Looking to the aforesaid provisions of the Act, 2005, hearing of third party is a must. Time bound schedule given under the Act, 2005 should be kept in mind and hearing ought to be over, keeping in mind, the time bound schedule given under the Act. It has been held by Hon'ble Supreme Court in the case of Dr. Rashlal Yadav v. State of Bihar and Ors. , especially in Para 6, relevant part of Para 6 reads as under:

...If the statute confers drastic powers it goes without saying that such powers must be exercised in a proper and fair manner. Drastic substantive laws can be suffered only If they are fairly and reasonably applied. In order to ensure fair and reasonable application of such laws Courts have, over a period of time, devised rules of fair procedure to avoid arbitrary exercise of such powers. True it is, the rules of natural justice operate as checks on the freedom of administrative action and often prove time-consuming but that is the price one has to pay to ensure fairness in administrative action. And this fairness can be ensured by adherence to the expanded notion of rule of natural justice. Therefore, where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair. Rules of natural justice are, therefore, devised for ensuring fairness and promoting satisfactory decision-making. Where the statute is silent and a contrary intention cannot be implied the requirement of the applicability of the rule of natural justice is read into it to ensure fairness and to protect the action from the charge of arbitrariness. Natural justice has thus secured a foothold to supplement enacted law by operating as an implied mandatory requirement thereby protecting it from the vice of arbitrariness. Courts presume his requirement in all its width as implied unless the enactment supplies indications to the contrary as in the present case....

(Emphasis supplied) Thus unless the law expressly or by necessary implication excludes the application of the rule of natural justice. Courts will read the said requirement in enactments that are silent and insist on its application. Looking to the provisions of Section 7(7), 11(1), 19(2), 19(3) and 19(4), I am clearly of the opinion that applicability of the principles of natural justice are excluded before taking decision under Section 7 and, therefore, even if it is a time-consuming process as stated in the aforesaid para, the principles of natural justice ought to be followed to ensure fairness in the decision by Public Information Officer.

Thus, Time bound schedule given under the Act, 2005 is not for ousting the hearing of a third party but is only for the prompt, quick and early disposal of the application, preferred by the applicant under Section 6 of the Act, 2005, so that information can be supplied as quickly as possible to the applicant. Everything cannot be done so hurriedly that the rights given to third party under Section 11 are violated. What information has been treated as confidential by the third party is known to the third party. Public Information Officer has to understand confidentiality of the information, its effect upon the third party and has also to keep in mind, right of applicant to get information. Sometimes such informations are relating to trade or commercial secrets protected by law and, therefore, proviso has been provided under Section 11(1) of the Act, 2005, that if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party, the disclosure of information is allowed by Section 11(1) of the Act, 2005. Likewise are the provisions, vis-a-vis third party under Sections 8(d) and 8(j). But before arriving at this having far reaching consequences, conclusion by Public Information Officer, he ought to give an opportunity of being heard to a third party, even in existence of time bound schedule given by the Act, 2005. Thus, in view of the aforesaid provisions, the principles of natural justice are not diluted, by time bound schedule given under the Act, 2005.

13. What satisfaction must be arrived at. prior to disclosure of information about third party:

Looking to the provisions of the Act especially Section 8(d), 8(j) and proviso to Section 11(1) and looking to the process of disclosing information to the applicant 'relating to or supplied by the third party and treated as confidential by the third party', the Act imposes a duty upon Public Information Officer to arrive at a conclusion that public interest in disclosure outweighs. harm or injury, to the protected interest of such third party, or larger public interest warrants, disclosure of such information.

In considering whether the public interest in disclosure outweighs in importance any possible harm or injury to the interest of such third party, the Public Information Officer will have to consider the following:

(i) The objections raised by the third party by claiming confidentiality in respect of the Information sought for.

(ii) Whether the Information is being sought by the applicant in larger public interest or to wreak vendetta against the third party. In deciding that the profile of person seeking information and his credentials will have to be looked into. If the profile of the person seeking Information, in light of other attending circumstances, leads to the construction that under the pretext of serving public interest, such person is aiming to settle personal score against the third party, it cannot be said that public interest warrants disclosure of the information solicited.

(iii) The Public Information Officer, while dealing with the information relating to or supplied by the third party, has to constantly bear in mind that the Act does not become a tool in the hands of a busy body to settle a personal score.

Learned counsel for the petitioner has relied upon the decision rendered by Hon'ble Supreme Court in the case of Ashok Kumar Pandey v. State of West Bengal and Ors. , especially in Paras 12 and 14, read as under:

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process wither by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

14. The Court has to be satisfied about (a) the predentials of the applicant: (b) the prima facie correctness or nature of information given by him; (c) the information being not vague

and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motive, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy me. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even to their own to protect.

(Emphasis supplied) Thus, for arriving at a conclusion that public interest in disclosure outweighs, harm or injury, to the protected interest or larger public interest warrants disclosure of such information, credentials of the applicant or profile of a person should also be kept in mind.

Thus, the aforesaid factors will be considered by Public Information Officer before disclosing the information 'relating to or supplied by a third party and has been treated as confidential by that third party'. To arrive at this conclusion, Public Information Officer has to give notice to a third party. They ought to allow a third party to make a submission thereafter, he must hear the third party and finally, he has to pass a speaking order. In the facts of the present case, no conclusion has been arrived at by the concerned respondent authorities, and, hence, the orders passed by concerned respondent authorities deserve to be quashed and set aside.

14. Proceedings under Sections 18 and 19 of the Act, 2005:

Learned counsel for the petitioners submitted that though no second appeal was preferred by the applicant before respondent No. 1, respondent No. 1 passed an order on 31st January, 2007 to disclose the Information and the matter was remanded to respondent No. 2. The Second Appellate Authority remanded the matter to the First Appellate Authority and, thereafter, mathematically and without application of mind, rest of the authorities have followed the direction dated 31st January, 2007. In response to this, it is contended by learned Counsel for respondent No. 1 that Sections 18, 19 and 20are read simultaneously and not in isolation, then, extent, width and nature of the power is given under Section 18 of the Act, 2005. If there is any complaint, it will be considered as per Section 18 and if the complaint is received, the order can be passed by respondent No. 1, without giving any opportunity of being heard to the third party. Section 19 pertains to appeals (First Appeal as well as Second Appeal) and Section 20 pertains to penalty and, therefore, it is submitted by learned Counsel for respondent No. 1 that there is no illegality by respondent No. 1 in passing an order dated 31st January, 2007. This contention of respondent No. 1 is not accepted by this Court mainly for the reasons as stated hereinabove that a third party has got certain rights under the provisions of the Act, 2005, as confidential information is to be disclosed or supplied to the applicant. Confidentiality of the information cannot be ignored by Public Information Officer. In the facts of the present case, as stated hereinabove, the informations which were asked by the applicant were relating to the third party. He preferred an application on 25th July, 2006 to the respondent No. 3 under Section 6 of the

Act, 2005. The respondent No. 3 transferred the said application to respondent No. 4 on 29th July, 2006, respondent No. 3, who is Public Information Officer at Ahmedabad had correspondingly brought to the notice of the applicant that he may contact respondent No. 4 for getting information, who is Public Information Officer at Jamnagar. This communication is dated 29th August, 2006. Being aggrieved by this communication, the applicant had preferred an application before respondent No. 1, who is Second Appellate Authority. Looking to the facts of the case, he passed a final order, (which could have been passed by Public Information Officer, after following procedure as referred hereinabove) and remanded the matter to respondent No. 2 (who is first Appellate Authority). There is no such provisions under the Act, 2005 for remanding such application to respondent No. 2 because it was a complaint under Section 18. As per learned Counsel appearing for respondent No. 1, in fact, no second appeal was preferred before respondent No. 1 by the original applicant. Nothing was decided by the first Appellate Authority and, therefore, there is no question of remanding the matter to respondent No. 2 whatsoever arises and that too, with the final decision to impart information as prayed for by the original applicant and because of his order dated 31st January, 2007, which is totally in violation of provisions of the Act, 2005 and in violation of principles of natural justice. I accept this contention. Respondent No. 1 cannot pass an order dated 31st January, 2007. Looking to Section 18(1) empowers to inquire into a complaint. As per Section 18(2), if there are reasonable grounds, State Information Commission can hold inquiry. As per Section 18(3) provides teeth for holding inquiry. Certain powers vested in Civil Court under Civil Procedure Code have been invested in the Commission. Scope of Section 18 is different from Section 19. Section 19 provides Appeals (First Appeal and Second Appeal). In appeal, order passed by lower authority can be quashed or it can be amended or modified or can be upheld. Appeal is continuation of earlier proceedings.

In the facts of the present case, order dated 31st January, 2007 passed under Section 18. No appeal was preferred under Section 19. In fact, State Information Commission has no power or jurisdiction to pass such order under Section 18, for the following reasons:

(i) The Information Commission has no authority or jurisdiction to pass an order directing the Appellate Authority to part with information under Section 18 of the Act.

(ii) The order clearly indicates that the Appellate Authority is left with no discretion except to issue suitable directions and to arrange to provide information.

(iii) No scope has been left for the Assistant Public Information Officer or the Public Information Officer to decide the matter considering the provisions of Section 11.

(iv) Direction is given that the lower authorities should not only provide information, but to furnish to the Commission the information so provided.

(v) The power under Section 18 is limited to hold an inquiry into a complaint and if necessary, impose penalties under Section 20. It is not an appellate power for the appellate power is found in Section 19.

(vi) The effect of the order dated 31-1-2007 is that the petitioner has been completely deprived of statutory right of appeal. This would be evident from the fact that the Labour

Commissioner has been directed to furnish information and further the Labour Commissioner has directed in turn the Assistant Labour Commissioner vide order. dated 9-3-2007 to disclose the informations. All appeals in the circumstances have become nugatory. Alternative remedy, which would be generally available, is completely lost in view of the order passed by the Information Commissioner. It appears that rest of the authorities have mechanically followed that order dated 31st January, 2007. Respondent No. 2 is the first Appellate Authority, who directed from Ahmedabad on 9th March, 2007 to furnish the information. As per order dated 31st March, 2007, direction was given by respondent No. 2 at Ahmedabad for information to be supplied by respondent No. 4, who is at Jamnagar and on the very same day, respondent No. 4, who is Jamnagar supplied information to the original applicant because of direction in the order dated 31st January, 2007. An order passed by the Officer at Ahmedabad, whether was properly read or understood by Officer at Jamanagar is not even properly coming on the record of the present case. The distance between Ahmedabad and Jamnagar is more than 300 kms. As this Court is quashing and setting aside the impugned three orders passed by respondent Nos. 1, 2 and 4 on the ground of violation of principles of natural justice, on the ground of orders being non-speaking orders and passed without giving notice and opportunity of personal hearing to the third party, this Court is not much analyzing scope of Section 18 read with Section 19 of the Act, 2005 and this point is kept open whether Sections 18 and 19 are working independently or not. A thing which cannot be done directly, can never be done indirectly. A right vested in the third party directly under Section 11(1) read with Section 7(7) of the Act, 2005 cannot be taken away by respondent No. 1 treating the application preferred by the original applicant dated 7th September, 2006 as the complaint under Section 18 of the Act, 2005. In other words, information which cannot be given under Section 7, can never be given under Section 18. Because Section 7 is to be read with Section 11(1), without hearing third party, no information can be supplied if it is relating to or supplied by third party and has been treated as confidential by the third party. Thus, a grave error has been committed by respondent No. 1 in passing the order dated 31st January, 2007, which is apparent on the face of the record.

15. Locus standi:

It is submitted by learned Counsel for the original applicant that the petitioners have no locus standi to file these petitions. Looking to the provisions of the Act and the information asked by the original applicant, the information is relating to the present petitioner and its group Companies. Petitioner and its group Companies are third party under Section 2(n) of the Act, 2005 and there are also allegation as to commercial rivalry. Two Suits have been filed by the original applicant bearing Civil Suit No. 1431 of 2003 and Civil Suit No. 3189 of 2002. The commercial rivalry is referred to in Para 6 and 6-A in respective plaints. Learned Counsel for the petitioners submitted that more than a dozen criminal complaints have been filed by Union of India through its Officers, Serious Fraud and Investigation Office, Ministry of Company Affairs, New Delhi, against the applicant 32 such applications have been given by the very same applicant seeking information about the petitioner and its group companies. The figure 32 has gone upto more than half a century by now. Profile of a person is also to be seen by Public Information Officer for arriving at conclusion as to whether public interest, in disclosure outweighs harm or injury to the private or protected of the third party or(whether larger public interest warrants disclosure of such information.

With this texture of fabric of facts, I am of the clear opinion that the petitioners have locus standi to prefer these petitions.

16. Procedure to be followed when order is against third party:

Right to get information and right to treat the particular information as confidential is to be seen through the provisions of the Act, 2005 by Public Information Officer before disclosing the information because once the information is disclosed, which is confidential, it is extremely difficult for the higher/ Appellate Courts to put the clock back. Release of information is like air or smell. Once it is allowed to spread over, it cannot be called back, by Appellate Forums. Therefore if the stay is prayed, by third party, against disclosure of information, relating to or supplied by third party and has been treated as confidential by that third party, it ought to be given, at least till appeal period is over. There is no restriction upon applicant, for further transmission of information, after getting the same. If stay is not granted, perhaps, no fruits of favourable order in Appeal can be enjoyed by third party. In practical sense, order cannot be upset by higher forums. Once information is allowed to go in the hand of applicant, it is irreversible process. It makes practically First Appeal or Second Appeal or Writ petition, infructuous or every time relief will have to be moulded. Therefore, to make First Appeal or Second Appeal, effective, stay ought to be granted, if the decision is against the third party under Right to Information Act, 2005. Confidential information ought not be disclosed by the Public Information Officer except for the situation, which are referred to hereinabove. Exceptions are mentioned in the Act, 2005 especially in Sections 8 and 9 of the Act, 2005. As stated hereinabove, Public Information Officer should keep in mind public interest outweigh harm or injury to the protected interest or Public Information Officer has to draw attention of his mind that larger public interest warrants disclosure of such information. In the facts of the present case, no such conclusion has been arrived by any of the respondent authorities and, therefore, impugned orders affect the petitioners and hence have locus standi to challenge the impugned orders.

17. Rights of third party:

There are certain rights conferred by the Act, 2005 to the third party, prior to disclosure of information. Likewise, as stated hereinabove, there are also certain rights, which are vested in the third party, after an order of disclosure of the information 'relating to or supplied by the third party and has been treated as confidential by that third party'. As per Section 2(n) of the Act, 2005, the present petitioner is a third party. Looking to the provisions of the Act, 2005, especially Section 7(7), 8(d) and 8(j) read with Section 11 as well as under Section 19 of the Act, 2005, third party has certain rights, in relation to disclosure of information relating to third party or supplied by third party:

Pre-decisional Rights:

(i) As per Section 11 of the Act, 2005, third party should be given a written notice if Public Information Officer intends to disclose or supply, the information 'relating to or supplied by the third party';

(ii) The said notice ought to be given by the Public Information Officer as to which information is asked by the applicant about the third party. Thus, nature of information asked by the applicant has to be revealed in the said notice;

(iii) Third party has right to treat the said information as confidential, looking to the several factors, viz. nature of business of the third party, nature of commercial transactions, looking to the nature of correspondence with other various Institutes, looking to the nature of reports supplied by the third party or supplied by some other Institutions about the third party, etc. Third party can treat the information as confidential at any stage, prior to grant or disclosure of information to the original applicant, by Public Information Officer;

(iv) Third party ought to be invited to make a submission in writing or orally by Public Information Officer;

(v) It is a right vested in the third party that such submission shall be kept in view, while taking a decision by Public Information Officer about disclosure of information (as per Section 11(1) of the Act, 2005) or third party has right that the Public Information Officer shall take into consideration the representation made by a third party under Section 11 (as per Section 7(7) of the Act, 2005);

(vi) Third party has a right of personal hearing to be given by Public Information Officer. Looking to Section 8(d) and 8(j) and proviso to Section 11(1), disclosure of information may be allowed, (i) if public interest in disclosure, outweighs, harm or injury to the protected interest of third party, or (ii) if larger public interest warrants the disclosure of such information. This will be a complex decision by Public Information Officer as it will have direct nexus with some of the important rights of third party. It may harm the competitive position of third party or it may tantamounts to unwarranted invasion, upon right of privacy;

Therefore also, in my opinion, personal hearing ought to be afforded to the third party.

(vii) Third party has a right to get speaking order. If order is not a speaking order then, the Appellate Authority cannot read the mind of the Public Information Officer. Right to prefer an appeal has been given to the third party under Section 19 of the Act, 2005. Reasons of the order, is the soul of the order, without which order has no life-Otherwise also, non-speaking order leads to arbitrariness. In case of Mr. A information will be ordered to supply whereas in other case, it can be denied. Arbitrariness and equality are sworn enemies of each other.' Where arbitrariness is present, equality is absent and where, equality is present, arbitrariness is absent.

Post-decision Rights:

(viii) When Public Information Officer orders to disclosure an information 'relating to or supplied by third party and has been treated as confidential by that third party' under Section 7, and if third party prays for stay of operation, implementation and execution of the order to prefer an appeal, or to approach higher forum generally it ought to be given at least till appeal period is over, except for the cogent reasons, to be recorded in writing. Wrongly disclosed/ supplied, confidential information relating to third party or supplied by third

party, will be like spreading over, of air. It is practically impossible, for appellate forum, even if third party succeed in first appeal or second appeal or in writ petition, to order to return the wrongly disclosed information. Like smell, it will spread over from one hand to another hand, information can reach to different hands without any restriction. There is no restriction, after getting information.

(ix) It is a right vested in a third party to get notice in writing of the decision of the Public Information Officer With a statement therein, that a third party is entitle to prefer an appeal (as per Section 11(3)and 11(4) of the Act, 2005)

(x) Third party has a right to prefer First Appeal against the order passed by Public Information Officer (as per Section 19(2) of the Act, 2005).

(xi) Third party has a right to prefer Second Appeal under Section 19(3) of the Act, 2005.

(xii) Third party has a right of personal hearing before Appellate Authority as well as Second Appellate Authority (as per Rule 6(4) (v) of the Rules, 2005) as well as under Section 19(4) of the Act, 2005.

The aforesaid rights of the third party have been violated by the concerned respondent authorities. No notice was given to the third party, nor even the third party was heard before imparting the information by the respondent authorities. The impugned orders are non-speaking orders. Hence, the impugned orders deserve to be quashed and set aside.

18. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, the order dated 31st January, 2007 passed by respondent No. 1 i.e. Gujarat State Information Commission (Annexure 'C to the memo of the petition) as well as the order dated 9th March, 2007 passed by respondent No. 2 i.e. Labour Commissioner and Appellate Authority (Annexure 'C to the memo of the petition) as well as the communication dated 9th March, 2007 issued by respondent No. 4 i.e. Public Information Officer (Annexure 'G' to the memo of the petition) are hereby quashed and set aside. The original applicant Rasiklal Mardia is hereby directed not to make use of said information for any purpose whatsoever. Respondent No. 1 Gujarat State Information Commission is hereby restrained from proceeding further with application preferred by the original applicant under Section 18 of the Act, 2005 being Complaint No. 541/06-07. Respondent Nos. 1 to 6 in Special Civil Application No. 17067 of 2007 are hereby directed not to entertain any applications preferred at the instance of the original applicant under the provisions of the Act, 2005 concerning the petitioner and its group Companies for imparting or disclosing information to the original applicant, without following due procedure under the Act, 2005 and in compliance with the aforesaid directions given in the aforesaid paras of this judgment nor any such applications shall be proceeded further by respondent Nos. 1 to 6, except after following provisions of the Act, 2005 and interpretation thereof made hereinabove, in this judgment. Rule made absolute in both the petitions.

19. Learned Counsel for the original applicant-Rasiklal Mardia prayed for stay of the operation of the aforesaid order. It is opposed by the learned Counsel for the petitioner. Looking to the facts and circumstances of the case and the provisions of the Act, 2005 and

for the reasons stated hereinabove, the request made by learned Counsel for the original applicant is not accepted by this Court.

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 21.05.2010

\+ **WP (C) 12714/2009**

DELHI DEVELOPMENT AUTHORITY ... Petitioner

- versus -

CENTRAL INFORMATION COM MISSION AND ANOTHER ... Respondents

Advocates who appeared in this case:-
For the Petitioner : Mr Ajay Verma
For the Respondent No.1 : Prof. K.K. Nigam
For the Respondent No.2 : Mr Sarabjit Roy (In person)

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MS. JUSTICE VEENA BIRBAL

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J

PREFACE

1. Information is power. This is truer now, in this information age, than ever before. In a democracy this power of information which the public authorities possess is to be shared with the people. But at the same time, not every piece of information is to be made public. There is the public interest and democratic purpose in dissemination of information on the one hand and the competing private rights and national interests in general non-disclosure,

on the other. This is recognized in the preamble to the Right to Information Act, 2005 (hereinafter referred to as 'the said Act') itself:-

> "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"
>
> (emphasis supplied)

Thus, the flow of information is not to be an unregulated flood. It needs to be controlled just as the flow of water is controlled by a tap. Those empowered to handle this 'tap' of information are imbued with great power. Under the said Act, this power is to be exercised by the Information Commissions (State and Central). But, the power is clearly not plenary, unrestricted, limitless or unguided. The Information Commissions are set up under the said Act and they have to perform their functions and duties within the precincts marked out by the legislature. As we shall see, this is a case where the Central Information Commission and the Chief Information Commissioner have travelled beyond their boundaries of power and have thereby transgressed the provisions of the very Act which created them.

The Facts:

2. The petitioner (Delhi Development Authority), by way of this writ petition under Article 226 of the Constitution of India, seeks the issuance of

a writ in the nature of certiorari quashing / setting aside the order dated 22.09.2009 passed by the Central Information Commission upon a complaint filed by the respondent No.2. The petitioner also seeks the quashing / setting aside of the Central Information Commission (Management) Regulations, 2007 (hereinafter referred to as 'the impugned Regulations') on the ground that they are *ultra vires* the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act'). In particular, the petitioner prays for the quashing of Chapter IV with specific emphasis on Regulation 20, which makes provision for the conduct of an inquiry. The petitioner is also aggrieved by the fact that the Central Information Commission required the presence of the Vice-Chairman of the Delhi Development Authority in the course of proceedings before it and the fact that the said Vice-Chairman could not be present was commented upon adversely by the Central Information Commission. The point taken by the petitioner is that the Central Information Commission does not have the plenary powers, which are vested in the High Courts and the Supreme Court of India and that, under the provisions of the RTI Act, the said Commission only has the power to summon and enforce the attendance of a person for the purposes of evidence. It was contended that the Commission does not have the power to direct the presence of the head of a public authority like the petitioner, especially when the concerned officers of such a public authority in the hierarchy under the RTI Act and senior officers have otherwise appeared before the Commission in deference to it. It was, therefore, contended that there was no power with the Commission to require the presence of the

Vice-Chairman of the petitioner and consequently, there was no occasion for the Commission to make any adverse observation in the impugned order merely because the Vice-Chairman of the petitioner could not appear for the hearing on 03.09.2009. In the impugned order dated 22.09.2009, the Central Information Commission made the following observations:-

> "At the outset we are constrained to note adversely the absence of Vice Chairman, DDA who was specially invited on this occasion to help clarify the decision regarding compliance with the orders of this Commission."
>
> (underlining added)

3. The operative portion of the decision taken by the Commission on 22.09.2009 is as under:-

> "Having heard the arguments and examined the records, we find the levels of compliance of the DDA both in letter & spirit of the RTI Act leaves much to be desired. It does not appear that close attention has been paid by the top management of this Authority to ensure a smooth transition to the transparency and accountability that is demanded by this law. Principal Commissioner cum Secretary, DDA Shri V.M. Bansal, although repeatedly asked to clarify various points at issue, solidly took recourse to the plea that whatever the Commission directs, the DDA will implement. He had no suggestions of what course may be followed either by internal inquiry or enquiry by professionals of the need to review the public disclosure policy of the DDA. This is a most unsatisfactory situation in a public authority, which should be in the forefront of transparency dealing with a mandate as vital as is assigned to the DDA. For this reason, this Commission in enquiring into the complaint of Dr. Sarabjit Roy is satisfied that there are grounds to enquire into the matter of compliance with sec 4 of the RTI Act by the DDA. To initiate this enquiry a Committee of the following is appointed, which will go into the details of servicing of the RTI Act by all wings and sections of the DDA and submit a report to this Commission within 45 working days of the date of receipt of this Decision Notice:
>
> 1. Ms Sujata Chaturvedi, Director MoUD
> 2. Shri Dunu Roy, Hazards Centre, Delhi

3. Shri Pankaj KP Shreyaskar Jt Registrar, CIC, Member Secretary"

(underlining added)

4. As aforesaid, the petitioner is aggrieved by the fact that the absence of the Vice-Chairman, DDA was commented upon adversely in the impugned order. The petitioner is also aggrieved by the fact that by virtue of the impugned order, the Commission has appointed a committee to inquire into the complaint of the respondent No.2 with regard to the matter of compliance by the DDA with the provisions of Section 4 of the RTI Act. According to the petitioner, there is no provision, which, under the RTI Act or the Rules made thereunder, empowers the Commission to appoint a committee, to inquire into the details of servicing of the RTI Act by all the wings and sections of the DDA and to thereafter submit a report to the Commission. The appointment of the said Committee (which includes Ms Sujata Chaturvedi, an official of the Ministry of Urban Development, Shri Dunu Roy, who represents an NGO, 'Hazard Centre', Delhi and Shri Pankaj KP Shreyaskar, who is the Joint Registrar of the Commission) is sought to be justified on the part of the counsel appearing on behalf of the Commission on the basis of Regulation 20 of the impugned Regulations. It is for this reason that the petitioner has impugned the regulations as being *ultra vires* the Act.

5. The impugned order dated 22.09.2009 is the result of a sequence of events which were set into motion by a complaint filed by the respondent No.2 sometime in 2005 under Section 18 read with Section 19 of the said

Act. The complaint was against the DDA and, in particular with regard to information concerning the ongoing modification of the Master Plan of Delhi for the year 2021 (MPD 2021). The respondent No.2 also sought directions to the DDA to fulfill its obligations under Section 4 of the RTI Act, which included pro-active disclosures. Initially, the respondent No.2 had claimed several reliefs, which included the providing of information sought, a direction to the DDA to deposit records with the Commission, appointment of a single Public Information Officer (PIO); re-designing of the application form; copies of 17 manuals be provided to the complainant; and payment of compensation. However, before us, the respondent No.2 submitted that his only surviving grievance is that the provisions of Section 4 of the RTI Act be complied with and the details be made available on the website of the Delhi Development Authority as expeditiously as possible. We are, therefore, focusing only on the aspect of compliance by the DDA with the provisions of Section 4 of the RTI Act.

6. On the said complaint made by the respondent No.2, the Commission passed an order on 25.02.2006, whereby the public information officer of the petitioner was, *inter alia*, directed to provide the Commission with a compliance report for the Commission's record with respect to the obligations under Section 4 of the RTI Act. It was also directed that the Acts and the Rules relevant to the functioning of the public authority (DDA) be published on the website as expeditiously as possible and, in any case, within 30 days.

7. Thereafter, on 12.08.2008, the respondent No.2 filed another complaint against the Secretary, Delhi Development Authority submitting that the orders of the Commission dated 25.02.2006 had not yet been complied with. It appears that prior to the consideration of this complaint dated 12.08.2008, the Commission, in another appeal (Appeal CIC/S/A/2008/00006) pertaining to the DDA, had passed an order on 09.02.2009 directing the Secretary, DDA to put the DDA Act and the Rules framed thereunder on the DDA's website. The respondent No.2's complaint dated 12.08.2008 was disposed of by the Commission by virtue of its order dated 01.06.2009. In this order, the Commission observed that the information contemplated under the provisions of Section 4(1)(b) of the RTI Act, insofar as it pertained to the Delhi Development Authority, was not available on the latter's website. In the said order, however, it was noted that the representative of the Delhi Development Authority had submitted that in accordance with the instructions of the Commission, the DDA Act had been uploaded on the DDA's website. This fact had also been conceded by the respondent No.2. But, he qualified his concession by stating that it had only been done recently and not in compliance with the orders of the Commission of 25.02.2006, which had required the said information to be placed on the website within 30 days. It is not in dispute that over 3600 pages of information had been uploaded on the website of the DDA. However, it was contended by the respondent No.2 that the same was not placed in an organized manner.

8. In the decision taken by the Commission on 01.06.2009, there is a reference to other decisions of the Commission dated 09.04.2009 and 17.03.2009 wherein, apparently, the Commission had dealt with the question of implementation of Section 4(1) of the RTI Act in detail. From the order dated 01.06.2009, it appears that detailed directions were given by the Commission in its decision of 09.04.2009 pertaining to the implementation of the provisions of Section 4(1) of the RTI Act. In the decision dated 09.04.2009, which was generally made with regard to public authorities, the Commission in purported exercise of powers conferred under Section 19(8)(a) required the public authorities to, *inter alia*, take the following steps:-

> "xxxxx xxxxx xxxxx xxxxx xxxxx
>
> (i) Since a reasonable time has now passed form the time of promulgation of the Act in 2005, the Public Authorities should now take urgent steps to have their records converted to electronic form, catalogued, indexed and computerized for easy accessibility through the network all over the country, as mandated in Section 4(1)(a) of the Act. The computerization, dissemination and updating of record is an ongoing and continuous process and all Public Authorities should put a proper system in place to make such sharing of records as automatic, routine and continuous process, so that access to such records is facilitated.
>
> (ii) The Public Authorities are required to take immediate steps to publish detailed, complete and unambiguous information under the 16 categories, as on 31.3.2009 (if already not done or partially done) and thereafter update the information as and when necessary, but definitely every year, as mandated under section 4(1)(b) of the Act.
>
> (iii) While formulating important policies or announcing the decisions affecting the public, the Public Authorities are

required to publish all relevant facts about such policies and decisions for the information of public at large, as mandated under section 4(1)(c) of the Act.

(iv) The information disclosed by the Public Authorities under section 4(1)(b) & (c) of the Act is required to be disseminated through multiple means as provided under sub sections 2, 3 and 4 of Section 4 of the Act …..

xxxxx xxxxx xxxxx xxxxx xxxxx

(vii) The names, room numbers, telephone numbers, e-mail addresses of the CPIOS/ACPIOS and Appellate Authorities may be prominently displayed in each office for the convenience of the public at large. If the complete disclosures of 4(1)(b) & (c) are also available with any other officer(s) other than the CPIOS/ACPIOs, the names, designations, room numbers and telephone numbers of such officers must be prominently displayed in the offices for easy contactability."

The Commission, after setting out the directions indicated above, which it had given in its decision of 09.04.2009, passed the following order:-

"**In the light of the above Secretary DDA Shri Bansal is directed to ensure that the orders of this Commission of 25-2-2006 are complied with in full within 30 working days of the date of issue of this decision notice**. It is noted that this is a repetition of an earlier order buttressed by subsequent elaboration in the Commission's orders of 17-3-09 and 9-4-09. If the compliance is not complete by the end of the period now given by CPIO found to be in non-compliance will be liable for penalty under sub-Section 1 of Section 20 on the ground that furnishing the information in the manner directed has been obstructed by that CPIO.

To ensure that this is done, therefore, this Commission will hold a further hearing in this matter on 13th July, 2009 at 4.00 p.m. when all parties are directed to be present including Secretary, DDA Shri Bansal who is the coordinating authority for dissemination of information under the RTI Act so nominated by the DDA. The complaint is disposed of accordingly."

9. As a follow-up on the order dated 01.06.2009, further proceedings were held before the Central Information Commission. One such proceeding was held on 23.07.2009, whereupon the decision was announced on 24.07.2009. In the said decision of 24.07.2009, the Central Information Commission observed that the petitioner (DDA), in an effort to demonstrate compliance to the Commission, had uploaded the information in a disorganized manner which was also admittedly incomplete thereby bringing in confusion instead of clarity into the system for providing access to information as required under Section 2(i) of the RTI Act. Based upon this premise, the Central Information Commission came to the following conclusion in its order dated 24.07.2009:-

> "Under the circumstances, it will be necessary to launch a more detailed enquiry into the functioning of DDA in servicing the RTI Act. For this purpose, Vice Chairman, DDA Shri Ashok Kumar together with Principal Commissioner cum Secretary, DDA, will appear before us on 3rd Sept., 2009 at 11.00 a.m. to discuss the present situation and the requirement and scope of further enquiry to enable us to reach a constructive conclusion in this matter."
>
> (underlining added)

10. From the above decision, it is apparent that the Central Information Commission thought it fit to launch a detailed inquiry into the functioning of the DDA in servicing the RTI Act. For this purpose, the Commission directed the Vice-Chairman, DDA together with the Principal Commissioner-cum-Secretary, DDA to appear before the Commission on 03.09.2009. The expression used is – "will appear before us". This expression has, in the impugned order, been referred to as a 'special invitation'. But, the order dated 24.07.2009 from its tenor does not appear to

be an invitation, but a clear direction requiring the Vice-Chairman, DDA to appear before the Commission on the date indicated. According to the petitioner, issuance of such a direction was not within the powers of the Central Information Commission.

11. After the said order dated 24.07.2009, a hearing was held on 03.09.2009. The Vice-Chairman, DDA was not present. However, the Principal Commissioner-cum-Secretary, DDA was present alongwith other officials of the DDA. As mentioned above, the absence of the Vice-Chairman, DDA was taken adverse note of by the Central Information Commission and thereafter, the decision to appoint the three-member committee to go into the details of servicing of the RTI Act by all the wings and sections of the DDA and to submit a report to the Commission, was taken. These are, in brief, the facts of the case.

Three Questions:

12. In this writ petition, the following questions need to be determined:-

(1) Whether the Central Information Commission has the power, under the RTI Act and the Rules made thereunder to appoint a committee of persons other than the members of the Commission, to inquire into the implementation of the obligations cast upon a public authority, such as the DDA by virtue of Section 4 of the RTI Act ?

(2) Whether the Chief Information Commissioner had the power to make the Central Information Commission (Management) Regulations, 2007 under Section 12(4) of

the RTI Act and particularly regulations with regard to the subject matter of Chapter IV thereof, namely, 'registration, abatement or return of the appeal' ?

(3) Whether the Central Information Commission had the power to issue a direction requiring the presence of the Vice-Chairman, DDA in the proceedings before it ?

The answers to these questions are:- (1) No; (2) No; and (3) No. The reasons for the same are given below:-

Question No.1:

13. The answer to this question lies in examining the relevant provisions of the RTI Act. Section 4 of the said Act sets out the obligations of the public authorities. The same reads as under:-

> "**4. Obligations of public authorities.**— (1) 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 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;

(xviii) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(xix) 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."

14. Section 18 prescribes the powers and functions of the Central Information Commission and the State Information Commission. It reads as under:-

"18. Powers and functions of the Information Commission.— (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 limit 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 court while trying a suit under the Code of Civil Procedure, 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 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."

15. Section 19 of the RTI Act deals with appeals. The same reads as under:-

> **"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 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 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.
>
> (2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.
>
> (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.
>
> (4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(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.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed."

16. From the above, it is clear that certain obligations have been cast upon the public authorities by virtue of Section 4. In particular, Section 4(1)(b) requires every public authority to, within 120 days from the enactment of the Act, publish particulars of its organization, functions and duties; powers and duties of its officers and employees; procedures followed in the decision making process, including channels of supervision and accountability, etc. Section 4(1)(c) casts an obligation upon a public authority to publish all relevant facts while formulating important policies or announcing the decisions which affect the public. With regard to the provisions of Section 4(1)(c), it is specifically provided in sub-section (2) of Section 4 that it shall be a constant endeavour on the part of every public authority to take steps to provide as much information *suo motu* to the public at regular intervals through various means of communication, including internet, so that the public have minimum resort to the use of the RTI Act to obtain information. Another salutary provision is that by virtue of Section 4(3), all such information is required to be disseminated widely and in such form and manner which is easily accessible to the public. Of course, Section 4(4) does provide that all such materials should be disseminated after taking into consideration the cost effectiveness, local language and the most effective method of communication. It also provides that the information should be easily accessible and to the extent possible should be in electronic format with the Central Public Information Officer or the State Public Information Officer, as the case may be. The word "disseminate" has also been defined in the explanation to mean – making the information known or

communicating the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet, etc. It is, therefore, clear from a plain reading of Section 4 of the RTI Act that the information, which a public authority is obliged to publish under the said section should be made available to the public and specifically through the internet. There is no denying that the petitioner is duty bound by virtue of the provisions of Section 4 of the RTI Act to publish the information indicated in Section 4(1)(b) and 4(1)(c) on its website so that the public have minimum resort to the use of the RTI Act to obtain the information. To that extent, the Central Information Commission is correct in directing the petitioner (DDA) to carry out its obligations by publishing the information on its website. However, we are concerned with the larger issue of as to whether the Central Information Commission had the power to appoint "a third party committee" comprising of outsiders to conduct an inquiry into the servicing of the RTI Act. As we have seen, Section 4 merely sets out the obligations of the public authorities. It does not provide the machinery to enforce the implementation of these obligations.

17. Section 18, which has been set out above, deals with the powers and functions of the Central Information Commission as also the State Information Commission. Sub-section (1) stipulates that it shall be the duty of the Information Commission to receive and "inquire into" a complaint from any person where any of the conditions mentioned in clauses (a) to (f) are satisfied. Sub-section (2) of Section 18 stipulates that the Information

Commission, if it is satisfied that there are reasonable grounds to inquire into the matter, may initiate an "inquiry" in respect thereof. Sub-section (3) of Section 18 provides that the Information Commission shall, "while inquiring into" any matter under Section 18, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the matters specified in the said provision which, *inter alia*, includes summoning and enforcing the attendance of the persons and compelling them to give oral or written evidence on oath or to produce the documents or things, etc. Section 18(4) empowers the Information Commission to examine any record to which the RTI Act applies, which is under the control of the public authority, during the "inquiry" of any complaint under the said Act. It also stipulates that no such record may be withheld from the Commission on any grounds. It is apparent that all the sub-sections of Section 18 refer to the powers of the Information Commission to inquire into a complaint. Section 18(2) deals with the initiation of inquiry by the Information Commission. Section 18(3) spells out the powers of the Information Commission while conducting such an inquiry and Section 18(4) empowers the Information Commission to examine any record to which the RTI Act applies during the course of inquiry by the Information Commission. It is apparent from all these provisions that the inquiry that is contemplated under Section 18 is an inquiry by the Information Commission itself. There is no provision for an inquiry to be conducted by any other 'committee' for and on behalf of the Information Commission.

18. Insofar as the provisions of Section 19, which pertain to appeals, are concerned, the Central Information Commission or the State Information Commission in its decision in an appeal, has the power to, *inter alia*, require the public authority to take such steps as may be necessary to secure compliance with the provisions of the RTI Act which obviously includes the provisions of Section 4 which spells out the obligations of the public authorities. Section 19(8)(a)(vi) clearly indicates that the information Commission has the power to require a public authority to provide the Information Commission with an annual report in compliance with clause (b) of sub-section (1) of Section 4. There is nothing in Section 19 which empowers an Information Commission, be it the Central or the State Commission, to constitute any committee to initiate or conduct any inquiry for and on its behalf.

19. It is clear that there is no provision under the RTI Act which empowers the Central Information Commission or, for that matter, the State Information Commission, to appoint a committee for conducting an inquiry for and on its behalf. The power of inquiry under Section 18, which has been given to the Central and the State Information Commissions is confined to an inquiry by the concerned Information Commission itself. There can be no delegation of this power to any other committee or person. "*Delegatus non potest delegare"* is a well-known maxim which means – in the absence of any power, a delegate cannot sub-delegate its power to another person (See: ***Pramod K. Pankaj v. State of Bihar & Others*****: 2004 (3) SCC 723**).

20. As we have seen, there is nothing in the Act which empowers the Central Information Commission to appoint a committee to conduct an inquiry on its behalf, the only rules that have been framed under Section 27 of the RTI Act, are the following:-

i) The Right to Information (Regulation of Fee and Cost) Rules, 2005; and

ii) The Central Information Commission (Appeal Procedure) Rules, 2005.

None of these rules deal with the powers of inquiry of the Central Information Commission. Therefore, there is nothing prescribed either in the Act or the Rules made thereunder, whereby the Central Information Commission could be said to have been empowered to delegate its power of inquiry under Section 18 to some other person or a committee of persons.

21. Consequently, this question has to be answered in the negative. The Central Information Commission did not have the power to appoint the committee that it did by virtue of its order dated 22.09.2009 and, therefore, to this extent, the impugned order is liable to be set aside and it is so set aside.

Question No.2:

22. The learned counsel appearing on behalf of the Central Information Commission sought to justify the order dated 22.09.2009 with regard to the formation of a committee for the purposes of conducting an inquiry on the strength of the impugned Regulations. In particular, he referred to Regulation 20 of the impugned Regulations, which reads under:-

> "**20. Conduct of an enquiry.—** The Commission may entrust an enquiry in connection with any appeal or complaint pending before it to the Registrar or any other officer for the purpose and the Registrar or such other officer while conducting the enquiry shall have all the necessary powers including power to—
> (i) summon and enforce attendance of persons;
> (ii) compel production of documents or things;
> (iii) administer oath and to take oral evidence or to receive affidavits or written evidence on solemn affirmation;
> (iv) inspect documents and require discovery of documents; and
> (v) requisition any public record or documents from any public authority."

23. A plain reading of the said Regulation 20 indicates that the Commission may entrust an inquiry in connection with any appeal or complaint pending before it to the Registrar or any other officer for the purpose and the Registrar or such other officer while conducting the inquiry shall have all the necessary powers, including summoning and enforcing the attendance of persons, etc. It is apparent, straightway, that the powers which have been given to the Commission under the RTI Act have been sought to be delegated to the Registrar or any other officer, who may be appointed for the purpose of conducting an inquiry. This is clearly impermissible. It is beyond what has been provided in the Act. There is no question of the Central Information Commission entrusting an inquiry to the Registrar or to anybody else. This would be in clear and gross violation of the provisions of the RTI Act. It would also amount to an abdication by the Commission of the duties specifically cast upon it by the statute. Regulation 20 is, therefore, clearly *ultra vires* the provisions of the RTI Act and is liable to be set aside.

24. Apart from this, there also arises the larger issue as to whether the impugned Regulations could, at all have been made by the Chief Information Commissioner. The impugned Regulations have purportedly been made in exercise of the powers conferred under Section 12(4) of the RTI Act. The impugned Regulations purport to be regulations for the management of the 'affairs' of the Central Information Commission so as to enable it to function effectively. However, we may observe, at the outset, that the regulations go far beyond the general superintendence, direction and management of the affairs of the Central Information Commission, which is provided for under Section 12(4) of the RTI Act. Section 12 (4) of the RTI Act reads as under:-

> "**12. Constitution of Central Information Commission.—**
> (1) xxxxx xxxxx xxxxx xxxxx
> (2) xxxxx xxxxx xxxxx xxxxx
> (3) xxxxx xxxxx xxxxx xxxxx
> (4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.
> (5) xxxxx xxxxx xxxxx xxxxx
> (6) xxxxx xxxxx xxxxx xxxxx
> (7) xxxxx xxxxx xxxxx xxxxx"

25. We note that there is a similar provision in respect of the State Information Commissions, namely, Section 15(4). Section 12(4) merely indicates that the general superintendence, direction and management of the

affairs of the Central Information Commission vests in the Chief Information Commissioner, who shall be assisted by the Information Commissioners. This power, which vests in the Chief Information Commissioner, is only limited to the affairs of the Central Information Commission and does not extend to the substantive provisions of the RTI Act. No power whatsoever has been given to the Chief Information Commissioner to impinge upon or add to or subtract from the powers and functions of the Central Information Commission as stipulated in Section 18 of the RTI Act. The Chief Information Commissioner could, arguably, prescribe regulations concerning its own internal management affairs. He cannot promulgate or prescribe any regulations which impinge on the substantive or procedural provisions stipulated under the RTI Act and the Rules competently framed thereunder. The Chief Information Commissioner is a creature of the statute and unless the statute creating him invests him with a specific power, he cannot claim to exercise such power. The RTI Act does not confer any power upon the Chief Information Commission to make any regulations and much less regulations encroaching upon the subject matter of the rule making power of the 'appropriate' government under Section 27.

26. Before we go on to examine the provisions of Section 27 and 28 of the RTI, which deal with the rule making powers of the 'appropriate government' and 'competent authority', it would be appropriate to notice the observations of the Supreme Court in respect of powers of the National

Human Rights Commission in the case of ***N.C. Dhoundial v. Union of India and Ors.***: ***(2004) 2 SCC 579*** (at page 586):-

> "14. We cannot endorse the view of the Commission. The Commission which is an 'unique expert body' is, no doubt, entrusted with a very important function of protecting the human rights, but, it is needless to point out that the Commission has no unlimited jurisdiction nor does it exercise plenary powers in derogation of the statutory limitations. The Commission, which is the creature of statute, is bound by its provisions. Its duties and functions are defined and circumscribed by the Act. Of course, as any other statutory functionary, it undoubtedly has incidental or ancillary powers to effectively exercise its jurisdiction in respect of the powers confided to it but the Commission should necessarily act within the parameters prescribed by the Act creating it and the confines of jurisdiction vested in it by the Act."
>
> (underlining added)

27. A Constitution Bench of the Supreme Court in ***Naraindas Indurkhya v. State of M.P.*****: 1974 (4) SCC 788**, considered the rival claims of the Board of Secondary Education and the State Government, under the provisions of the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965, to the power to prescribe text books. The said Board was constituted under section 3 of the said Act and section 8 defined its powers which, inter alia, included the power to prescribe courses of instruction in such branches of Secondary Education as it may think fit. In this backdrop, the Supreme Court held that the Board did not have the power to prescribe text books and, therefore, the Notification issued by the Board 'prescribing' text books was held to be ineffectual. The Supreme Court's observations were, inter alia, as follows:-

> "13. It is elementary that the Board is a creature of the statute and unless the statute creating it invests it with power to

prescribe text books so as to make it obligatory on the schools to adopt such text books and no others for study and teaching, it cannot claim to exercise such power. The Board also cannot, in the absence of power expressly or by necessary implication conferred on it by the Statute, make it a condition of recognition of the schools that they shall follow only the text books prescribed by it and no other text books shall be used by them for study and teaching. The Act of 1965 under which the Board is created does not in express terms give power to the Board to prescribe text books, nor does it provide anywhere that the Board shall be entitled to make it a condition of recognition that the schools shall use the text books prescribed by it and no others."

xxxx xxxx xxxx xxxx

"It is only the State Government and not the Board, which is given power under Section 4, Sub-section (1) to prescribe text books, and therefore, the notification dated 28th March, 1973, which was issued by the Board and not by the State Government, was futile and ineffectual and did not have the effect of prescribing these text books under Section 4, Sub-section (1). These text books could not, therefore, be regarded as text books prescribed under Sub-section (1) or referred to in Sub-section (2) of Section 4 and in the circumstances there was no obligation on the approved and recognised schools to use only these text books and no others undo Sub-section (3) of Section 4."

(underlining added)

28. Sections 27 and 28 deal with the rule making powers of the appropriate Government and the competent authority, respectively. The expression "appropriate government" has been defined in Section 2(a) as under:-

"2. Definitions.— In this Act, unless the context otherwise requires, —

(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;
xxxxx xxxxx xxxxx xxxxx"

Similarly, the expression "competent authority" has been defined in Section 2(e) as under:-

> **"2. Definitions.—** In this Act, unless the context otherwise requires, —
>
> xxxxx xxxxx xxxxx xxxxx
>
> (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;
>
> xxxxx xxxxx xxxxx xxxxx"

29. The Chief Information Commissioner does not fall within the definition of "appropriate Government" or the "competent authority". In other words, the Chief Information Commissioner has no powers to make rules under Section 27 or Section 28. Both the "appropriate government" and the "competent authority" have been empowered by the said Rules to make rules to carry out the provisions of the RTI Act. However, such rules would only be operative if they are notified in the official gazette.

30. In ***Sukhdev Singh and Others v. Bhagatram Sardar Singh Raghuvanshi and Anotehr*: 1975 (1) SCC 421**, a Constitution Bench of the Supreme Court held that '[r]ules, regulations, schemes, bye-laws, orders made under statutory powers are all comprised in 'delegated legislation'. In this context, the Supreme Court observed:-

> "15. The words "rules" and "regulations" are used in an Act to limit the power of the statutory authority. The powers of statutory bodies are derived, controlled and restricted by the statutes which create them and the rules and regulations framed thereunder. Any action of such bodies in excess of their power or in violation of the restrictions placed on their powers is ultra vires…"
>
> "18. The authority of a statutory body or public administrative body or agency ordinarily includes the power to make or adopt rules and regulations with respect to matters within the province of such body provided such rules and regulations are not inconsistent with the relevant law. … These statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the Legislature. Rules and regulations made by reason of the specific power conferred on the statute to make rules and regulations establish the pattern of conduct to be followed. Rules are duly made relative to the subject-matter on which the statutory bodies act subordinate to the terms of the statute under which they are promulgated. Regulations are in aid of the enforcement of the provisions of the statute."
>
> "21. The characteristic of law is the manner and procedure adopted in many forms of subordinate legislation. The authority making rules and regulation must specify the source of the rule and regulation making authority. To illustrate, rules are always framed in exercise of the specific power conferred by the statute to make rules. Similarly, regulations are framed in exercise of specific power conferred by the statute to make regulations. The essence of law is that it is made by the law-makers in exercise of specific authority. The vires of law is capable of being challenged if the power is absent or has been exceeded by the authority making rules or regulations."

> "24. Broadly stated, the distinction between rules and regulations on the one hand and administrative instructions on the other is that rules and regulations can be made only after reciting the source of power whereas administrative instructions are not issued after reciting source of power..…"
>
> (underlining added)

In this case, the ostensible source of power for framing the said Regulations is indicated to be section 12(4) of the RTI Act. But, that provision only relates to the superintendence, direction and management of the affairs of the Central Information Commission. Section 12(4) cannot be regarded as the fountain-head of the power to make 'regulations' whether expressly or by implication. The scope and ambit of Section 12(4) is limited to the management of the affairs of the Central Information Commission. The words superintendence, direction and management are all used in a synonymous sense and concerns the internal affairs of the Commission. The power which vests in the Chief Information Commissioner by virtue of Section 12(4) does not extend to the subject matter of the rule making powers of the 'appropriate government' or the 'competent authority' under Sections 27 and 28, respectively.

31. With regard to the impugned Regulations, we may also observe that, first of all, there is no power prescribed under the Act to make any regulations. Secondly, even if the said regulations were to be construed as Rules, the Chief Information Commissioner does not have the power to make rules because he is neither the "appropriate government" nor is he the "competent authority". Thirdly, even if it were assumed, and merely as an

extreme conjecture, that he did have the power to make such 'rules' in the guise of 'regulations', the same have not, in any event, been notified in the official gazette. Fourthly, nor have they been laid down before the House of Parliament as provided under Section 29. Consequently, the 'regulations' framed by the Chief Information Commissioner cannot be regarded as having any legal sanctity or validity. Therefore, no reliance whatsoever can be placed on the said Regulation 20 in order to justify the order dated 22.09.2009, whereby the Central Information Commission has constituted a committee to inquire into the workings of Section 4 insofar as the petitioner (DDA) is concerned.

32. We would also like to point out that Section 27, which empowers the appropriate government to make rules to carry out the provisions of this Act, specifically speaks of the power to make rules with regard to the procedure to be adopted by the Central Information Commission or the State Information Commission, as the case may be, in deciding an appeal under sub-section (10) of Section 19 of the RTI Act. This power is particularly spelt out in Section 27(2)(e) of the said Act. In exercise of this power, the Central Government, being the "appropriate government" has, in fact, framed the rules – The Central Information Commission (Appeal Procedure) Rules, 2005. But, we find that the Chief Information Commissioner, who has arrogated to himself the power to do anything under the guise of the provisions of Section 12(4) of the said Act, has formulated the impugned Regulations which also specifically provide for 'the registration, abatement

or return of appeals' in Chapter IV of the impugned Regulations. The procedure prescribed under the regulations, if compared with the appeal procedure prescribed under the Central Information Commission (Appeal Procedure Rules) 2005, would reveal that the same are at variance. The following comparative table demonstrates this variance:-

Comparison between the Central Information Commission (Appeal Procedure) Rules 2005 and the Impugned Central Information Commission (Management) Regulations 2007

Central Information Commission (Appeal Procedure) Rules 2005	**The Central Information Commission (Management) Regulations 2007**
In exercise of the powers conferred by clauses (e) and (f) of sub–section (2) of section 27 of the Right to Information Act, 2005 (22 of 2005), the Central Government hereby makes the following rules, namely:- **1. Short Title and commencement. -** (1) These rules may be called the Central Information Commission (Appeal Procedure) Rules, 2005. (2) They shall come into force on the date of their publication in the Official Gazette.[1]	In exercise of the powers conferred by section 12(4) of the Right to Information Act, 2005 (Act 22 of 2005) and all other provisions in the Act enabling in this behalf, the Chief Information Commissioner hereby makes the following Regulations for management of the affairs of the Central Information Commission so as to enable it to function effectively. **Chapter-**1: **Short Title and Commencement:-** (i) These Regulations may be called "the Central Information Commission (Management) Regulations, 2007". (ii) They shall come into force with effect from such date as the Chief Information Commissioner may by order specify.[2]

[1] 28th October, 2005
[2] 21st June, 2007

	(iii) Appeals and Complaints which have already been filed before the date of commencement of these Regulations and have been found in order and are already registered before this date will be proceeded with as before and shall not abate for any infirmity therein but these regulations will be applicable for any prospective action even in regard to such pending appeals and complaints.
No such provision has been made under these Rules.	**CHAPTER – IV: Registration, Abatement or Return of Appeal**. 7. **Appeal or complaint etc. to be in writing:-** Every appeal, complaint, application, statement, rejoinder, reply or any other document filed before the Commission shall be typed, printed or written neatly and legibly and in double line spacing and the language used therein shall be formal and civilized and should not be in any way indecent or abusive. The appeal, complaint or an application shall be presented in at least two sets in a paper-book form.
3. Contents of appeal.- An appeal to the Commission shall contain the following information, namely.- (i) name and address of the appellant ; (ii) name and address of the Central Public Information Officer against the decision of whom the appeal is preferred. (iii) particulars of the order including number, if any, against which the appeal is preferred ; (iv) brief facts leading to the appeal ; (v) If the appeal is preferred against deemed refusal, the particulars of the application, including number and date and name and address of the Central Public Information Officer to whom the application was made; (vi) prayer or relief sought;	8. **Contents of appeal or complaint:-** (1) An appeal or a complaint to the Commission shall contain the following information, namely:- (i) name, address and other particulars of the appellant or complainant, as the case may be; (ii) name and address of the Central Public Information Officer (CPIO) or the Central Assistant Public Information Officer (CAPIO) against whom a complaint is made under Section 18 of the Act, and the name and address of the First Appellate Authority before whom the first appeal was preferred under Section 19(1) of the Act. (iii) particulars of the decision or order, if any, including its number and the date it was pronounced, against which the appeal is preferred; (iv) brief facts leading to the appeal or the complaint; (v) if the appeal or complaint is preferred

(vii) grounds for the prayer or relief; (viii) verification by the appellant; and (ix) any other information which the Commission may deem necessary for deciding the appeal.	against refusal or deemed refusal of the information, the particulars of the application, including number and date and name and address of the Central Public Information Officer to whom the application was made and name and address of the First Appellate Authority before whom the appeal was filed; (vi) prayer or relief sought; (vii) grounds for the prayer or relief; (viii) verification by the appellant or the complainant, as the case may be; and (ix) any other information which may be deemed as necessary and helpful for the Commission to decide the appeal or complaint. (2) The contents of the complaint shall be in the same form as prescribed for the appeal with such changes as may be deemed necessary or appropriate.
4. Documents to accompany appeal. - Every appeal made to the Commission shall be accompanied by the following documents, namely. (i) self-attested copies of the orders or documents against which the appeal is being preferred ; ii) copies of documents relied upon by the appellant and referred to in the appeal ; and (iii) an index of the documents referred to in the appeal.	9. **Documents to accompany appeal or complaint:-** Every appeal or complaint made to the Commission shall be accompanied by self attested copies/photo copies of the following documents, namely:- (i) The RTI application submitted before the CPIO along with documentary proof as regards payment of fee under the RTI Act; (ii) The order, or decision or response, if any, from the CPIO to whom the application under the RTI Act was submitted. (iii) The First appeal submitted before the First Appellate Authority with documentary proof of fling the First Appeal. (iv) The Orders or decision or response, if any, from the First Appellate Authority against which the appeal or complaint is being preferred; (v) The documents relied upon and referred

	to in the appeal or complaint; (vi) A certificate stating that the matters under appeal or complaint have not been previously filed, or are pending, with any court or tribunal or with any other authority; (vii) An index of the documents referred to in the appeal or complaint; and (viii) A list of dates briefly indicating in chronological order the progress of the matter up to the date of filing the appeal or complaint to be placed at the top of all the documents filed.
No such provision has been made under these Rules.	**10. Service of copies of Appeal/Complaint** Before submitting an appeal or complaint to the Commission, the appellant or the complainant shall cause a copy of the appeal or complaint, as the case may be, to be served on the CPIO/PIO and the Appellate Authorities and shall submit a proof of such service to the Commission. Provided that if a complainant does not know the name, address and other particulars of the CPIO or of the First Appellate Authority and if he approaches the Commission under Section 18 of the Act, he shall cause a copy of his complaint petition to be served on the concerned Public Authority or the Head of the Office and proof of such service shall be annexed along with the complaint petition.
No such provision has been made under these Rules.	11. **Presentation and scrutiny of appeal or complaint:-** (i) The Registrar shall receive any appeal or complaint petition addressed to the Commission and ensure that (a) the appeal or the complaint, as the case may be, is submitted in prescribed format; (b) that all its contents are duly verified by the appellant or the complainant, as the case may be;

	(c) that the appeal or the complaint is in accordance with the Regulations. (ii) The Registrar shall also ensure that the appeal or the complaint petition contains copies of all required documents such as: (i) RTI application (ii) Receipt of the RTI Application (iii) Proof in regard to payment of fee/cost, if any; (iv) Decision/reply etc. from the CPIO, if any; (v) Appeal to the 1st Appellate Authority; (vi) Decision of the 1st Appellate Authority, if any. (iii) The Registrar shall scrutinize every appeal/complaint received and will ensure — (a) that the appeal or the complaint petition is duly verified and required number of copies are submitted; (b) That all the documents annexed are duly paginated and attested by the appellant or the complainant. (c) That the copies of the documents filed and submitted are clear, distinct and legible; (iv) That the Registrar will return any such appeal or the complaint if it does not meet the requirement or conform to the standard as set out above and permit its resubmission in proper form. (v) The Registrar may reject any such appeal or complaint petition — (a) if it is time-barred; or (b) if it is otherwise inadmissible; or

	(c) if it is not in accordance with these Regulations. Provided that no such appeal or complaint petition shall be rejected by the Registry unless the concerned appellant or the complainant is given an opportunity of being heard. The decision of the Registrar in regard to the issue of maintainability of an appeal or a complaint shall be final. (vi) All appeals and Complaints not rejected or returned as above and found in order shall be registered and a specific number will be allocated. (vii) The Registrar or any other officer authorized by the Commission shall endorse on every appeal or complaint the date on which it is presented. (viii) The appeals and complaints shall bear separate serial numbers so that they can be easily identified under separate heads. (ix) If any appeal or complaint is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant or complainant to rectify the same in his presence or may allow two weeks time to rectify the defect. If the appeal or complaint has been received by post and found to be defective, the Registrar may communicate the defect(s) to the appellant or complainant and allow him two weeks time from the date of receipt of communication from the Registrar to rectify the defects. (x) If the appellant or complainant fails to rectify the defects within the time allowed in clause (ix) above, the appeal or complaint shall be deemed to have been withdrawn. (xi) An appeal or complaint which is not in order and is found to be defective or is not as per prescribed format is liable to be rejected. Provided that the Registrar may, at his discretion, allow an appellant or complainant to file a fresh appeal or complaint in proper form.

No such provision has been made under these Rules.	12. **Filing of Counter Statement by the Central Public Information Officer or the First Appellate Authority:-** After receipt of a copy of the appeal or complaint, the Central Public Information Officer or the First Appellate Authority or the Public Authority shall file counter statement along with documents, if any, pertaining to the case. A copy of the counter statement(s) so filed shall be served to the appellant or complainant by the CPIO, the First Appellate Authority or the Public Authority, as the case may be.
No such provision has been made under these Rules.	13. **Posting of appeal or complaint before the Information Commissioner:-** (i) An appeal or a complaint, or a class or categories of appeals or complaints, shall be heard either by a Single Information Commissioner or a Division Bench of two Information Commissioners, or a Full Bench of three or more Information Commissioners, as decided by the Chief Information Commissioner by a special or general order issued for this purpose from time to time. (ii) Where in the course of the hearing of an appeal or complaint or other proceeding before a Single Information Commissioner, the Commissioner considers that the matter should be dealt with by a Division or Full Bench, he shall refer the matter to the Chief Information Commissioner who may thereupon constitute such a Bench for the hearing and disposal of the matter. (iii) Similarly, where during the course of the hearing of a matter before a Division Bench, the Bench considers that the matter should be dealt with by a Full Bench, or where a Full Bench considers that a matter should be dealt with by a larger Bench, it shall refer the matter to the Chief Information Commissioner who may thereupon constitute such a Bench for the hearing and disposal of the matter.
No such provision has been made under these Rules.	14. A**mendment or withdrawal of an Appeal or Complaint:** The Commission may in its discretion allow a prayer for any amendment or withdrawal of an appeal or complaint during the course of its hearing if such a prayer is made by the appellant or

	complainant on an application made in writing. However, no such prayer may be entertained by the Commission after the matter has been finally heard or a decision or order has been pronounced by the Commission.
5. Procedure in deciding appeal.- In deciding the appeal the Commission may.- (i) hear oral or written evidence on oath or on affidavit from concerned or interested person ; (ii) peruse or inspect documents, public records or copies thereof ; (iii) inquire through authorised officer further details or facts ; (iv) hear Central Public Information Officer, Central Assistant Public Information Officer or such Senior Officer who decided the first appeal, or such person against whom the complaint is made, as the case may be ; (v) hear third party ; and (vi) receive evidence on affidavits from Central Public Information Officer, Central Assistant Public Information Officer, such Senior Officer who decide the first appeal, such person against whom the complaint lies or the third party.	18. **Evidence before the Commission:** In deciding an appeal or a complaint, the Commission may:- (i) receive oral or written evidence on oath or on affidavit from concerned person or persons; (ii) peruse or inspect documents, public records or copies thereof; (iii) inquire through authorized officer further details or facts; (iv) examine or hear in person or receive evidence on affidavit from Central Public Information Officer, Central assistant Public Information Officer or such Senior Officer who decided the first appeal or such person or persons against whom the complaint is made as the case may be; or (v) examine or hear or receive evidence on affidavit from a third party, or an intervener or any other person or persons, whose evidence is considered necessary or relevant.
6. Service of notice by Commission.- Notice to be issued by the Commission may be served in any of the following modes, namely.- (i) service by the party itself ; (ii) by hand delivery (dasti) through Process Server ; (iii) by registered post with acknowledgment due ; or	No such provision has been made under these Regulations.

(iv) through Head of Office or Department.	
7. Personal presence of the appellant or complainant. - (1) The appellant or the complainant, as the case may be, shall in every case be informed of the date of hearing at least seven clear days before that date. (2) The appellant or the complainant, as the case may be, may at his discretion at the time of hearing of the appeal or complaint by the Commission be present in person or through his duly authorised representative or may opt not to be present. (3) Where the Commission is satisfied that the circumstances exist due to which the appellant or the complainant, as the case may be, is being prevented from attending the hearing of the Commission, then, the Commission may afford the appellant or the complainant, as the case may be, another opportunity of being heard before a final decision is taken or take any other appropriate action as it may deem fit. (4) The appellant or the complainant, as the case may be, may seek the assistance of any person in the process of the appeal while presenting his points and the person representing him may not be a legal practitioner.	15. **Personal presence of the appellant or complainant:-** (i) The appellant or the complainant, as the case may be, shall be informed of the date of hearing at least seven clear days before that date. (ii) The appellant or the complainant, as the case may be, may at his discretion be present in person or through his duly authorized representative at the time of hearing of the appeal or complaint by the Commission, or may opt not to be present. (iii) Where the Commission is satisfied that circumstances exist due to which the appellant or the complainant is being prevented from attending the hearing of the Commission, the Commission may afford the appellant or the complainant, as the case may be, another opportunity of being heard before a final decision is taken or take any other appropriate action as it may deem fit. (iv) The appellant or the complainant, as the case may be, may seek the assistance of any person while presenting his case before the Commission and the person representing him may not be a legal practitioner. (v) If an appellant or complainant at his discretion decides not to be present either personally or through his duly authorized representative during the hearing of an appeal or complaint before the Commission, the Commission may pronounce its decision or order in the matter *ex parte.*
No such provision has been made under these Rules.	16. **Date of hearing to be notified:-** The Commission shall notify the parties the date and place of hearing of the appeal or complaint in such manner as the Chief Information Commissioner may by general or special order direct.
8. Order of the Commission. - Order of the Commission shall be pronounced in open proceedings and be in writing duly authenticated by the Registrar or any other officer authorised by the	22. **Communication of decisions and Orders:-** (i) Every decision or order of the Commission shall be signed and dated by the

Commission for this purpose.	Commissioner or Commissioners who have heard the appeal or the complaint or have decided the matter. (ii) Every decision/order of the Commission may either be pronounced in one of the sittings of the Commission, or may be placed on its website, or may be communicated to the parties under authentication by the Registrar or any other officer authorized by the Commission in this regard. (iii) Every such decision or order, whenever pronounced by a Single Information Commissioner or by a Division Bench or by a Full Bench of three or more Information Commissioners, shall be deemed to be the decision or order by the Commission under the Act.
No such provision has been made under these Rules.	17. **Adjournment of Hearing:-** The appellant or the complainant or any of the respondents may, for just and sufficient reasons, make an application for adjournment of the hearing. The Commission may consider the said application and pass such orders as it deems fit.
No such provision has been made under these Rules.	19. **Issue of summons:-** Summons to the parties or to the witnesses for appearance or for production of documents or records or things shall be issued by the Registrar under the authority of the Commission, and it shall be in such form as may be prescribed by the Commission.
No such provision has been made under these Rules.	**20. Conduct of an enquiry: -**The Commission may entrust an enquiry in connection with any appeal or complaint pending before it to the Registrar or any other officer for the purpose and the Registrar or such other officer while conducting the enquiry shall have all the necessary powers including power to — (i) summon and enforce attendance of persons; (ii) compel production of documents or things;

	(iii) administer oath and to take oral evidence or to receive affidavits or written evidence on solemn affirmation; (iv) inspect documents and require discovery of documents; and (v) requisition any public record or documents from any public authority.
No such provision has been made under these Rules.	21. **Award of costs by the Commission:-** The Commission may award such costs or compensation to the parties as it deems fit having regard to the facts and circumstances of the case.
No such provision has been made under these Rules.	**23. Finality of Decision:-** (1) A decision or an order once pronounced by the Commission shall be final (2) An appellant or a complainant or a respondent may, however, make an application to the Chief Information Commissioner for special leave to appeal or review of a decision or order of the case and mention the grounds for such a request; (3) The Chief Information Commissioner, on receipt of such a request, may consider and decide the matter as he thinks fit.
No such provision has been made under these Rules.	24. **Abatement of an Appeal/Complaint:-** The proceedings pending before the Commission shall abate on the death of the appellant or complainant.

33. So, it appears that the Chief Information Commissioner has sought to overwrite not only the statutory provisions, but also the statutory rules. This

is clearly impermissible. From the above table, it can be seen that by virtue of Regulation 21, the Commission has purportedly been given the power to award such costs or compensation to the parties as it deems fit having regard to the facts and circumstances of the case. Such a power is not provided in the RTI Act. Section 19(8) specifically stipulates that in its decision, the Central Information Commission or the State Information Commission, as the case may be, has the power to (a) require the public authority to take any steps such as may be necessary to secure compliance with the provisions of the RTI Act; (b) require the public authority to compensate the complainant for any loss or other detriment suffered; (c) impose any of the penalties provided under the RTI Act; (d) reject the application. Thus, by virtue of the said provision, the Central Information Commission has the power to require a public authority to compensate the complainant for "any loss or other detriment suffered". In other words, the compensation has to be linked to the loss or other detriment which is suffered by the complainant. But, by virtue of Regulation 21, the Commission is sought to be empowered to award costs or compensation to the "parties" as it "deems fit" having regard to the facts and circumstances of the case. Thus, while the RTI Act makes a specific stipulation that the Central Information Commission has the power to award compensation to the complainant and that such power is to be exercised in the event of any loss or other detriment which is suffered by the complainant, by virtue of Regulation 21, the Information Commission is supposedly empowered to not only award costs in addition to compensation, but to either of the parties (not limited to the complainant) and for whatever

reason it "deems fit" without there being any nexus with the loss or other detriment actually suffered by the complainant. Clearly, Regulation 21 is out of line with the specific power given by the RTI Act in respect of compensation.

34. Another instance of the regulations exceeding the limits of power prescribed under the RTI Act and the Rules is to be found in Regulation 22. Rule 8 of the Central Information Commission (Appeal Procedure) Rules, 2005 (hereinafter referred to as 'the said Rules') clearly stipulates that the order of the Central Information Commission shall be pronounced in open proceedings and be in writing duly authenticated by the Registrar or any other officer authorized by the Commission for this purpose. However, Regulation 22 is at variance with this rule. It provides that every decision / order of the Central Information Commission may either be pronounced in one of the sittings of the Commission or may be placed on its website or may be communicated to the parties under authentication by the Registrar or any other officer authorized by the Commission in this regard. Clearly, regulation 22 permits something which has not been permitted by the statute or the rules made thereunder. The orders of the Central Information Commission are to be pronounced in open proceedings under the statutory rules, but the regulations seek to alter that position by permitting not only pronouncement in one of the sittings, but also by simply placing orders on the website or communication to the parties. Regulation 22 contains another provision which treats an order pronounced by a "single" Information

Commissioner or by a "Division Bench" (two Commissioners) or by a "Full Bench" of three or more Information Commissioners as the decision or order of the Central Information Commission under the Act. There is no such prescription under the RTI Act or the rules validly made thereunder which provides for such 'Benches' of the Central Information Commission.

35. Yet another instance of the complete transgression of the statutory powers is to be found in Regulation 23. The said regulation, inter alia, provides that an appellant or a complainant or a respondent may, notwithstanding that the decision or order of the Commission is final, make an application to the Chief Information Commissioner for special leave to appeal or review of a decision or order of the case and mention the grounds for such a request. It further seeks to empower the Chief Information Commissioner, to consider and decide such a request as he thinks fit. Neither the RTI Act nor the rules framed thereunder grant the power of review to the Central Information Commission or the Chief Information Commissioner. Once the statute does not provide for the power of review, the Chief Information Commissioner cannot, without any authority of law, assume the power of review or even of a special leave to appeal. Clearly, the said regulation is beyond the contemplation of the Act. Such a regulation is *ultra vires* the provisions of the Act.

36. We would also like to re-iterate the provisions of Section 19(10) of the RTI Act. Section 19, as we have mentioned earlier, deals with appeals. Sub-section (10) of Section 19 clearly stipulates that the Central Information

Commission or the State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure "as may be prescribed". The word 'prescribed' is defined in Section 2(g) of the RTI Act to mean prescribed by the rules made under the RTI Act by the appropriate Government or the competent authority, as the case may be. It has no reference to any regulations made or to be made by the Chief Information Commissioner. Thus, the mandate of the Act is that the Central Information Commission shall decide the appeal in accordance with the rules made under the said Act by the appropriate Government or the competent authority, as the case may be and not otherwise. The Central Information Commissioner by formulating the regulations and prescribing the procedure for deciding appeals, has clearly violated these provisions of the RTI Act.

37. From the above, it can be seen that the regulations have been framed by the Chief Information Commissioner in complete derogation of the provisions of the RTI Act. He had no power to frame the regulations, particularly those contained in Chapter IV. Consequently, this question is also answered in the negative.

Question No.3:

38. Section 18(3) of the said Act, which we have already set out above, empowers the Information Commission, while inquiring into any matter under the said Section, to have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters:-

(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.

39. There is no doubt that while the Central Information Commission is conducting an inquiry into a matter under Section 18 of the said Act, it has the powers to summon and enforce the attendance of persons and compel them to give written or oral evidence on oath and to produce the documents or things. But, it is only for the purposes of giving evidence and to produce documents or things that a person may be summoned by the Central Information Commission. This power of summoning for the purposes of evidence cannot be read as a general power to call any person for any purpose in the course of hearing before the Central Information Commission. In the present case, the Vice-Chairman, DDA was not summoned for either giving oral evidence or written evidence or to produce any documents or things in his possession. He was directed to be present for other reasons. That power is not there with the Central Information Commission. Such a power only exists in courts of plenary jurisdiction. The Central Information Commission is not a court and certainly not a body

which exercises plenary jurisdiction. The Central Information Commission is a creature of the statute and its powers and functions are circumscribed by the statute. It does not exercise any power outside the statute. There is no power given by the statute to the Central Information Commission to call any person or compel any person to be present in a hearing before it in the proceedings under the Act, except for the purposes of giving evidence – oral or written or for producing any documents or things. Thus, no adverse inference could have been drawn for the absence of the Vice-Chairman, DDA in the proceedings held on 03.09.2009. This question is also answered in the negative.

Reliefs:

40. In view of the answers to the questions formulated above, the impugned order dated 22.09.2009 is set aside to the extent the Central Information Commission appointed an 'enquiry committee' when it was incumbent upon the Commission to conduct the inquiry itself. It is also set aside to the extent that it draws an adverse inference with regard to the absence of the Vice-Chairman, DDA in one of its sittings. The impugned Regulations are quashed as being *ultra vires* the Right to Information Act, 2005. The parties are left to bear their respective costs.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

May 21, 2010
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 195/2011

UNION OF INDIA

..... Appellant

Through: Mr. S.K. Dubey, Advocate

versus

PK SRIVASTAVA

..... Respondent

Through: respondent in person

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

O R D E R

% 09.04.2013

Vide application dated 26.3.2008, the respondent Dr. P.K. Srivastava sought certain information under Right to Information Act, 2005. On not receiving any response, he made a complaint in this regard to the Central Information Commission. The desired information, however, came to be supplied to the respondent vide letter dated 9.10.2009. It was complained by the respondent that had the desired information been supplied to him in time, he would have convinced the Ministry of Textile and Central Silk Board to induct and give him *in situ* promotion to him to the post of Scientist-D with effect from 30.8.2006 and the delay in furnishing of the said information by CPIO, DoPT, Government of India had caused irreversible loss of status, dignity, mental peace and recurrent financial loss. After hearing the respondent/complainant and the concerned CPIO, the Central Information Commission vide order dated 31.12.2009, awarded compensation amounting

to Rs.43,240/- to the complainant/ respondent, comprising Rs.23,240/- for

ten visits to and fro Allahabad to pursue the case before the Central Administrative Tribunal and Rs.20,000/- for staying for at least two nights per visit. The aforesaid order was passed in exercise of the powers conferred upon the Commission under Section 19(8)(b) of the Right to Information Act. Being aggrieved from the order of the Commission, the appellant file W.P(C) No.4847/2010. The aforesaid writ petition have been dismissed vide impugned order dated 22.7.2010, the appellant is before us by way of this appeal.

2. It has been contended by Mr. S.K. Dubey, learned counsel for the appellant that since no appeal before the Commission was filed by the respondent, it had no power to award compensation in terms of Section 19(8)(b) of the said Act and consequently the order passed by the Commission was without jurisdiction.

3. Section 19 of the Right to Information Act, to the extent it is relevant for our purpose reads as under:

> "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 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 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.

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(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.

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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.

(9) The Central Information Commission or State

Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority."

4. Section 20 of the aforesaid Act which is relevant for our purpose, reads as under:

> 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. CHAPTER VI MISCELLANEOUS CHAPTER VI MISCELLANEOUS."

5. It is quite evident from a perusal of the above referred provisions contained in Section 19 of the Act that compensation to the complainant for any loss or other detriment suffered by him can be awarded by the Commission only while deciding an appeal filed before it. Similar power can also be exercised by the State Information Commission, while passing an order in appeal preferred before it. The aforesaid Section does not provide for grant of compensation merely on the basis of a complaint made to the

Commission, without an appeal having been preferred to it.

6. We find from a perusal of Section 20 of the Act that in case the Commission, while deciding a complaint received by it is of the view that the Central Public Information Officer or the State Public Information Officer had, *inter alia*, not furnished the information within the time specified in sub Section (1) of Section 7, it is required to impose penalty of Rs.250/- each per day till the information was furnished, but in no case, the amount of penalty can exceed Rs.25,000/-. Therefore, while deciding a

complaint received from the respondent, the Commission could only have imposed penalty prescribed in sub section (1) of Section 20 of the Act, but could not have awarded any compensation to him in exercise of the powers conferred upon it by Section 19(8)(b) of the Act. The order passed by the Commission, therefore, was clearly without jurisdiction and is therefore liable to be set aside.

7. For the reasons stated hereinabove, we set aside the impugned order dated 22.7.2010 as well as the order dated 31.12.2009. We remit the matter back to the Commission for passing appropriate order under Section 20(1) of the Act after hearing both the parties. We direct the parties to appear before the Commission on 06.05.2013 The Commission shall pass an appropriate order in terms of this direction within three months of the parties appearing before it.

The appeal stands disposed of accordingly.

CHIEF JUSTICE

V.K. JAIN, J

APRIL 09, 2013
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 28.10.2013

\+ **W.P.(C) No.6755/2012**

J.K.MITTAL .... Petitioner

Through:Petitioner in person with Mr.Varun Gaba, Advocate

versus

CENTRAL INFORMATION COMMISSION AND ANR

..... Respondents

Through:Mr.Amrit Pal Singh, CGSC for R.2 with Mr.Naresh Kumar, Dy. Registrar, CESTAT in person.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J. (ORAL)

The petitioner before this Court filed an application dated 4th February, 2012 before the Central Public Information Officer (CPIO) of Central Excise & Service Tax Appellate Tribunal (CESTAT) seeking certain information. Alleging that the CPIO had failed to provide information sought in terms of the aforesaid application, the petitioner filed a complaint before the Central Information Commission under Section 18 read with Section 20 of the Right to Information Act, seeking imposition of penalty against the said CPIO under Section 20 of the Act.

In the aforesaid complaint, the petitioner clearly stated that he had filed a separate appeal under Section 19 of the Act before the First Appellate Authority and in the complaint he was seeking action against the CPIO since the Hon'ble Supreme Court in **CIC vs. State of Manipur & Ors.** had held that the procedure contemplated under Section 18 of the Act was altogether different from the procedure contemplated under Section 19 of the Act and, therefore, the Commission has no power, while dealing with a complaint, to direct providing of the information subject-matter of the complaint. In Para 6 of the complaint, the petitioner reiterated that he was not seeking any information and the Commission had no jurisdiction to direct providing of the information while considering a complaint under Section 18 of the Act.

2. The aforesaid complaint was disposed of by the Commission, vide impugned order dated 19th July, 2012 which, to the extent it is relevant, reads as under:-

> "2. In order to avoid multiple proceedings under sections 18 and 19 of the RTI Act, viz., complaints and appeals, this case is remitted to CPIO, Customs Excise & Service Tax, Appellate Tribunal, New Delhi (along with copy of appeal and RTI-request), with the following directions:

(i) In case no reply has been given by the CPIO to the Complainant to his RTI- request dated 14.2.2012 CPIO should furnish a reply to the Complainant **within two weeks** of receipt of this order.

(ii) In case CPIO has already given a reply to the Complainant in the matter, he should furnish a copy of his reply to the Complainant **within one week** of receipt of this order."

3. Section 18 of the Act, to the extent it is relevant provides that it shall be the duty of the Commission to receive and enquire into a complaint from any person who has been refused access to any information requested under the Act or who has not been given a response to a request for information or access to information within the time limits specified under the Act. It is, therefore, obligatory for the Commission to decide such a complaint on merit instead of simply directing the CPIO to provide information which the complainant had sought. If the Commission finds that the CPIO had without reasonable cause refused to receive an application for information or had not furnished information within the prescribed time or had given incorrect, incomplete or misleading information, it is required to impose prescribed penalty upon such a CPIO/SPIO, as the case may be. In the cases covered by Sub-section (2) of Section 20 of the Act, the

Commission is also required to recommend disciplinary action against the concerned CPIO or SPIO, under the service rules applicable to him. Section 19 of the Act, on the other hand, provides for a first appeal to the First Appellate Authority under Sub-section (1) and a Second Appeal to the Commission under Sub-section (3) of the aforesaid Section. Sub-section (8) of the aforesaid Act deals with the power of the Commission with respect to the appeals preferred in terms of Sub-section (3) of the said Section and reads as under:-

> "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."

4. The scope of the powers of the Commission under Section 18 of the Act came up for consideration of the Hon'ble Supreme Court in **Central Information Commissioner vs. State of Manipur 2012(286) E.L.T. 485(S.C.)** Appellant No.2 in the aforesaid case filed an application dated 9.2.2007 seeking certain information from the State Information Officer. Since no response was received, he preferred a complaint before the State Chief Information Commissioner under Section 18 of the Act. The said State Chief Information Commissioner directed respondent No.2 before the Apex Court to furnish the information which appellant No.2 had sought. The aforesaid direction of the State Chief Information Commissioner was challenged by the State by way of writ petition. The appellant No.2 had filed yet another complaint before the Chief Information Commissioner which also had met a similar fate at the hands of the State Chief Information Commissioner. A learned Single Judge of the High Court upheld the order passed by the State Chief Information Commissioner. Being

aggrieved, the State preferred an appeal before a Division Bench of the High Court which held that the Commissioner had no power to direct the respondent to furnish information since such a power could be exercised only in terms of Section 19 of the Act. The Commissioner was accordingly directed to dispose of the complaint in accordance with law. Being aggrieved by the order passed by the Division Bench, the Chief Information Commissioner preferred an appeal by Special Leave. Rejecting the appeal filed by the Commissioner, the Apex Court, *inter alia*, held as under:-

> "…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 30th May, 2007 and 14th 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.

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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 Anr. v. Arabinda Bose and Anr.: AIR 1952 SC 369. At page 377 of the report Chief Justice Patanjali Sastri had laid down:
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> "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."
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> 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."

5. In view of the above referred authoritative pronouncement of the Apex Court, there can be no dispute that while considering a complaint made under Section 18 of the Act, the Commission cannot direct the concerned CPIO to provide the information which the complainant had sought from him. Such a power can only be exercised when a Second Appeal in terms of Sub-section (3) of Section 19 is preferred before the Commissioner.

6. As noted earlier, in his complaint, the complainant had specifically referred to the above referred order of the Apex Court and had also drawn the attention of the Commission to the legal proposition, as enunciated in the above referred decision. A perusal of the impugned order would show that the Commission either did not at all advert to the above referred decision or for the reasons which cannot be gathered from the order , it decided not to refer to the aforesaid decision of the Apex Court in the impugned order.

7. The complainant, who appears in person, states that in fact such orders have been passed by the Commission in a number of cases despite the attention of the Commission having been specifically drawn to the authoritative pronouncement of the Apex Court. He volunteers to give particulars of some such cases.

8. For the reasons stated hereinabove, the impugned order dated 19th July, 2012 passed by the Central Information Commission is hereby set aside and the Commission is directed to dispose of the complaint (No.CIC/SS/C/2012/000336) of the petitioner within four months from today, in accordance with the procedure prescribed in the Act.

9. As regards, the grievance expressed by the petitioner that the Commission, despite its attention being drawn to the above referred

decision of the Apex Court continues, while considering a complaint under Section 18 of the Act, to direct the concerned CPIO to provide information instead of deciding the complaint on merits, it is expected that the Commission henceforth will decide the complaints on merits instead of directing the CPIO to provide the information which the complainant had sought. Of course, it would be open to the Commission to give such a direction while entertaining a second appeal under Sub-section (3) of Section 19 of the Act.

The petition stands disposed of.

V.K. JAIN, J

OCTOBER 28, 2013
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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 05.12.2014

+ W.P.(C) 2939/2014

R.K. JAIN ..... Petitioner

versus

CHAIRMAN, INCOME TAX SETTLEMENT COMMISSION & ORS. ..... Respondents

Advocates who appeared in this case:
For the Petitioner : Mr Rajveer Singh.
For the Respondents : Mr P. Roychaudhuri.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner, *inter alia*, impugns an order dated 14.02.2014 passed by respondent no. 3 – Central Public Information Officer & Administrative Officer, Income Tax Settlement Commission, denying the information, which was earlier directed to be supplied to the petitioner under the provisions of the Right to Information Act, 2005 (hereafter the 'RTI Act').

2. The impugned order indicates that the order dated 26.09.2013 passed by respondent no. 2 pursuant to an application filed by the petitioner under the RTI Act; and the order dated 21.10.2013 passed by respondent no. 4 in an appeal preferred by the petitioner against the order dated 26.09.2013, were set aside as being void *ab-initio* by respondent no. 1 as an

administrative head of the Income Tax Settlement Commission.

3. The principal controversy to be addressed is whether, respondent no.1 could declare by an administrative order, the orders passed by respondent nos. 2 & 4 as being void *ab-initio.*

4. Briefly stated, the relevant facts necessary for considering the controversy in the present petition are as under:-

4.1 The petitioner had filed an RTI application seeking information, *inter alia*, with respect to disposal and pendency of matters before the Income Tax Settlement Commission. In response to this application, respondent no.2 (CPIO and Joint Commissioner of Income Tax, Income Tax Settlement Commission) passed an order dated 26.09.2013 furnishing certain information to the petitioner. However, by the said order certain other information as sought for was denied. The petitioner preferred an appeal before respondent no 4, who was specified as the First Appellate Authority. The said appeal was partly allowed by an order dated 21.10.2013.

4.2 The petitioner sent a letter dated 23.10.2013 to respondent no.2 seeking compliance of the order dated 21.10.2013, however, received no response thereto. Thereafter, the petitioner sent another reminder dated 09.03.2014 and subsequent thereto received the impugned order on 15.03.2014, which was issued by respondent no. 3 (and not by respondent no. 2 who had passed the earlier order as the CPIO). The impugned order referred to an administrative order passed by the respondent no. 1; the extract of which as quoted in the impugned order reads as under:

> "As there has been total no-compliance by the JDIT-II and DIT(Inv) of the provisions of the RTI Act, 2005 and notification by the Chairman, ITSC, New Delhi order No. C-26016/1/05/SC-RTI/1178 dated 29/31-07-2013, the orders of even numbers dated 26.09.2013 and 21.10.2013 passed by the JDIT and DIT(Inv) are ab initio void and are annulled. The RTI application will be disposed of in accordance with the provisions of the RTI Act, 2005 and notification by the Chairman, ITSC, New Delhi order No.C-26016/1/05/SC-RTI/1178 dated 29/31-07-2013 by the Administrative Officer, (CPIO) ITSC, Principal Bench, New Delhi at the earliest."

5. The learned counsel appearing for the petitioner contends that the orders passed by the CPIO (i.e. respondent no 2) and the First Appellate Authority (i.e. respondent no. 4) could not be denied or declared as void by an administrative order. This is disputed by the learned counsel appearing for the respondents who submits that the Chairman, Income Tax Settlement Commission, being the overall administrative head of the department, would have the inherent power to pass an administrative order in respect of any order passed by the other sub-ordinate officers. He contends that respondent nos.2 and 4 were not the designated authorities under the RTI Act with respect to the information sought by the petitioner since the information pertained to another wing of the department.

6. It is not disputed that the orders dated 26.09.2013 and 21.10.2013 were orders passed under the RTI Act and in that sense were in exercise of statutory powers. I am unable to accept that such orders passed in exercise of statutory powers could be declared as a nullity or void by an administrative order without recourse to the hierarchy of authorities as

specified in the statute – the RTI Act. In the event, the respondent no.1 was of the view that the orders passed by respondent nos.2 & 4 were without authority of law, the proper and the only course would be to file an appeal before the Central Information Commission (hereafter the 'CIC') or any other competent judicial forum. However, the said orders could not be nullified by an administrative order.

7. In ***CIT v. Greenworld Corpn.*: (2009) 7 SCC 69**, the Supreme Court while considering the role of the superior officers over the income tax authorities exercising power under the Income Tax Act, 1961 held as under:-

> "55. When a statute provides for different hierarchies providing for forums in relation to passing of an order as also appellate or original order, by no stretch of imagination a higher authority can interfere with the independence which is the basic feature of any statutory scheme involving adjudicatory process."

8. It is well settled that even if an order is a nullity, it would continue to be effective unless set aside by a competent body or Court. In this case respondent no. 1 is not authorised under the RTI Act to interfere with the orders passed under the RTI Act. The Supreme Court in ***State of Punjab and Ors v. Gurdev Singh***: **(1991) 4 SCC 1** held as under:

> "7. ... If an Act is void or ultra vires it is enough for the court to declare it so and it collapses automatically. It need not be set aside. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not 'quash' so as to produce a new state of affairs.

8. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or court. In *Smith* v. *East Elloe Rural District Council* [1956 AC 736, 769 : (1956) 1 All ER 855, 871] Lord Radcliffe observed: (All ER p. 871)

> "An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

9. Apropos to this principle, Prof. Wade states [See Wade: Administrative Law, 6th edn., p. 352] : "the principle must be equally true even where the 'brand' of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. Prof. Wade sums up these principles: [Ibid.]

> "The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another."

10**.** It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for

> relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for."

9. The learned counsel appearing for the respondents further submits that the present writ petition ought not to be entertained as the petitioner would have an alternative remedy to approach the CIC by way of a complaint under Section 18(1) of the RTI Act. The learned counsel has specifically referred to Section 18(1)(f) of the RTI Act which reads as under:-

> "**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,—
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> xxxx xxxx xxxx xxxx xxxx
>
> (f) in respect of any other matter relating to requesting or obtaining access to records under this Act."

10. Undoubtedly, the CIC would have the power to enquire into any complaint in respect of matters relating to access of information under the RTI Act. However, it is apparent, in the present, case that respondent no.1 has acted without authority of law in nullifying orders passed under the RTI Act; thus, interference with the impugned order is warranted in these proceedings.

11. The petitioner has specifically pleaded that the website of the Income Tax Settlement Commission had disclosed respondent no.2 as the CPIO. The same has not been disputed by the respondents. It is noted that by

virtue of Section 4(1)(b)(xvi) of the RTI Act, the public authority is required to publish the name, designation and particulars of public information officers. Admittedly, the name and designation of respondent no.2 and no other, was published as the CPIO in relation to the Principal Bench of the Income Tax Settlement Commission. In the circumstances, the petitioner has alleged that, in fact, respondent no.2 and respondent no.4 were the respective CPIO and the First Appellate Authority of the concerned public authority. According to the petitioner, the administrative order of respondent no.1 referred to in the impugned order was conjured up only to overreach the order dated 21.10.2013 passed by the First Appellate Authority as the same was found to be inconvenient. The learned counsel for the petitioner has further pointed that the copy of the administrative order has also not been produced by the respondents. In addition, the petitioner has alleged that the impugned order is antedated as although it is dated 14.02.2014, the same was received by the petitioner on 15.03.2014.

12. Although the allegations made by the petitioner may warrant an enquiry, I am not inclined to examine the same in these proceedings and it would be open for the petitioner to approach the CIC under Section 18 of the RTI Act in respect of these allegations. The CIC has the necessary power to initiate an enquiry in respect of such complaints by virtue of Section 18(2) of the RTI Act.

13. In view of the above, the impugned order is set aside. However, it will also be open for the respondents to approach the CIC to assail the orders dated 26.09.2013 and 21.10.2013 passed by respondent no.2 and respondent no.4 respectively. Needless to mention that if an appeal is filed

before the CIC by the public authority (the Income Tax Settlement Commission), the same would be considered in accordance with law.

VIBHU BAKHRU, J

DECEMBER 05, 2014
RK

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 22.05.2012

% Judgment delivered on: 01.06.2012

\+ **W.P.(C) 11271/2009**

REGISTRAR OF COMPANIES & ORS ..... Petitioners

Through: Mr. Pankaj Batra, Advocate.

versus

DHARMENDRA KUMAR GARG & ANR ..... Respondents

Through: Mr. Rajeshwar Kumar Gupta and Ms. Shikha Soni, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition has been preferred by the Registrar of Companies, NCT of Delhi & Haryana (ROC) and its CPIOs Sh. Raj Kumar Shah and Sh. Atma Shah to assail two similar orders dated 14.07.2009 passed by the Central Information Commission (CIC) in complaint case Nos. CIC/SG/C/2009/000702 and CIC/SG/C/2009/000753. By these similar orders, the appeals preferred by the same respondent- querist were allowed, rejecting the defence of the petitioners founded upon

Section 610 of the Companies Act, 1956, and it was directed that the complete information sought by the respondent-querist in his two applications under the Right to Information Act (RTI Act) be provided to him before 25.07.2009. The CIC has also directed issuance of show-cause notice to the petitioner-PIOs under Section 20(1) of the RTI Act asking them to show-cause as to why penalty should not be imposed upon them for not furnishing information as sought by the querist within thirty days.

2. The querist-Shri Dharmendra Kumar Garg filed an application under the RTI Act on 28.05.2009 requiring the PIO of the ROC to provide the following information in relation to company No. 056045 M/s Bloom Financial Services Limited:

> *"1. Who are the directors of this company? Please provide their name, address, date of appointment and copies of consent filed at ROC alongwith F-32 filed.*
>
> *2. After incorporation of above company, how many times directors were changed? Please provide the details of documents files and copies of Form 32 filed at ROC.*
>
> *3. Please provide the copies of Annual Returns filed at ROC since incorporation to 1998*
>
> *4. On what ground prosecution has been filed. Please provide the details of prosecution and persons included for prosecution. Please provide the copies of Order Sheets and related documents.*
>
> *5. On what ground the name of Dharmender Kumar Garg has been included for prosecution?*
>
> *6. Please provide the copies of Form No 5 and other documents filed for increase of capital?*

7. How much fee was paid for increase of Capital of above company? Please provide the details of payment of fee at ROC.

8. Please provide the copies of Statutory Report and Special Leave Petition (Statement in lieu of prospectus) filed at ROC."

3. The PIO-Sh. Atma Shah responded to the said queries on 29.05.2009. In respect of queries No. 1, 2, 3, 6, 7 & 8, the stand taken by the PIO was as follows:

"that in view of the provisions of Section 610 of the Companies Act, 1956 read with Companies (Central Government's) General Rules and Forms, 1956 framed in exercise of powers conferred by clauses (a) & (b) of sub-section (1) of Section 642 of the Companies Act, 1956, the documents filed by companies pursuant to various provisions of the Companies Act, 1956 with the ROCs are to be treated as 'information in public domain' and such information is accessible by public pursuant to the provisions of Section 610 of the Companies Act, 1956. There is an in built mechanism under the provisions of the Companies Act, 1956 for accessing information relating to documents filed which are in the public domain on payment of fees prescribed under the provisions of the Companies Act, 1956 and the Rules made there under. Hence you can obtain the desired information by inspecting the documents filed by the company in this office before filing of documents online i.e. prior to 8/03/2006 at O/o Registrar of Companies, NCT of Delhi & Haryana, 131, Sector-5, IMT Manesar, Haryana and after 18/3/06 on the Ministry's website www.mca.gov.in. Further certified copies of the desired documents can also be obtained on payment of fees prescribed thereof. In view of this, the information already available in the public domain would not be treated as 'information held by or under the control of public authority' pursuant to Section 2(j) of the Right to Information Act, 2005. Therefore, the provisions of RTI Act, 2005 would not be applicable for providing inspection/copies of such documents/information to the

public."

4. The queries at serial Nos. 4 & 5, as aforesaid, were also responded to by the PIO. However, I am not concerned with the answers given in response to the said queries, as the legal issue raised in the present petition by the petitioners relates to the interplay between Section 610 of the Companies Act on the one hand, and the provisions of the RTI Act on the other hand. Not satisfied with the response given by the PIO Sh. Atma Shah, as aforesaid, the respondent-querist, without preferring a first appeal, straightway preferred an appeal before the CIC, which has been disposed of vide impugned order dated 14.07.2009 in complaint case No. CIC/SG/C/2009/000702.

5. The respondent-querist raised further queries in respect of the same company vide an RTI application dated 06.06.2009. This application was also responded to by the PIO Sh. Atma Shah on 23.06.2009. In this reply as well, in respect of certain queries, the PIO responded by placing reliance on Section 610 of the Companies Act and gave more or less the same reply, as extracted above. Since the respondent-querist was not satisfied with the said response, he preferred a petition before the CIC, once again by-passing the statutory first appeal provided under the RTI Act. This appeal was registered as complaint case No. CIC/SG/C/2009/000753.

6. Before the CIC, the petitioners contended that the information which could be accessed by any person by resort to Section 610 of the Companies Act is information which is already placed in the public domain, and it cannot be said that the said information is "held by" or is "under the control" of the public authority. It was contended that such information, as has already been placed in the public domain, does not fall within the scope of the RTI Act and a citizen cannot by-pass the procedure, and avoid paying the charges prescribed for accessing the information placed in the public domain, by resort to provisions of the RTI Act.

7. In support of their submissions, before the CIC the petitioners placed reliance on a departmental circular No. 1/2006 issued by the Ministry of Company Affairs, wherein the view taken by the Director, Inspection & Investigation was that in the light of the provisions of Section 610 of the Companies Act read with Companies (Central Government's) General Rules & Forms, 1956 (Rules), framed in exercise of powers conferred under clauses (a) & (b) of sub-Section 1 of Section 642 of the Companies Act, the documents filed by the Companies pursuant to various provisions of the Companies Act with the ROC are to be treated as information in the public domain. It was also his view that there being a complete mechanism provided under the provisions of the Companies Act for accessing information relating to documents filed, which are in public domain, on payment of fees

prescribed under the Companies Act and the Rules made thereunder, such information could not be treated as information held by, or under the control of, the public authority. His view was that the provisions of RTI Act could not be invoked for seeking copies of such information by the public.

8. The petitioners also placed reliance on various earlier orders passed by the different CICs, upholding the aforesaid stand of the ROC and, in particular, reliance was placed on the decision of Sh. A.N. Tiwari, Central Information Commissioner in F.No. CIC/80/A/2007/000112 decided on 12.04.2007. Reference was also made to various orders of Prof. M.M. Ansari, Central Information Commissioner taking the same view. The petitioner has placed all these orders before this Court as well, as Annexure A-7(Colly.)

9. The first submission of learned counsel for the petitioners is that, while passing the impugned orders, the Central Information Commissioner Sh. Shailesh Gandhi has acted with impropriety. Despite the earlier orders of two Central Information Commissioners – taking the view that the information placed by the petitioner-ROC in the public domain and accessible under Section 610 of the Companies Act are out of the purview of the RTI Act, being specifically brought to his notice, he has simply brushed them aside after noticing them by observing that he differs with these decisions. It is submitted that

even if Sh. Shailesh Gandhi, Central Information Commissioner, was of the opinion that the earlier views taken by two other learned CICs were not correct, the proper course of action for him to adopt would have been to record his reasons for not agreeing with the earlier views of the Central Information Commissioners, and to refer the said issue for determination by a larger bench of the Central Information Commission. Sitting singly, Sh. Shailesh Gandhi, Central Information Commissioner, could not have taken a contrary view by merely observing that he disagrees with the earlier views.

10. The further submission of learned counsel for the petitioners is that, even on merits, the view taken by the CIC in the impugned orders is illegal and not correct. It is argued that Clause (a) of Section 610 (1) of the Companies Act, inter alia, entitles “any person” to inspect any document kept by the Registrar, which may have been filed or registered by him in pursuance of the Companies Act, or may inspect any document, wherein the Registrar has made a record of any fact required or authorized to be recorded to be registered in pursuance of the Companies Act, on payment for each inspection of such fee, as may be prescribed.

11. Further, by virtue of Clause (b) of Section 610 (1) any person can require the Registrar to provide certified copies of the Certificate of Registration of any company, or a copy or extract of any other

document, or any part of any other document, on payment in advance of such fee, as may be prescribed. It is submitted that the Registrar of Companies has placed all its records pertaining to, and in relation to the companies registered with it in the public domain. They have either been placed on the website of the ROC, or are available for inspection at the facility of the ROC. Any person can inspect such records either on-line, or at the facility of the petitioner-ROC and if the person so desires, can also obtain copies of all or any of such documents on payment of charges, as prescribed under the Rules.

12. Learned counsel for the petitioners submits that the Companies (Central Government's) General Rules & Forms, 1956, which have been framed in exercise of the power conferred upon the Central Government by clauses (a) & (b) of sub-Section (1) of Section 642 of the Companies Act, prescribe the fees for inspection of document and for obtaining certified copies thereof in Rule 21 A, which reads as follows:

> *"21A. Fees for inspection of documents etc.—The fee payable in pursuance of the following provisions of the Act, shall be—*
>
> | | | |
> |---|---|---|
> | *(1)* | *Clause (a) of sub-section (1) of section 118* | *rupees ten.* |
> | *(2)* | *Clause (b) of sub-section (1) of section 118* | *rupee one.* |
> | *(3)* | *Sub-section (2) of section 144* | *rupees ten.* |
> | *(4)* | *Clause (b) of sub-section (2) of section 163* | *rupees ten.* |

(5)	*Clause (b) of sub-section (3) of section 163*	*rupee one.*
(6)	*Sub-section (2) of section 196*	*rupee one.*
(7)	*Clause (a) of sub-section (1) of section 610*	*rupees fifty.*
(8)	*Clause (b) of sub-section (1) of section 610—*	
	(i) For copy of certificate of incorporation	*rupees fifty.*
	(ii) For copy of extracts of other documents including hard copy of such documents on computer readable media	*rupees twenty five per page."*

13. Learned counsel submits that there are two kinds of information available with the ROC. The first is the information/ documents, which the ROC is obliged to receive, record and maintain under the provisions of the Companies Act, and the second kind of information relates to the administration and functioning of the office of the ROC. The first kind of information, i.e., the returns, forms, statements, etc. received, recorded and maintained by the ROC in relation to the companies registered with it, is all available for inspection, and the certified copies thereof can be obtained by resort to Section 610 of the Companies Act and the aforesaid Rules. He submits that since this information is already in the public domain, same cannot be said to be information held by, or in the control of the public authority, i.e., ROC. He submits that it is the second kind of information, as aforesaid, which a citizen can seek by invoking provisions of the RTI Act from the ROC, and not the first kind of information which, in any event, is already available in

the public domain, and accessible to one and all, including non-citizens.

14. He submits that the right to information vested by Section 3 of the RTI Act is available only to citizens. However, the right vested by virtue of Section 610 of the Companies Act can be exercised by any person, whether, or not, he is a citizen of India. Therefore, the right vested by Section 610 of the Companies Act is much wider in its scope than the right vested by Section 3 of the RTI Act. It is argued that the object of the RTI Act is to enable the citizens to access information so as to bring about transparency in the functioning of public authorities, which is considered vital to the functioning of democracy and is also essential to contain corruption and to hold governments and their instrumentalities accountable to those who are governed, i.e., the citizens. The information accessible under Section 610 is, in any event, freely available and all that the person desirous of accessing such information is required to do, is to make the application in terms of the said provision and the Rules, to become entitled to receive the information.

15. Learned counsel submits that the fees prescribed for provision of information under the RTI Act is nominal and much less compared to the fees prescribed under Rule 21 A. Learned counsel for the petitioners submits that the petitioners have consciously prescribed

the fees under the RTI Act as a nominal amount of Rs.10/- per application since the petitioner-ROC does not wish to make it inconvenient or difficult for the citizens to obtain information held by or under the control of the ROC under the said Act. However, the said provision cannot be exploited or misused by a citizen for the purpose of seeking information, which is available in the public domain and is accessible under Section 610 of the Companies Act by payment of prescribed fee under Rule 21 A of the aforesaid Rules.

16. On the other hand, the submission of learned counsel for the respondent-querist is that the provisions of the RTI Act 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 the RTI Act itself. In this respect reference is made to Section 22 of the RTI Act. It is, therefore, argued that a citizen has an option to seek information from the ROC, either by resort to Section 610 of the Companies Act or by resort to the provisions of the RTI Act. Merely because Section 610 exists on the Statute Book, it does not mean that the right available under the RTI Act to seek information can be curtailed or denied.

17. Learned counsel for the respondent further submits that under Section 610 of the Companies Act, a person can access only such

information which has been filed or registered by him (i.e., the person seeking the information), in pursuance of the Companies Act. He submits that the expression *"being documents filed or registered by him in pursuance of this Act"* used in Section 610(1)(a) of the Companies Act connect with the words *"any person"* and not with the words *"inspect any documents kept by the Registrar"*.

18. Section 610 of the Companies Act, 1956 reads as follows:

> "*610. Inspection, production and evidence of documents kept by Registrar.*
>
> *(1) [Save as otherwise provided elsewhere in this Act, any person may]-*
>
> *(a) inspect any documents kept by the Registrar [in accordance with the rules made under the Destruction of Records Act, 1917] being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection, of [such fees as may be prescribed];*
>
> *(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, [on payment in advance of [such fees as may be prescribed:]*
>
> *Provided that the rights conferred by this sub-section shall be exercisable-*
>
> *(i) in relation to documents delivered to the Registrar with a prospectus in pursuance of sub-clause (i) of clause (b) of sub-section (1) of section 60, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and*

(ii) in relation to documents so delivered in pursuance of clause (b) of sub-section (1) of section 605, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court [or the [Tribunal]] except with the leave of that Court [or the [Tribunal]] and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court [or the [Tribunal]].

(3) A copy of, or extract from, any document kept and registered at any of the officers for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document".

19. The submission of learned counsel for the respondent that only the person who has filed documents with the Registrar of Companies is entitled to inspect the same is wholly fallacious and deserves to be outrightly rejected. This interpretation is clearly not borne out either from the plain language of section 610 or upon a scrutiny of the object and purpose of the said provision. Section 610 enables "any person" to inspect any documents kept by the registrar, being documents "filed or registered by him in pursuance of this Act". The obligation to file and register the documents, which may be submitted by a company registered, or seeking registration with the Registrar of Companies, is that of the Registrar of Companies. It is the Registrar, who makes a

record of any fact required or authorized to be recoded or registered in pursuance of the Companies Act, and not “any person”.

20. If the submission of learned counsel for the respondent were to be accepted, it would mean that it is the applicant under section 610, who is obliged to make a record of any fact required, or authorized to be recorded or registered in pursuance of the Companies Act, which is not the case. It is also not the obligation of “any person” either to file, or to receive and put on record, or to register, the documents lodged by him in the office of the ROC. That is the obligation of the Registrar of Companies. The whole purpose of section 610 is to bring about full and complete transparency in the matter of registration of companies and in the matter of their accounts and directorship, so that any person can obtain all the relevant information in relation to any registered company.

21. Pertinently, the language used in clause (b) does not support the submission of the respondent at all. If the submission of learned counsel for the respondent were to be accepted, it would mean that while a person can inspect only those documents which he has lodged in the office of the Registrar of Companies (by virtue of clause (a)), at the same time, under clause (b) of section 610(1), he can obtain the certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document duly certified by

the Registrar.

22. Section 610(2) puts a check on issuance of a process for compelling the production of any document by the Registrar, by any Court or Tribunal. It requires that such process would not be issued except with the leave of the Court or the Tribunal. This check has been placed, since any person can obtain information either through inspection, or by obtaining certified copies of documents filed by any company, by following the procedure prescribed, and a certified true copies of any such documents or extracts is admissible in evidence in all legal proceedings, and has the same efficacy and validity as the original documents filed and registered by the Registrar of Companies (see section 610(3)).

23. There can be no doubt that the documents kept by the Registrar, which are filed or registered by him, as well as the record of any fact required or authorized to be recorded by the Registrar or registered in pursuance of the Companies Act qualifies as "information" within the meaning of that expression as used in Section 2(f) of the RTI Act. However, the question is — whether the mere fact that the said documents/record constitutes "information", is sufficient to entitle a citizen to invoke the provisions of the RTI Act to access the same?

24. The Parliament has defined the expression "right to information" under Section 2(j). The same reads as follows:

> *"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;"*

25. The right to information is conferred by section 3 of the RTI Act, which reads as follows:

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

26. Pertinently, the Parliament did not use the language in Section 3: *"Subject to the provisions of this Act, citizens shall have a right to access all information",* or the like. Therefore, the right conferred by Section 3 of the RTI Act, which is the substantive provision, means the right to information "*accessible under the Act which is held by or under the control of any public authority and includes ....".*

27. It is not without any purpose that the Parliament took the trouble of defining "right to information". Parliament does not undertake a casual or purposeless legislative exercise. The definition of "right to information" specifically qualifies the said right with the words:

(1) "*accessible under this Act*", and;

(2) *"which is held by or under the control of any public authority"*.

28. The information should, firstly, be accessible under this Act. This means that if there is information which is not accessible under this Act, there is no "right to information" in respect thereof. Consequently, there is no right to information in respect of information, which is exempted from disclosure under Section 8 or Section 9 of the RTI Act.

29. A particular information may not be held by, or may not be under the control of the public authority concerned. There would be no right in a citizen to seek such information from that particular public authority, though he may have the right to seek the same information from another public authority who holds or under whose control the desired information resides. That is why Section 6(3) provides that an application to seek 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, shall be transferred to that other public authority.

30. But is that all to the expression "*held by or under the control of any public authority*" used in the definition of "Right to information" in

Section 2(j) of the RTI Act?

31. In the context of the object of the RTI Act, and the various provisions thereof, in my view, the said expression "*held by or under the control of any public authority*" used in section 2(j) of the RTI Act deserves a wider and a more meaningful interpretation. The expression "Hold" is defined in the Black's Law dictionary, 6th Edition, inter alia, in the same way as "*to keep*" i.e. to retain, to maintain possession of, or authority over.

32. The expression "held" is also defined in the Shorter Oxford Dictionary, inter alia, as "*prevent from getting away; keep fast, grasp, have a grip on*". It is also defined, inter alia, as "*not let go; keep, retain".*

33. The expression "control" is defined in the Advanced Law Lexicon by P.N. Ramanatha Aiyar 3rd Edition Reprint 2009 and it reads as follows:

> *"(As a verb) To restrain; to check; to regulate; to govern; to keep under check; to hold in restraint; to dominate; to rule and direct; to counteract; to exercise a directing, restraining or governing influence over; to govern with reference thereto; to subject to authority; to have under command, and authority over, to have authority over the particular matter. (Ame. Cyc)"*

34. From the above, it appears that the expression "held by" or "under the control of any public authority", in relation to "information",

means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already "let go", i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority "holds" or "controls" the same. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not this kind of information, which appears to fall within the meaning of the expression "right to information", as the information in relation to which the "right to information" is specifically conferred by the RTI Act is that information which *"is held by or under the control of any public authority"*.

35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever. The right available to any person to seek inspection/copies of documents under Section 610 of the Companies

Act is governed by the Companies (Central Government's) General Rules & Forms, 1956, which are statutory rules and prescribe the fees for inspection of documents, etc. in Rule 21A. The said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI Act to seek information. It would also be complete waste of public funds to require the creation and maintenance of two parallel machineries by the ROC – one under Section 610 of the Companies Act, and the other under the RTI Act to provide the same information to an applicant. It would lead to unnecessary and avoidable duplication of work and consequent expenditure.

36. The right to information is required to be balanced with the need to optimize use of limited fiscal resources. In this context I may refer to the relevant extract of the Preamble to the RTI Act which, inter alia, provides:-

> *"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 confidentially of sensitive information;*
>
> *AND WHEREAS* ***it is necessary to harmonise these conflicting interests*** *while preserving the paramountancy of the democratic ideal;"* (emphasis supplied).

37. Section 4(1)(a) also lays emphasis on availability of recourses, when it talks about computerization of the records. Therefore, in the exploitation and implementation of the RTI Act, a delicate and reasonable balance is required to be maintained. Nobody can go overboard or loose ones equilibrium and sway in one direction or assume an extreme position either in favour of upholding the right to information granted by the RTI Act, or to deny the said right.

38. The Supreme Court in ***The Institute of Chartered Accountants of India Vs. Shaunak H. Satya & Others,*** *Civil Appeal No. 7571/2011 decided on 02.09.2011,* observed 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.****"*(emphasis supplied).

39. Therefore, if another statutory provision, created under any other law, vests the right to seek information and provides the mechanism for invoking the said right (which is also statutory, as in this case) that mechanism should be preserved and operated, and not destroyed

merely because another general law created to empower the citizens to access information has subsequently been framed.

40. Section 4 of the RTI Act obliges every public authority, inter alia, to publish on its own, information described in clause (b) of sub-Section (1) of Section 4. Sub-clause (xv) of clause (b) obliges the public authority to publish *"the particulars of facilities available to citizens for obtaining information ...."*. In the present case, the facility is made available – not just to citizens but to any person, for obtaining information from the ROC, under Section 610 of the Companies Act, and the Rules framed thereunder above referred to. Section 4(2) of the RTI Act itself postulates that in respect of information provided by the public authority *suo moto*, there should be minimum resort to use of the RTI Act to obtain information.

41. The submission of learned counsel for the respondent founded upon Section 22 of the RTI Act also has no merit. Section 22 of the RTI Act reads as follows:

> *"22. The provisions of this 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 this Act."*

42. Firstly, I may notice that I do not find anything inconsistent between the scheme provided under Section 610 of the Companies Act

and the provisions of the RTI Act. Merely because a different charge is collected for providing information under Section 610 of the Companies Act than that prescribed as the fee for providing information under the RTI Act does not lead to an inconsistency in the provisions of these two enactments. Even otherwise, the provisions of the RTI Act would not override the provision contained in Section 610 of the Companies Act. Section 610 of the Companies Act is an earlier piece of legislation. The said provision was introduced in the Companies Act, 1956 at the time of its enactment in the year 1956 itself. On the other hand, the RTI Act is a much later enactment, enacted in the year 2005. The RTI Act is a general law/enactment which deals with the right of a citizen to access information available with a public authority, subject to the conditions and limitations prescribed in the said Act. On the other hand, Section 610 of the Companies Act is a piece of special legislation, which deals specifically with the right of any person to inspect and obtain records i.e. information from the ROC. Therefore, the later general law cannot be read or understood to have abrogated the earlier special law.

43. The Supreme Court in ***Ashoka Marketing Limited and Another Vs. Punjab National Bank and Others****, (1990) 4 SCC 406,* applied and explained the legal maxim: *leges posteriors priores conterarias abrogant*, (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalia specialibus non derogant*, (a general provision does not derogate from

a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34). One of the principles of statutory interpretation is that the later law abrogates earlier contrary laws. This principle is subject to the exception embodied in the second latin maxim mentioned above. The Supreme Court in paragraphs 50-52 of this decision held as follows:

> *"50. One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriors priores conterarias abrogant, (later laws abrogate earlier contrary. laws). This principle is subject to the exception embodied in the maxim: generalia specialibus non derogant, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34).*
>
> *51. The rationale of this rule is thus explained by this Court in the J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. The State of Uttar Pradesh & Others, [1961] 3 SCR 185:*
>
> > *"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as*

regards all the rest the earlier directions should have effect."

52. In U.P. State Electricity Board v. Hari Shankar Jain, [1979] 1 SCR 355 this Court has observed:

"*In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament.*" *"*

44. Justice G.P. Singh in his well-known work *"Principles of Statutory Interpretation 12th Edition 2010"* has dealt with the principles of interpretation applicable while examining the interplay between a prior special law and a later general law. While doing so, he quotes Lord Philimore from ***Nicolle Vs. Nicolle,*** *(1922) 1 AC 284,* where he observed:

"it is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. This, as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute, or be the underlying common or customary law of the country. Where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so."

45. The Supreme Court in ***R.S. Raghunath Vs. State of Karnataka & Another,*** *(1992) 3 SCC 335,* quotes from Maxwell on The Interpretation of Statutes, the following passage:

> "*A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act.*"

46. This principle has been applied in ***Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Dey & Others,*** *AIR 1996 SC 1931* as well. Therefore, Section 22 of the RTI Act, in any event, does not come in the way of application of Section 610 of the Companies Act, 1956.

47. Now, I turn to consider the submission of learned counsel for the petitioner that the Central Information Commissioner Sh. Shailesh Gandhi has acted with impropriety while passing the impugned order, by disregarding the earlier orders of the other Central Information Commissioners and by taking a decision contrary to them without even referring the matter to a larger bench.

48. In ***Sh. K. Lall Vs. Sh. M.K. Bagri, Assistant Registrar of Companies & CPIO,*** *F. No. CIC/AT/A/2007/00112,* the Central Information Commissioner Sh. A.N. Tiwari squarely considered the very same issue with regard to the interplay between Section 610 of the Companies Act and the rights of a citizen to obtain information under the RTI Act. Sh. A.N. Tiwari by a detailed and considered decision held that information which can be accessed by resort to Section 610 of the Companies Act cannot be accessed by resort to the provisions of the RTI Act. The discussion found in his aforesaid order on this legal issue reads as follows:

> *"9. It shall be interesting to examine this proposition. Section 2(j) of the RTI Act speaks of "the right to information accessible under this Act which is held by or under the control of any public authority……". The use of the words "accessible under this Act"; "held by" and "under the control of" are crucial in this regard. The inference from the text of this sub-section and, especially the three expressions quoted above, is that an information to which a citizen will have a right should be shown to be a) an information which is accessible under the RTI Act and b) that it is held or is under the control of a certain public authority. This should mean that unless an information is exclusively held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control of' the public authority and, thus would cease to be an information accessible under the RTI Act. This interpretation is further strengthened by the provisions of the RTI Act in Sections 4(2), 4(3) and 4(4), which oblige the public authority to constantly endeavour "to take steps in accordance with the requirement of clause b of subsection 1 of the Section 4 to provide as*

much information suo-motu to the public at regular intervals through various means of communication including internet, so that the public have minimum resort to the use of this Act to obtain information." (Section 4 sub-section 2). This Section further elaborates the position. It states that "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." The explanation to the subsection 4 section 4 goes on to further clarify that the word "disseminated" used in this Section would mean the medium of communicating the information to the public which include, among others, the internet or any other means including inspection of office of any public authority.

10. It is significant that the direction regarding dissemination of information through free or priced documents, or free or priced access to information stored on internet, electronic means, or held manually; free or on payment of predetermined cost for inspection of such documents or records held by public authorities, appear in a chapter on 'obligations of public authorities'. The inference from these sections is a) it is the obligation of the public authorities to voluntarily disseminate information so that "the public have minimum resort to the use of this Act to obtain information", b) once an information is voluntarily disseminated it is excluded from the purview of the RTI Act and, to that extant, contributes to minimizing the resort to the use of this Act, c) there is no obligation cast on the public authority to disseminate all such information free of cost. The Act authorizes the public authorities to disclose such information suo-motu "at such cost of a medium or the print cost price as may be prescribed", d) the RTI Act authorizes the public authority to price access to the information which it places in the public domain suo-motu.

11. These provisions are in consonance with the wording of the Section 2(j) which clearly demarcates the boundary between an information held or under the control of the public authority and, an information not so held, or under the control of that public authority who suo-motu places

that information in public domain. It is only the former which shall be "accessible under this Act" — viz. the RTI Act and, not the latter. This latter category of information forms the burden of sub-section 2, 3 and 4 of Section 4 of this Act.

12. The RTI Act very clearly sets the course for the evolution of the RTI regime, which is that less and less information should be progressively held by public authorities, which would be accessed under the RTI Act and more and more of such held information should be brought into the public domain suo-motu by such public authority. Once the information is brought into the public domain it is excluded from the purview of the RTI Act and, the right to access this category of information shall be on the basis of whether the public authority discloses it free, or at such cost of the medium or the print cost price "as may be prescribed". The Act therefore vests in the public authority the power and the right to prescribe the mode of access to voluntarily disclosed information, i.e. either free or at a prescribed cost / price.

13. The respondents are right therefore in arguing that since they had placed in the public domain a large part of the information requested by the appellant and prescribed the price of accessing that information either on the internet or through inspection of documents, the ground rules of accessing this information shall be determined by the decision of the public authority and not the RTI Act and the Rules. That is to say, such information shall not be covered by the provisions about fee and cost of supply of information as laid down in Section 7 of the RTI Act and the Rules thereof.

14. It is, therefore, my view that it should not only be the endeavour of every public authority, but its sacred duty, to suo-motu bring into public domain information held in its control. The public authority will have the power and the right to decide the price at which all such voluntarily disclosed information shall be allowed to be accessed.

15. There is one additional point which also needs to be considered in this matter. The appellant had brought up the issue of the overarching power of the RTI Act under Section 22. This Section of the Act states that the provisions of the 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 this Act. In his view, the pricing of the access to the records and information by the public authority at a scale different from the rates / fees for accessing the information prescribed under the Act amounts to inconsistency. A closer look at the provision shows that this is not so. As has been explained in the preceding paragraphs, the fees prescribed for access to information under the RTI Act applies only to information 'held' or 'under the control of' the public authority. It does not apply inferentially to the information not held or not under the control of the public authority having been brought into the public domain suo-motu in terms of sub-section 3 of Section 4. The price and the cost of access of information determined by the public authority applies to the latter category. As such, there is no inconsistency between the two provisions which are actually parallel and independent of each other. I therefore hold that no ground to annul the provision of pricing the information which the public authority in this case has done, exists.

16. In my considered view, therefore, the CPIO and the AA were acting in consonance with the provision of this Act when they called upon the appellant to access the information requested and not otherwise supplied to him by the CPIO, by paying the price / cost as determined by the public authority."

49. This view was followed by Sh. A.N. Tiwari in a subsequent order dated 29.08.2007 in ***"Shri Shriram (Dada) Tichkule Vs. Shri P.K. Galchor, Assistant Registrar of Companies & PIO".*** The same view was taken by another Central Information Commissioner namely, Prof. M.M. Ansari in his orders dated 29.03.2006 in ***Arun Verma Vs. Department of Company Affairs***, *Appeal No. 21/IC(A)/2006,* and in the case of ***Sh. Sonal Amit Shah Vs. Registrar of Companies***, *Decision No. 2146/IC(A)/2008 dated 31.03.2008,* and various others,

copies of which have been placed on record. It appears that all these decisions were cited before learned Central Information Commissioner Sh. Shailesh Gandhi. In fact, in the impugned order, he also refers to these decisions and states that *"I would respectfully beg to differ from this decision"*.

50. The Central Information Commission while functioning under the provisions of the RTI Act, no doubt, do not constitute a Court. However, there can be no doubt about the fact that Central Information Commission functions as a quasi-judicial authority, as he determines inter se rights and obligations of the parties in relation to the grant of information, which may entail civil and other consequences for the parties.

51. This Court in ***Union Public Service Commission Vs. Shiv Shambhu & Others,*** *L.P.A. No. 313/2007 decided on 03.09.2008*, while dealing with the issue whether the Central Information Commissioner should be impleaded as a party respondent in proceedings challenging its order and whether the Central Information Commission has a right of audience to defend its order before this Court in writ proceedings, observed as follows:

> *"2. At the outset this Court directs the deletion of the CIC which has been arrayed as Respondent No. 1 to this appeal, consequent upon it being arrayed as such in the writ petition. This Court has repeatedly issued practice directions stressing that a judicial or quasi-judicial body or Tribunal whose order is challenged in a writ petition (and*

thereafter possibly in appeal) ought not to itself be impleaded as a party respondent. The only exception would be if malafides are alleged against any individual member of such authority or Tribunal in which case again it would be such member, and not the authority/Tribunal, who may be impleaded as a respondent. Accordingly the cause title of the present appeal will read as ***Union Public Service Commission v. Shiv Shambhu & Ors.****"*

52. This decision has subsequently been followed in ***State Bank of India Vs. Mohd. Shahjahan****, W.P.(C.) No. 9810/2009*, wherein the Court held as follows:

"12. This Court is unable to accept the above submission. There is no question of making the CIC, whose order is under challenge in this writ petition, a party to this petition. Like any other quasi-judicial authority, the CIC is not expected to defend its own orders. Likewise, the CIC cannot be called upon to explain why it did not follow any of its earlier orders. That the CIC should not be made a party in such proceedings is settled by the judgment of the Division Bench in this Court in ***Union Public Service Commission v. Shiv Shambu 2008 IX (Del) 289.****"*

53. It is, therefore, a well-recognised position that the CIC discharges quasi-judicial functions while deciding complaints/appeals preferred by one or the other party before it.

54. It is a well-settled canon of judicial discipline that a bench dealing with a matter respects an earlier decision rendered by a coordinate bench (i.e., a bench of same strength), and is bound by the decision of a larger bench. If this discipline is breached, the same would lead to complete chaos and confusion in the minds of the

litigating public, as well as in the minds of others such as lawyers, other members/judges of quasi-judicial/judicial bodies, and the like. Breach of such discipline would result in discrimination and would shake the confidence of the consumers of justice. There can be no greater source of discomfiture to a litigant and his counsel, than to have to deal with diametrically opposite views of coordinate benches of the same judicial /quasi-judicial body. If the emergence of contradictory views is innocent i.e. due to ignorance of an earlier view, it is pardonable, but when such a situation is created consciously, with open eyes, and after having been put to notice, the judge/authority responsible for the later view should take the blame for creating confusion and for breaching judicial discipline.

55. The Supreme Court in ***Dr. Vijay Laxmi Sadho Vs. Jagdish***, *(2001) 2 SCC 247*, deprecated such lack of judicial discipline by observing as follows:

> *"33. As the learned Single Judge was not in agreement with the view expressed in Devilal's case, Election Petition No. 9 of 1980, it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed.* ***It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of***

law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs." (emphasis supplied)

56. In the present case, the Central Information Commissioner Mr.Shailesh Gandhi has also demonstrated complete lack of judicial discipline while rendering the impugned decisions. By no stretch of imagination, it cannot be said that the earlier decisions were not on the point. Particularly, the decision rendered by Sh. A.N. Tiwari in F. CIC/T/A/2007/0012 dated 12.04.2007 directly deals with the very same issue, and is an exhaustive, and detailed and considered decision. If the Central Information Commissioner Sh. Shailesh Gandhi had a different view in the matter – which he was entitled to hold, judicial discipline demanded that he should have recorded his disagreement with the view of Sh. A.N. Tiwari, Central Information Commissioner, and, for reasons to be recorded by him, required the constitution of a larger bench to re-examine the issue. He could not have ridden rough shot over the earlier decisions of Sh. A.N. Tiwari and Prof. M.M. Ansari, particularly when he was sitting singly to consider the same issue of law.

57. The consequence of the improper conduct of Sh. Shailesh Gandhi, Central Information Commissioner, is that there are now two sets of conflicting orders- taking diametrically opposite views, on the issue aforesaid. Therefore, unless the said legal issue is settled one

way or the other by a higher judicial forum, it would be open to any other Information Commissioner to choose to follow one or the other view. This would certainly lead to confusion and chaos. It would also lead to discrimination between the querists/public authority, who are either seeking information or are defending the action under the RTI Act. One such instance, cited by learned counsel for the petitioner is in the case of ***Smt. Dayawati Vs. Office of Registrar of Companies****, in CIC/SS/C/2011/000607 decided on 23.03.2012*. In this case, once again the same issue had been raised. The Central Information Commissioner Smt. Sushma Singh has preferred to follow the view of Sh. A.N. Tiwari in the case of ***K. Lall Vs. Ministry of Company Affairs****, Appeal No. CIC/AT/A/2007/00112 dated 14.04.2007*.

58. On this short ground alone, the impugned orders of the learned Central Information Commissioner deserve to be quashed and set aside.

59. The reasoning adopted by Shri Shailesh Gandhi, the learned Central Information Commissioner for taking a view contrary to that taken by Sh. A.N. Tiwari in his order dated 12.04.2007 (which has been extracted hereinabove), does not appeal to me. The view taken by Sh.A.N. Tiwari, Central Information Commissioner appeals to this Court in preference to the view taken by Sh. Shailesh Gandhi, Central Information Commissioner in the impugned orders. The impugned

orders do not discuss, analyse or interpret the expression "right to information" as defined in Section 2(j) of the RTI Act. They do not even address the aspect of Section 610 of the Companies Act being a special law as opposed to the RTI Act.

60. I may also observe that the approach of the Central Information Commission in seeking to invoke Section 20 of the RTI Act in the facts of the present case is wholly unjustified. By no stretch of imagination could it have been said that PIOs of the ROC had acted "*without any reasonable cause*" or "*malafidely denied the request for information or knowingly* gave incorrect, incomplete or misleading information, or destroyed information, which was the subject of the request, or obstructed in any manner the furnishing of information". The PIOs were guided by the departmental circular No. 1/2006 dated 24.01.2006 in the view that they communicate to the respondent-querist. This view was taken by none other than the Director Inspection & Investigation in the Ministry of Company Affairs, Government of India and circulated to all Regional Directors of Registrar of Companies and all Official Liquidators. There was nothing before the PIOs to suggest that the said view had been disproved by any judicial or quasi-judicial authority. Clearly, the PIOs acted bonafide and without any malice.

61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show-cause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with

objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.

62. For all the aforesaid reasons, I allow the present petition and quash the impugned orders passed by Sh. Shailesh Gandhi, Central Information Commissioner. The parties are left to bear their respective costs.

(VIPIN SANGHI)
JUDGE

JUNE 01, 2012
'BSR'/sr

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on : 28.04.2009

\+ W.P. (C) 3845/2007

MUJIBUR REHMAN ..... Petitioner
Through: Ms. Girija Krishan Verma, Advocate.

versus

CENTRAL INFORMATION COMMISSION ..... Respondent
Through: Ms. Yogmaya Agnihotri,
Advocate for Resp-3&6.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

Hon'ble Mr. Justice S. Ravindra Bhat (Open Court)

%

1. Issue Rule. With consent of counsel for parties, heard counsel for the parties.

2. The petitioner is aggrieved by an order dated 29.5.2006 by which the Central Information Commission (CIC) dropped penalty proceedings under Section 20 of the Right to Information Act, 2005.

3. The facts, briefly, are that the petitioner sought information through an application dated 29.11.2005, in respect of service rules of the South Eastern Coalfields Limited (SECL). It is undisputed that despite the application, he did not receive any response; he was constrained to

prefer an appeal which was of no avail. He, therefore, approached the CIC on 16.3.2006, by way of a second appeal. On 27.3.2006, the CIC made the following order: -

> *"At the very start we must adversely observe the manner in which this case has been handled by the public authority. The information asked for should be common knowledge and is suitable for suo moto disclosure u/s 4 (1) of the Act. Had an effort been made to conform to this provision, the public authority, the appellant and this Commission would have been saved much time and expense.*
>
> *We have examined the file and heard both parties. We find that the applicant has not been given the information that he has sought, not even the promotion rules, except a copy of the seniority list, which was attested and certified by the PIO during the hearing. The Appellate Authority has failed to apply his mind to the appeal and dismissed it having been told that the information and been supplied, without caring to confirm this with the appellant or indeed giving him a chance to be heard which together with there being no evidence of the AA's decision having been received by the appellant arouses the suspicion that this decision was only an afterthought in the apprehension that the applicant might go in appeal.*
>
> *The South Eastern Coalfields Ltd is directed to provide all the information asked for by the appellant to him within fifteen working days from the date of issue of this Decision Notice. We accept the plea of PIO Mitra that because he was not the principal supplier of the information, the officer whose assistance he has sought under Sec 5 (4) namely GM (P&A) is liable to bear responsibility for the delay and therefore deemed refusal to provide the information sought. He will therefore show cause by April 20, 2005 as to why a penalty of Rs 25,000 should not be imposed upon him.*
>
> *This appears an egregious case of neglect of responsibility. A copy of this Decision may therefore be sent to the Secretary Coal in the Government of India, and to the Department of Personnel & Training for their record and initiation of remedial action.*
>
> *Notice of this decision be given free of cost to the parties."*

3. It is an undisputed fact that on 10.4.2006, the third respondent company caused a letter to be issued (a copy of which has been produced in these proceedings), revealing the nature of

information sought. It was specifically stated that no seniority list had been issued in the year 2004-2005. Apparently, a copy of this letter was furnished during the course of proceedings, before the CIC. On the next date of hearing, i.e., 29.5.2006, the CIC considered the explanation of the "deemed PIO", i.e. the sixth respondent –(since the designated CPIO had required another officer i.e. Shri S.P. Chaubey, GM (Personnel and Administration) to collect and furnish the information, for convenience, a step which is permissible under the Act) – for appropriate response to the queries. The notice was specifically in terms of Section 19 (8), calling upon the sixth respondent to show cause why penalty ought not to be imposed. During the course of hearing, the CIC noted that there was indeed a late response to the query made on 29.11.2005 which was eventually answered after the petitioner had approached it (the CIC) and in fact during the course of the proceedings. It also held sixth respondent culpable and directed departmental proceedings against him. However, it discharged the notice and did not impose any penalty under Section 20. The relevant part of the CIC's findings are as follows: -

> *"The appellant's case is that the information said to have been provided to him was not actually attached with the letter stating that the information was attached. The PIO was asked to hand over the attachments on the spot which he did. GM (P&A) SP Chaubey, treated as CPIO u/s 5(5) has stated that the SECL has no clues governing this procedure but only established practice, termed "Niyam" in Hindi, the language used in the response to the appellant's application. Regarding this the full information has been provided and there are no seniority rules to provide. Appellant has every right to agitate the SECL have such rules, but this Commission is not the competent authority to take a decision on such a matter. However, under Sec 19(3) we direct SECL to publish for the information of all its employees, the established current practice for considering promotion, preferably on the internet in keeping with Sec 4(1) of the Act.*
>
> *Respondents denied that the public authority had taken any vindictive action against the appellant, and had issued no order of suspension but only served a charge sheet not related to the appeal. We have examined the charge sheet, a copy of which has been received only recently. There is indeed no specific mention of information supplied to the Commission, but the Charge Sheet charges the appellant*

with not having taken recourse to remedies available within the public authority and instead sought to depend on 'outside sources'. Given the timing of the charge sheet i.e. shortly after the Decision of the Commission on 27/3/'06, and that the appellant, as stated in the hearing and not contested, never had to face disciplinary procedures throughout his service in SECL, the suspicion is aroused that, although denied by the GM(P&A) in his counter to the allegations vide letter No. SECL/BSP/GM(P&A)/'2006/1/716 of 19.5.'06, the action taken is indeed related with the CIC being identified as an 'outside source'. Although no penal action is proposed on this ground therefore, the public authority will take note of this and ensure that the appellant is not victimized for his action in seeking what is his right under law. This may also be brought to the notice of the Ministry of Personnel, Public Grievances & Pensions, which will ensure that safeguards are provided in every public authority under its jurisdiction to protect bonafide interests of applicants under the Act at all levels.

In our Decision of 27/3/'06 we had asked Chaubey treated as PIO, to show cause by April 20, 2005 as to why a penalty of Rs.25,000 should not be imposed upon him. In response deemed CPIO SP Choubey has replied vide his No.SECL/BSP/GM(P&A)/2006/PIO/447 of 12/4/'06 that the information sought has been provided and penal proceedings be dropped. Under Proviso to Sec 20(1), the burden of proving that he acted reasonably and diligently shall be on the CPIO. In this case, the information available with the public authority has been provided now, it must be noted that no reasonable cause for delay stands established as to why it was not supplied as per the law in the first instance, although the appellate authority has pleaded ill health which we accept in his case. Because this is the first case of its kind from the public authority, we do not propose a financial penalty. However, disciplinary action against GM(P&A) SP Choubey is recommended u/s 20 (2), SECL will initiate such action under the Service Rules applicable to him, which could include but need not remain restricted to issue of a warning for dereliction of duty.

Notice of this decision be given free of cost to the parties."

5. The petitioner contends that after having noted about the burden of proving that the concerned individual or public officer had acted diligently, being on the individual, and further holding that there was no reasonable cause for the delay, the CIC fell into error in not imposing the penalty and in merely recommending disciplinary action. In addition to attacking the order as arbitrary and unjustified, the petitioner contends that he had to shockingly face a charge-sheet, and even though he has now been promoted, the third respondent has not indicated that the charge-sheet has been dropped. The petitioner contends that the allegation in the

charge sheet was his (the petitioner's) dereliction in filing an application, under the Act, and eliciting information outside of the organization's channels. It is submitted that this allegation, besides being unfounded, undermines the purpose of the Act, which does not require any individual or applicant to demonstrate *locus standi.* So long as information is in the form mandated, and is not exempted from disclosure, everyone has the right to access it, whether he is related to the organization holding the information or not.

6. The third respondent, in reply, and through its counsel, Ms. Yogmaya Agnihotri, contends that action recommended by the CIC was indeed taken and that departmental proceedings were initiated against the sixth respondent. In this regard it is stated as follows: -

> *"xxxxx xxxxx xxxxx*
>
> *XXIII) That the averments in paragraph 4 (XXIII) are denied and under reply it is submitted that regarding the letter dated 14-11-2006 of respondent no.6 it is stated that he has been held guilty for giving false information and accordingly has been served a memorandum under CDA Rules of 1978 of CIL. Furthermore an Enquiry Officer has also been appointed for holding an inquiry into the charges levelled against respondent no. 6 as per the service rules/ conditions of CIL. Hence it is not at all true that SECL Management/ Ministry of Coal have not taking any action against respondent no.6 based on the respondent no.1 decision.*
>
> *xxxxx xxxxx xxxxx"*

7. The third respondent has not questioned the order of the CIC. The sixth respondent who entered appearance, in the proceedings and filed a reply does not dispute the order. He too submits that disciplinary action has been initiated against him. It is submitted that in the overall conspectus of the facts, this Court should desist from making any adverse order since the departmental proceedings are pending, as any order would adversely impact upon his (the sixth respondent's) service records.

8. The above discussion would show that though the petitioner had applied for information on 29.11.2005, he was made to wait and forced to file appeals to first appellate authority and later to the CIC. The internal processes, within the third respondent corporation, apparently were insensitive to the queries elicited and eventually after the CIC issued notice, did the third respondent furnish the information. It was in these circumstances that CIC issued notice to the PIO calling upon him why penal action should not be taken. That delay occurred, beyond the stipulated period in furnishing information is self evident. Both the orders dated 27.3.2006 and 29.5.2006 categorically record that there was delay. The only question, therefore, was whether after issuing notice and hearing the concerned deemed PIO - the sixth respondent, the CIC acted within its jurisdiction in not imposing the penalty of Rs.25,000/-.

9. Section 20, which is the provision enabling the CIC to impose penalty, reads as follows: -

> ***"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."

10. A close and textual reading of Section 20 itself reveals that there are three circumstances, whereby a penalty can be imposed i.e.

(a) Refusal to receive an application for information;

(b) Not furnishing information within the time specified; and

(c) Denying mala fidely the request for information or knowingly given incorrect, incomplete or misleading information for destroying information that was the subject matter of the request.

Each of the conditions is prefaced by the infraction "without reasonable cause". The CIC in its second impugned order dated 29.5.2006 clearly recorded that the 6th respondent did not furnish any reasonable cause for the delay and that this fact stood "established". It desisted from imposing the penalty which it was undoubtedly competent to under Section 20 (1). It, however, recommended that action should be taken against the concerned Public Information Officer i.e. the sixth respondent under Section 20 (2). That part of the order is not in dispute.

11. Now, it is a well established proposition that a Tribunal – as the CIC un-deniedly is - can be corrected in exercise of judicial review jurisdiction by the High Court, if it fails to exercise jurisdiction lawfully vested in it or acts beyond its jurisdiction, an expression that includes

acting contrary to the provisions of law, or established principles of law or the Constitution. This proposition has been in existence for half a century since *Hari Vishnu Kamat v. Ahmad Ishaque* AIR 1955 SC 233, where the Supreme Court declared the parameters of judicial review against orders of quasi judicial bodies, and tribunals. These were explained in the later judgment, in *Surya Dev Rai v. Ram Chander Rai* 2003 (6) SCC 675, in the following terms:

> *"..... the High Court was not justified in looking into the order of December 2, 1952, as an appellate court, though it would be justified in scrutinizing that order as if it was brought before it under Article 226 of the Constitution for issue of a writ of certiorari. The limit of the jurisdiction of the High Court in issuing writs of certiorari was considered by this Court in Hari Vishnu Kamath v. Ahmad Ishaque 1955-IS 1104 : ((S) AIR 1955 SC 233) and the following four proposition were laid down :-*
>
> *"(1) Certiorari will be issued for correcting errors of jurisdiction;*
>
> *(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;*
>
> *(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. Once consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.*
>
> *(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."*

12. The Court while considering a complaint about the Tribunal infracting its bounds has to be alive to the fact that primary discretion in such cases is with the statutory Tribunal. At the same time, once it is established that the Tribunal, for no apparent reason, either exceeded its

jurisdiction or failed to exercise jurisdiction lawfully vested in it, the High Court would be justified in interfering with its orders.

13. In this case, order dated 29.5.2006 as well as the previous order of 27.3.2006 establishes that the information sought was furnished after CIC issued its orders. Moreover, shockingly, the petitioner was issued with charge-sheet – a fact borne from the order dated 29.5.2007, for "not having taken recourse to the remedies available within the public authority". In other words, the petitioner was sought to be proceeded against departmentally for the sin of approaching the PIO under the RTI Act, - a right guaranteed to him in law. In such cases, it is cold comfort for a litigant – such as the petitioner/applicant – who was driven to seek information, to approach the CIC, at Delhi, to be told that the erring official would be proceeded with departmentally especially after recording that the lapse i.e. the delay or even the unreasonableness of withholding of information was unjustified. The petitioner in effect was doubly deprived – in the first instance, of the information which was sought for, and secondly, he was exposed to an unjustified threat of enquiry. In these circumstances, even though the CIC recommended disciplinary action under Section 20 (2), its denial of any penalty order under Section 20, in the considered opinion of this Court, cannot be upheld.

14. As far as the sixth respondent's contention regarding possible prejudice in his departmental enquiry is concerned, this Court feels that an order under Section 20 would not in any manner come in the way of his defenses, lawfully available to him in such proceedings. The sixth respondent is not denying the findings recorded in the order dated 29.5.2006; in fact he has not even challenged it. The court cannot be unmindful of the circumstances under which the Act was framed, and brought into force. It seeks to foster an "openness culture" among

state agencies, and a wider section of "public authorities" whose actions have a significant or lasting impact on the people and their lives. Information seekers are to be furnished what they ask for, unless the Act prohibits disclosure; they are not to be driven away through sheer inaction or filibustering tactics of the public authorities or their officers. It is to ensure these ends, that time limits have been prescribed, in absolute terms, as well as penalty provisions. These are meant to ensure a culture of information disclosure so necessary for a robust and functioning democracy.

15. In the above circumstances, Court is of the opinion that the impugned order to the extent it discharges the sixth respondent of the notice under Section 19 (8) and does not impose the penalty sought for has to be declared illegal. In this case, the penalty amount (on account of the delay between 28.12.2005 and the first week of May, 2006 when the information was given) would work out to Rs.25,000/-. The third respondent is hereby directed to deduct the same from the sixth respondent's salary in five equal installments and deposit the amount, with the Commission.

16. In the circumstances of the case, the third respondent shall bear the cost of the proceedings quantified at Rs.50,000/- be paid to the petitioner within six weeks from today.

17. The Writ Petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

APRIL 28, 2009
/vd/

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 9th January, 2012**

\+ **LPA 764/2011**

ANKUR MUTREJA ..... Appellant
Through: Appellant in person.

Versus

DELHI UNIVERSITY ..... Respondent
Through: Ms. Maninder Acharya, Adv.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGEMENT

A.K. SIKRI, ACTING CHIEF JUSTICE

1. The appellant had sought certain information under the provisions of the Right to Information Act, 2005 from the Information Officer of the respondent University; being not satisfied with the reply received, the appellant filed the first appeal and ultimately the second appeal to the Central Information Commission (CIC). The CIC vide its order dated 15.01.2011 directed the Information Officer of the respondent University to provide the required information to the appellant and also issued notice to the Information Officer of the respondent University to show cause as to

why penalty be not imposed on him for providing false information ostensibly with *mala fide* intention. The appeal filed by the appellant was however disposed of.

2. The information directed has since been supplied to the appellant and the appellant has no grievance in that regard. The appellant however filed the writ petition, from dismissal whereof this appeal has arisen, averring that the CIC ought not to have disposed of the appeal vide order dated 15.01.2011 since notice to show cause as aforesaid had been issued to the Information Officer of the respondent University. It was / is the contention of the appellant that owing to the appeal having been disposed of, the appellant had no opportunity to be heard on the issue of imposition of penalty on the Information Officer of the respondent University. The appellant, in the writ petition, sought the relief of quashing of the order dated 15.01.2011 of the CIC in so far as disposing of the appeal and sought a direction to CIC to grant an opportunity to the appellant to file a rejoinder to the reply filed by the respondent University to the show cause notice aforesaid and to hear the appellant on the issue of imposition of penalty.

3. The learned Single Judge dismissed the writ petition holding that imposition of penalty under Section 20 of the RTI Act is a matter of

discretion of the CIC and there was nothing to indicate that the penalty if ultimately imposed would have become payable to the appellant, as contended by the appellant.

4. Notice of this appeal was issued. We have heard the appellant appearing in person and the counsel for the respondent. We have also perused written arguments filed by the appellant.

5. It is the contention of the appellant, that a combined reading of Section 19(8)(c) and Section 20 of the Act makes it abundantly clear that the proceedings under Section 20 of the Act are part of the appellate proceedings; that the complainant on whose instance notice to show cause against imposition of penalty is issued has a role as a prosecutor in the penalty proceedings and penalty proceedings cannot be held in his absence - reliance in this regard is placed on ***Ram Chander Vs. State of Haryana*** AIR 1981 SC 1036; that CIC at different times has been following different procedure - in some matters the appeal is not disposed of till the conclusion of the penalty proceedings, thereby giving opportunity to the complainant to participate in the penalty proceedings. He thus contends that the procedure for the penalty proceedings needs to be laid down.

6. We have at the outset enquired from the appellant the fate of the notice to show cause issued to the Information Officer of the respondent University. The appellant states that since he had no opportunity to participate, he does not know the outcome thereof. The counsel for the respondent University states that the CIC was satisfied with the explanation furnished by the respondent University and thus dropped the show cause notice.

7. Section 19(8)(c) and Section 20 of the RTI Act are as under:

> *"19.* ***Appeal.***
>
> *(1)……..*
>
> *(2)……..*
>
> *(3)……..*
>
> *(4)……..*
>
> *(5)……..*
>
> *(6)……..*
>
> *(7)……..*
>
> *(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to, -*
>
> *(a)……..*
>
> *(b)……..*
>
> *(c) impose any of the penalties provided under this Act."*

"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."

8. It is clear from the language of Section 20(1) that only the opinion, whether the Information Officer has "without any reasonable cause" refused to receive the application for information or not furnished information within the prescribed time or *malafidely* denied the request for information or knowingly given incorrect, incomplete or misleading information etc., has to be formed "at the time of deciding the appeal". The proviso to Section 20(1) of the Act further requires the CIC to, after forming such opinion and before imposing any penalty, hear the Information Officer against whom penalty is proposed. Such hearing obviously has to be after the decision of the appeal. The reliance by the appellant on Section 19(8)(c) of the RTI Act is misconceived. The same only specifies the matters which the CIC is required to decide. The same cannot be read as a mandate to the CIC to pass the order of imposition of the penalty along with the decision of the appeal. Significantly, Section 19(10) of the Act requires CIC to decide the appeal "in accordance with such procedure as may be prescribed". The said procedure is prescribed in Section 20 of the Act, which requires the CIC to,

at the time of deciding the appeal only form an opinion and not to impose the penalty.

9. The aforesaid procedure is even otherwise in consonance with logic and settled legal procedures. At the stage of allowing the appeal the CIC can only form an opinion as to the intentional violation if any by the Information Officer of the provisions of the Act. Significantly, imposition of penalty does not follow every violation of the Act but only such violations as are without reasonable cause, intentional and *malafide.*

10. While in deciding the appeal, the CIC is concerned with the merits of the claim to information, in penalty proceedings the CIC is concerned with the compliance by the Information Officers of the provisions of the Act. A discretion has been vested in this regard with the CIC. The Act does not provide for the CIC to hear the complainant or the appellant in the penalty proceedings, though there is no bar also thereagainst if the CIC so desires. However, the complainant cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring Information Officer. There is no provision in the Act for payment of penalty or any part thereof if imposed, to the complainant. Regulation 21 of the Central Information Commission (Management) Regulations, 2007 though provides

for the CIC awarding such costs or compensation as it may deem fit but does not provide for such compensation to be paid out of the penalty if any imposed. The appellant cannot thus urge that it has a right to participate in the penalty proceedings for the said reason either.

11. The penalty proceedings are akin to contempt proceedings, the settled position with respect whereto is that after bringing the facts to the notice of the Court, it becomes a matter between the Court and the contemnor and the informant or the relator who has brought the factum of contempt having been committed to the notice of the Court does not become a complainant or petitioner in the contempt proceedings. His duty ends with the facts being placed before the Court though the Court may in appropriate cases seek his assistance. Reference in this regard may be made to ***Om Prakash Jaiswal v. D.K. Mittal*** (2000) 3 SCC 171, ***Muthu Karuppan, Commr. of Police, Chennai v. Parithi Ilamvazhuthi*** (2011) 5 SCC 496 and Division Bench judgment of this Court in ***Madan Mohan Sethi v. Nirmal Sham Kumari*** MANU/DE/0423/2011. The said principle applies equally to proceedings under Order XXXIX, Rule 2A of the Civil Procedure Code, 1908 which proceedings are also penal in nature.

12. Notice may also be taken of Section 18 of the RTI Act which provides for the CIC to receive and inquire into complaints against the Information Officer. The legislature having made a special provision for addressing the complaints of aggrieved information seekers is indicative of the remedy of such aggrieved information seekers being not in the penalty proceedings under Section 20.

13. We therefore do not find any error in the procedure adopted by the CIC. Moreover, the appellant did not approach the CIC in this regard and preferred to file this petition directly.

14. We therefore do not find any merit in this appeal and the same is accordingly dismissed.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

JANUARY 09, 2012
'gsr'..

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 5636/2016 and CM No. 23383/2016**

UNION OF INDIA AND ANR ..... Petitioners

Through: Mr Jasmeet Singh, CSGC with Mr Srivats Kaushal and Mrs Astha Sharma, Advocates for UOI.

versus

CENTRAL INFORMATION COMMISSION AND ANR ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 23.11.2017

1. The petitioner (Union of India) has filed the present petition, *inter alia*, impugning an order dated 12.03.2016 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'CIC'). By the impugned order, the CIC has declared "*the Ministers in the Union Government and all State Governments as 'public authorities' under Section 2(h) of Right to Information Act, 2005*".

2. The CIC has further issued directions to Central and State Governments to provide the necessary support to each Minister including designating some officers or appointing the said officers as Public Information Officers and First Appellate Authorities. The CIC has also directed that Ministers be given an official website for *suo moto* disclosure of information with periodical updating as prescribed under Section 4 of the Right to Information Act, 2005 (hereafter 'the Act'). The CIC has also

recommended that the oath of secrecy which is required to be taken by the Ministers be replaced with the oath of transparency.

3. Briefly stated, the relevant facts are that respondent no.2 filed an application dated 20.11.2014 before the Additional Private Secretary, Minister of Law and Justice, Government of India seeking the following information:-

> "Time period of Hon'ble Minister or Minister of State's meeting the General Public has not been issued by the Ministry. If issued, its details and time to provide in Hindi and English language."

4. Since the information as sought was not received, respondent no.2 filed an appeal dated 02.01.2015 under Section 19(1) of the Act. Thereafter, the Central Public Information Officer (hereafter 'CPIO') sent a response dated 16.01.2015 informing respondent no.2 that "*No specific time has been given for the meeting of General Public with the Hon'ble Minister. However, as and when requests are received appointments are given subject to the convenience of the Hon'ble Minister*".

5. Respondent no.2 filed a second appeal under Section 19(3) of the Act on 14.04.2015. The principal grievance of respondent no.2 was that he had not received the information sought for within the specified time and, therefore, prayed that certain action be taken against the concerned CPIO under Section 20(1) of the Act.

6. The CIC listed the aforesaid appeal for hearing on 29.02.2016. However, none appeared for either of the parties. Notwithstanding the

same, the CIC framed the following questions for his consideration:

> "a) Is Minister or his office a 'public authority' under the RTI Act?
>
> b) Whether a citizen has right to information sought, and does the minister has corresponding obligation to give?"

7. After framing the aforesaid questions, the CIC deliberated upon the same at length and held that the Ministers in the Union Government and/or State Governments are 'public authorities' within the meaning of section 2(h) of the Act. The CIC also issued several directions to the Central or State Governments to provide necessary support to each Minister including designating officers as Public Information Officers and First Appellate Authorities, by providing official website for *suo moto* disclosure of information; and, for periodical updating of such information.

8. This Court finds it difficult to understand as to how the questions as framed by the CIC arise in the appeal preferred by respondent no.2. The information as sought for by respondent no.2 was provided to him and there was no dispute that he was entitled to such information. The only grievance voiced by respondent no.2 was regarding the delay in providing him with the information as sought by him. Thus, the only prayer made by respondent no.2 before the CIC was that action be taken against CPIO and the First Appellate Authority under the provisions of the Act.

9. In these circumstances, there was no occasion for the CIC to enter upon the question as to whether a Minister is a 'public authority' under Section 2(h) of the Act. Further, directions issued by the CIC are also wholly outside the scope of the matter before CIC.

10. In view of the above, the impugned order dated 12.03.2016 cannot be sustained and is, accordingly, set aside.

11. The petition and the application are disposed of.

VIBHU BAKHRU, J

NOVEMBER 23, 2017
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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5688/2010 and CM No. 11183/2010

PRAVEEN KUMAR JHA ..... Petitioner
Through : Mr. Divya Jyoti Jaipuriar, Advocate.

versus

BHEL EDUCATIONAL MANAGEMENT BOARD and ORS .....
Respondents
Through : Mr. J.C. Seth, Advocate.

CORAM: JUSTICE S. MURALIDHAR

O R D E R
12.01.2011

1. The Petitioner, seeking information under Right to Information Act, 2005 (?RTI Act?) from Respondent No. 1, BHEL Educational Management Board, is aggrieved by the impugned order dated 28th July 2010 passed by the Central Information Commission (?CIC?). While dismissing his appeal, the CIC has advised Respondent No. 1 to initiate disciplinary action against the Petitioner for misusing the provisions of the RTI Act and also consider recovery of the expenditure incurred on the travel of the Public Information Officer (?PIO?) of Respondent No.1 for attending the hearing before the CIC.

2. The CIC in the impugned order concluded that the Petitioner had been filing frivolous RTI applications which resulted in increase in the costs of providing information by the Respondents. The conclusions of the CIC and the directions issued in the impugned order in paras 7, 8 and 9 read as under:
?7. The appellant?s action of putting frivolous RTI applications and appears have unduly increased the costs of providing information by the respondent, including the travel expenses incurred in attending hearings at the Commission. Besides, the appellant is also responsible for wasting the resources of this Commission which had allowed inspection of records in presence of its own representative. While the CPIO and his colleagues have responded and appeared for hearing on 28/7/2010, the appellant has refrained from attending the hearing. The appellant has thus failed to point out as to which information has been refused to him. The respondents have unnecessarily incurred costs in attending the hearing, mainly because of frivolous and vexatious appeals filed by the appellant.

8. In view of the fact that the appellant has been misusing the provisions of the Act and adding unnecessary costs to the public authorities, there is no reason why disciplinary action under the relevant Service (Conduct) Rules should not be taken against the appellant who is an employee of the respondent BHEL. The respondent?s ED is therefore advised to take appropriate disciplinary action against the appellant for misuse of the provisions of the Act for promotion of personal interest, for casting aspersions on the senior officials and for causing unnecessary expenditure on the public authority in attending to his RTI applications.

9. The respondent?s ED may also consider recovery of total expenditure incurred on travel of the CPIO and the deemed PIO for attending the hearing on 28/7/2010, from the monthly salary of the appellant. This hearing could have been avoided had the appellant acted responsibly in the matter of pursuing his 2nd appeals.?

3. Mr. Divya Jyoti Jaipuriar, learned counsel appearing for the Petitioner, first submits that there is no provision under the RTI Act which empowers the CIC to issue a direction to initiate disciplinary action against a complainant upon finding the complaint to be without merit. He further submits that there is no provision under the RTI Act for imposing costs on a complainant much less directing the employer of the complainant to recover such costs from the salary of the complainant.

4. Appearing for the Respondents Mr. J.C. Seth, learned counsel submits that although there is no specific provision permitting the CIC to levy costs on a complainant, the CIC being vested with the powers of a civil court under Section 18(3) of the RTI Act has the inherent power to levy costs on the complainant in the interests of justice. He also supports the directions of the CIC, which he

terms only an ?advice? to initiate disciplinary action against the complainant, who happens to be an employee of Respondent No. 1. Mr. Seth relies upon certain observations of the Supreme Court in the decisions in Canara Bank v. Nuclear Power Corporation of India Ltd 1995 Supp(3) SCC 81, Kavita Trehan v. Balsara Hygiene Products Ltd. AIR 1995 SC 441 and Salem Advocate Bar Association, Tamil Nadu v. Union of India (2005) 6 SCC 344.

5. The above submissions have been considered. The question that arises is whether the directions issued by the CIC, in paras 8 and 9 of the impugned order, are sustainable in law.

6. Section 18(3) of the RTI Act, which has been relied upon by learned counsel for the Respondents, reads as under:
?18 Powers and functions of Information Commission.
?.
(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 court 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.?

7. The above provision indicates that for the purposes of inquiring into a matter the CIC will have the same powers as vested in a civil court. This does not mean that the CIC has been vested with all the inherent powers of a civil court including, for instance, the powers under Section 151 CPC. In the absence of any specific provision in the RTI Act permitting the CIC to levy costs on a complainant, it is not possible to countenance the impugned order dated 28th July 2010 of the CIC directing deduction from the salary of the Petitioner the expenses incurred by the PIO of Respondent No. 1 in travel for attending the hearings before the CIC. There is absolutely no legal basis for such a direction.

8. Further, while Section 20 of the RTI Act empowers the CIC to levy costs on PIOs who are found to have obstructed the furnishing of information to an applicant, there is no corresponding provision for levy of penalties or costs on a complainant if the complaint is found to be vexatious. Likewise, Section 20(2) RTI Act permits the CIC to recommend disciplinary action against an errant CPIO. There is no provision concerning the complainant. It is not possible to accept the submission of learned counsel for the Respondent that the CIC has inherent powers to issue directions, in the interests of justice, to even give an ?advice? on deduction of costs from the complainant?s salary or to ?recommend? disciplinary action against a complainant. None of the decisions cited by the learned counsel for the Respondents support his contentions. Consequently, paras 8 and 9 to the impugned order dated 28th July 2010 of the CIC are hereby set aside.

9. The writ petition is disposed of in the above terms, but in the circumstances, with no order as to costs. The pending application is also disposed of.

S. MURALIDHAR, J
JANUARY 12, 2011
ak
WP (Civil) 5688/2010 Page 1 of 5

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THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 12.09.2014

+ **W.P.(C) 6088/2014 & CM Nos.14799/2014, 14800/2014 & 14801/2014**

MINISTRY OF RAILWAYS THROUGH SECRETERY & ANR ..... Petitioners

versus

GIRISH MITTAL ..... Respondent

Advocates who appeared in this case:
For the Petitioners : Mr L.K. Passi, Advocate with Mr B.N. Kaithal.
For the Respondent : None.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

CM No.14800/2014 & 14801/2014

Exemption is allowed subject to all just exceptions. The applications stand disposed of.

W.P.(C) No.6088/2014 & CM No.14799/2014 (Stay)

1. The petitioners have filed the present petition impugning orders dated 11.03.2013 and 04.04.2014 (hereinafter referred to as the 'impugned orders') passed by the Central Information Commissioner (CIC). By the impugned order dated 11.03.2013, the CIC held that information sought by the respondent had not been provided and earlier orders of the CIC had also not been complied with. The petitioners sought a review of the order dated

11.03.2013, which was rejected by the CIC by the impugned order dated 04.04.2014, on the ground that the CIC did not have any power to review its decisions.

2. The petitioners have assailed the impugned order dated 11.03.2013 contending that the CIC erred in imposing penalty pursuant to proceedings that had been filed by the respondent directly before the CIC without approaching the First Appellate Authority (FAA). It was submitted that a direct appeal against denial of information by Central Public Information Officer (CPIO) or a grievance with regard to non-supply of information could not be agitated before the CIC without first exhausting the remedies of appeal before the FAA. It was contended that, in these circumstances, the penalty imposed by CIC was without jurisdiction.

3. It was further contended that in the given facts and circumstances of the case, the CPIO could not be held liable or responsible for not providing information since the CPIO had forwarded the request of the respondent to the concerned departments. The learned counsel for the petitioners relied upon Section 6(3) of the Right to Information Act, 2005 (hereinafter referred to as the 'Act') to contend that a CPIO is required to transfer an application for information to the concerned authority and cannot be expected to pursue the matter thereafter. It was, thus, submitted that the CIC had erred in imposing of penalty on petitioner no.2.

4. I have heard the learned counsel for the petitioners.

5. Section 20 of the Act provides for imposing penalty on a Central Public Information Officer or a State Public Information Officer. The

opening sentence of Section 20(1) of the Act clearly indicates that in given cases penalty may be imposed where the CIC *"at the time of deciding any complaint or an appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer"* has without reasonable cause refused to receive an application or failed to furnish the information within the specified time. Section 20(1) of the Act is quoted below:-

> *"**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."*

6. It is apparent from the language of Section 20(1) of the Act that the CIC can impose a penalty at the time of deciding any appeal or complaint. The functions of the CIC and/or the State Information Commission are specified under Section 18 of the Act. Section 18(1) of the Act is relevant and is quoted below for ready reference:-

> *"**18. Powers and functions of Information Commission**.—(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;"*

7. Plainly, Section 18 of the Act enjoins the CIC to *inter alia* inquire into a complaint from any person who has been refused access to any information requested under the Act. In view of the unambiguous language

of the provisions of the Act, the contention that CIC lacks the jurisdiction to impose a penalty on a complaint is *ex facie* without merit. The plain language of Section 20(1) of the Act indicates that it is not necessary that the penalty be imposed by the CIC only while considering an appeal; penalty can also be imposed by the CIC if on inquiry made pursuant to a complaint, it is found that a CPIO has not furnished the information in time or has knowingly given incorrect or incomplete information. Therefore, in my view, the jurisdiction exercised by CIC cannot be faulted.

8. The next question that needs to be addressed is whether petitioner no.2 could escape the penalty by contending that it had forwarded the request to various departments. The facts relevant to consider this contention are that the respondent filed an RTI Application dated 17.01.2011 with the CPIO of Railway Board seeking information on fifteen points including information relating to Garib Rath trains in all zones of the Railways. As no information was received, the respondent on 02.03.2011 filed a complaint (being No. F.No.CIC/AD/C/2011/000621) with the CIC under Section 18 of the Act. Thereafter, on 23.03.2011, the CPIO transferred the RTI Application to RDSO, Lucknow. The respondent filed an appeal before the FAA on 18.04.2011 alleging that Railway Board itself was the custodian of information sought by him with respect of 10 points - listed as points (e) to (o) in his application - and CPIO had transferred his application with a *mala fide* intention. The respondent did not receive any response from the FAA and filed an appeal (being No.CIC/AD/A/2011/001870) before the CIC on 25.07.2011.

9. Subsequently, by an order dated 30.09.2011, the CIC disposed of the complaint of the respondent dated 02.03.2011. The relevant extract of the said order is as below:-

> *"2. In order to avoid multiple proceedings under section 18 and 19 of the RTI Act, viz., appeals and complaints, it is directed as follows:*
>
> *i) **Directions to CPIO** Railway Board New Delhi is directed as follows:*
>
> *a) In case no reply has been given by CPIO to the complainant to his RTI request dated 17.1.1.1 CPIO should furnish a reply to the complainant **within 1 week** of receipt of this order.*
>
> *b) In case CPIO has already given a reply to the complainant in the matter, he should furnish a copy of his reply to the complainant **within 1 week** of receipt of this order.*
>
> *c) CPIO should invariably indicate to the complainant the name and the address of the 1st Appellate Authority, before whom the appellant can file first appeal, if any.*
>
> *ii)**Directions to Petitioner:***
>
> *a) If the complainant is aggrieved with the reply received from CPIO, he, under section 19(1) of the RTI Act, may within the time prescribed file his first appeal before the 1st AA, who would dispose of the appeal under the relevant provisions of RTI Act.*
>
> *b) If the complainant is still aggrieved with the decision of AA, he may approach the Commission in 2nd appeal under section 19(3) along with the complaint u/s 18, if any, within the prescribed time limit.*

iii) ***Directions to AA*** *: On receipt of the 1st appeal from the petitioner as per the above directions, AA should dispose of the appeal within the period stipulated in the RTI Act."*

10. The appeal filed by the respondent on 25.07.2011 was heard by the CIC, subsequently, on 20.10.2011. During the course of hearing, the officials from the RDSO, Lucknow, produced a copy of the reply dated 01.04.2011 which indicated that information relating to point 3 had been furnished. It was also submitted that the other queries pertained to the Railway Board. Therefore, by an order dated 20.10.2011, the CIC disposed of the appeal and directed petitioner no.2 to provide information to the respondent on the remaining queries.

11. Thereafter, the respondent again filed a complaint (being No.CIC/AD/C/2012/000379) with the CIC on 01.12.2011 alleging that the order of CIC dated 20.10.2011 had not been complied with. The CIC disposed of the said complaint, by an order dated 29.03.2012, directing petitioner no.2 to obtain information from the concerned departments and provide the same to the respondent.

12. On 13.06.2012, the respondent filed another complaint with the CIC and followed it up with a reminder dated 20.08.2012, alleging that the orders of CIC had not been complied with by petitioner no.2. It is in context of the aforesaid facts, that the CIC passed the impugned order dated 11.03.2013, once again directing petitioner no.2 to provide the information sought for by the respondent and also imposed a penalty of ₹25,000/-. By an order dated 04.04.2014, the petition seeking review of the order dated

11.03.2013 was rejected by the CIC holding that the CIC does not have any power to review its decision.

13. In the given facts, it is apparent that the CIC's finding that petitioner no.2 had failed to provide the necessary information and comply with the earlier orders is clearly warranted.

14. It is also not contended by the petitioner that the information sought for by the respondent was provided to him within the prescribed time. The contention that petitioner no. 2 had forwarded the queries of the respondent to other officials and by virtue of Section 6(3) of the Act was required to do no more, has to be considered by referring to Section 6(3) of the Act. The same is reproduced below:-

> *"**6. Request for obtaining information.—***
>
> *xxxx xxxx xxxx xxxx xxxx*
>
> *(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 transfer 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."*

15. The plain language of Section 6(3) of the Act indicates that the public authority would transfer the application or such part of it to another

public authority where the information sought is more closely connected with the functions of the other authority. The reliance placed by the learned counsel for the petitioner on the provisions of Section 6(3) of the Act is clearly misplaced in the facts and circumstances of the case. This is not a case where penalty has been imposed with respect to queries which have been referred to another public authority, but with respect to queries that were to be addressed by the public authority of which petitioner no. 2 is a Public Information Officer. Section 6(3) of the Act cannot be read to mean that the responsibility of a CPIO is only limited to forwarding the applications to different departments/offices. Forwarding an application by a public authority to another public authority is not the same as a Public Information Officer of a public authority arranging or sourcing information from within its own organisation. In the present case, undisputedly, certain information which was not provided to respondent would be available with the Railway Board and the CPIO was required to furnish the same. He cannot escape his responsibility to provide the information by simply stating that the queries were forwarded to other officials. Undeniably, the directions of CIC were not complied with.

16. In the given circumstances, the petition is without merit and is dismissed. CM No.14799/2014 is also dismissed. There shall be no order as to costs.

VIBHU BAKHRU, J

SEPTEMBER 12, 2014
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8041/2014

MANIRAM SHARMA ..... Petitioner

Through: Mr. J.K. Mittal and Mr. Rajveer Singh, Advs.

versus

CENTRAL INFORMATION COMMISSION & ANR. ..... Respondents

Through: Mr. Rajesh Gogna, CGSC for R2 with Mr. V.K. Sharma, Designated Officer to IC(VS).

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% 27.04.2015

1. This is a writ petition whereby a challenge is laid to the communication dated 31.3.2014 issued by the designated officer of the Central Information Commission (in short the CIC).

2. Mr. Gogna has produced the file concerning the matter. Incidentally, Mr.Gogna appears not only for respondent No.1, i.e. the CIC but also for respondent No.2, i.e. the Central Public Information Officer (in short the CPIO) of the Ministry of Home Affairs, Government of India.

3. Mr. Gogna is instructed by Mr. V.K. Sharma, the designated officer, who is attached with the Information Commissioner (VS) and is the author of the communication dated 31.3.2014.

4. The original file has been produced before me. The original file contains a note sheet dated 26/28.3.2014. The said note sheet, which I am

told, is the original order, bears the signatures not only of the Information Commissioner, Mr. Vijay Sharma, but also of two other functionaries. I am told by Mr. V.K. Sharma, the designated officer, that the signatures are those of: Ms. Richa Jha, Legal Consultant and Ms. Devi, Manager (Law). While the information Commissioner, Mr. Vijay Sharma has appended his signatures on what purports to be an order, on 28.3.2014; Ms. Richa Jha has signed on 26.3.2014. The signature of Ms. Devi is dated 28.3.2014.

5. Clearly, this procedure is not proper.

6. The concerned Information Commissioner, vide order dated 12.2.2014, had directed the CPIO to produce the following information:-

> "...The respondent is directed to:
>
> (a) Provide the available information in context of the RTI application;
> (b) Show cause as to why action should not be taken against the respondent for contravening the timeline prescribed in the RTI Act; and
> (c) Comply with the above within 30 days of this order..."

7. Upon receipt of information, the order which is sought to have been passed and placed in original, in the official record, has been signed not only by the Information Commissioner, Mr. Vijay Sharma, but also by two other persons; one of whom is Legal Consultant, while the other is the Manager (Law) in CIC.

8. In my opinion, the function that the Information Commissioner was performing was a quasi-judicial function, to which, the other two persons could not have been parties.

9. I may only note that I have compared the impugned communication

dated 31.3.2014, with purported order placed in CIC's file. The said communication, basically, replicates what is, found in the original file.

10. It is not disputed before me by the counsel for the parties that the proceedings dated 12.2.2014 emanated from an appeal filed by the petitioner herein under Section 19 of the Right to Information Act, 2005 (in short the RTI Act). Therefore, in terms of Section 20 of the RTI Act, the requirement was to issue show cause notice (which the Information Commissioner did by order dated 12.2.2014) in case, he was of the view that the required information had either been refused or was not furnished within the time specified under Section 7(1) of the RTI Act or, was malafidely denied, or knowingly incorrect, incomplete or misleading information was given or, the information was destroyed, which was subject matter of the request made or, even obstructed.

11. The scheme of the RTI Act suggests that the power conferred on the CIC and the State Information Commissions to levy penalty is circumscribed by the provisions of Section 20 and the ingredients contained therein.

11.1 A Division Bench of this court vide a judgement dated 09.01.2012, passed in LPA No. 764/2011, titled: ***Ankur Mutreja vs Delhi University*** had an occasion to rule upon the scope and ambit of the proceedings carried out by the CIC under Section 20 of the RTI Act. The observations made by the Division Bench, which are pertinent qua the case, are recorded in paragraphs 8, 9 & 10. For the sake of convenience, the same are extracted hereinbelow:

> 8. It is clear from the language of Section 20(1) that only the opinion, whether the Information Officer has "without any reasonable cause" refused to receive the application for information or not furnished information within the

prescribed time or *malafidely* denied the request for information or knowingly given incorrect, incomplete or misleading information etc., has to be formed "at the time of deciding the appeal". The proviso to Section 20(1) of the Act further requires the CIC to, after forming such opinion and before imposing any penalty, hear the Information Officer against whom penalty is proposed. Such hearing obviously has to be after the decision of the appeal. The reliance by the appellant on Section 19(8)(c) of the RTI Act is misconceived. The same only specifies the matters which the CIC is required to decide. The same cannot be read as a mandate to the CIC to pass the order of imposition of the penalty along with the decision of the appeal. Significantly, Section 19(10) of the Act requires CIC to decide the appeal "in accordance with such procedure as may be prescribed". The said procedure is prescribed in Section 20 of the Act, which requires the CIC to, at the time of deciding the appeal only form an opinion and not to impose the penalty.

9. The aforesaid procedure is even otherwise in consonance with logic and settled legal procedures. At the stage of allowing the appeal the CIC can only form an opinion as to the intentional violation if any by the Information Officer of the provisions of the Act. Significantly, imposition of penalty does not follow every violation of the Act but only such violations as are without reasonable cause, intentional and malafide.

10. While in deciding the appeal, the CIC is concerned with the merits of the claim to information, in penalty proceedings the CIC is concerned with the compliance by the Information Officers of the provisions of the Act. A discretion has been vested in this regard with the CIC. The Act does not provide for the CIC to hear the complainant or the appellant in the penalty proceedings, though there is no bar also there against if the CIC so desires. However, the complainant cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring Information Officer. There is no provision in the Act for payment of penalty or any part thereof if imposed, to the complainant.

> Regulation 21 of the Central Information Commission (Management) Regulations, 2007 though provides for the CIC awarding such costs or compensation as it may deem fit but does not provide for such compensation to be paid out of the penalty if any imposed. The appellant cannot thus urge that it has a right to participate in the penalty proceedings for the said reason either.
>
> (emphasis is mine)

11.2 A perusal of the observations made in paragraph 10 of the Division Bench judgement would show that while there is no bar in the CIC entertaining an appellant / complainant before it in penalty proceedings, the matter is left to the discretion of the CIC. An appellant / complainant, cannot, as a matter of right, as held by the Division Bench, claim audience in the "penalty proceedings" carried out under Section 20 of the RTI, Act.

11.3 Mr Mittal, however, says that there are other judgements which he would like to place for consideration.

12. Having regard to the facts and circumstances, which arise in this case, I am inclined to accept the prayer of the petitioner to set aside the impugned communication dated 31.3.2014, and remand the case to respondent No.1, i.e. the CIC for fresh consideration, from the stage, at which, it was positioned when, order dated 12.2.2014 was passed. It is ordered accordingly.

13. Respondent no.1/CIC shall, thereafter, take a decision as to whether or not it wishes to involve the petitioner in the penalty proceedings contemplated under Section 20 of the RTI Act. Though the matter is left, as per the observations of the Division Bench, to the discretion of the CIC, the CIC will take into account the circumstances which obtained in this matter, one of which, is that, what was brought to light, before this court, could not have

got revealed but for the intercession of the petitioner.

13.1 For this limited purpose, the petitioner may appear before the CIC, which would then decide as to whether it would like the petitioner to participate in the penalty proceedings.

13.2 In case the CIC is of the view that the petitioner should participate in the proceedings, it will supply to the petitioner a copy of the reply filed by the delinquent officer to the show cause notice.

14. The writ petition is disposed of with the aforesaid directions.

RAJIV SHAKDHER, J

APRIL 27, 2015
s.pal

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 11065/2015 & C.M.No.325/2016**

NARESH KUMAR ..... Petitioner

Through Petitioner in person.

versus

CENTRAL INFORMATION COMMISSION AND ORS

..... Respondents

Through None

\+ **W.P.(C) 11189/2015**

NARESH KUMAR ..... Petitioner

Through Petitioner in person.

versus

CENTRAL INFORMATION COMMISSION AND ORS

..... Respondents

Through None

\+ **W.P.(C) 11190/2015**

NARESH KUMAR ..... Petitioner

Through Petitioner in person.

versus

CENTRAL INFORMATION COMMISSION AND ORS

..... Respondents

Through None

\+ **W.P.(C) 11192/2015**

NARESH KUMAR ..... Petitioner

Through Petitioner in person.

versus

CENTRAL INFORMATION COMMISSION AND ORS

..... Respondents

Through None

% Date of Decision: 12th January, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present batch of writ petitions has been filed for remanding the proceedings back to the Central Information Commission (CIC) to consider passing orders under Section 20 (2) of the RTI Act.

2. The petitioner, who appears in person, states that the Central Information Commissioner vide order dated 17th October, 2013, despite recording that she was of the distinct opinion that the UTS-I division of the Ministry of Home Affairs was stonewalling the disclosure of information, did not direct initiation of the disciplinary action under Section 20 (2) of the RTI Act.

3. He also states that subsequently in some of the matters, the Coordinate Bench of CIC only directed the respondents to provide information to the petitioner on certain points as well as the right to inspect the relevant files, but did not allow his prayer for initiation of disciplinary action under Section 20 (2) of the RTI Act.

4. He further states that his written submissions were not taken on record on this point. According to him, the subsequent Commissioner had not kept in mind the observations made by the previous Commissioner.

5. In the opinion of this Court, the formation of opinion under Section 20 (2) of the RTI Act is in the exercise of supervisory powers of CIC and not in the exercise of the adjudicatory powers. This Court is also of the view that the information seeker has no locus standi in penalty proceedings under Section 20 of the RTI Act.

6. A Division Bench of this Court in ***Anand Bhushan Vs. R.A.Haritash***, ***LPA No.777/2010***, ***decided on 29th March, 2012*** while dealing with the similar arguments with regard to imposition of penalty under Section 20 (1) of the RTI Act, has held as under:-

> *"8. We have in Ankur Mutreja (supra) given detailed reasons for the conclusions aforesaid reached therein and which cover contentions 6(ii) to (viii) & (x) aforesaid of the counsel for the appellant herein and we do not feel the need to reiterate the same. We may only add that the role of the CIC, under the Act, is not confined to that of an Adjudicator. The CIC under the RTI Act enjoys a dual position. The CIC, established under Section 12 of the Act, has been, a) under Section 18 vested with the duty to receive and enquire into complaints of non-performance and non-compliance of provisions of the Act and relating to access to records under the Act; b) empowered under Section 19(3) to hear second appeals against decision of Information Officer and the First Appellate Authority; c) empowered under Section 19(8) to, while deciding such appeals, to require any public authority to take such steps as may be necessary for compliance of provisions of the Act; and, d) and is to, under Section 25 of the Act prepare annual report on the implementation of the provisions of the Act. The CIC thus, besides the adjudicatory role also has a supervisory role in the implementation of the Act.*

9. The power of the CIC, under Section 20, of imposing penalty is to be seen in this light and context. A reading of Section 20 shows (as also held by us in Ankur Mutreja) that while the opinion, as to a default having been committed by the Information Officer, is to be formed „at the time of deciding any complaint or appeal", the hearing to be given to such Information Officer, is to be held after the decision on the complaint or the appeal. The proceedings before the CIC, of hearing the Information Officer qua whom opinion of having committed a default has been formed and of imposition of penalty, are in our opinion, in the exercise of supervisory powers of CIC and not in the exercise of adjudicatory powers. As already held by us in Ankur Mutreja, there is no provision, for payment of penalty or any part thereof, to the information seeker. The information seeker has no locus in the penalty proceedings, beyond the decision of the complaint/appeal and while taking which decision opinion of default having been committed is to be formed, and at which stage the complainant/information seeker is heard.

10. The Supreme Court in Competition Commission of India vs. Steel Authority of India Ltd. (2010) 10 SCC 744 held that the Competition Commission constituted under the Competition Act, 2002 discharges different functions under different provisions of the Act and the procedure to be followed in its inquisitorial and regulatory powers/functions is not to be influenced by the procedure prescribed to be followed in exercise of its adjudicatory powers. In the context of the RTI Act also, merely because the CIC, while deciding the complaints/appeals is required to hear the complainant/information seeker, would not require the CIC to hear them while punishing the erring Information Officer, in exercise of its supervisory powers.

xxx xxx xxx

13. Needless to say that if the information seeker has no right of participation in penalty proceedings, as held by us, the question of right of being heard in opposition to writ petition challenging imposition of penalty does not arise. We therefore hold that no error was committed by the learned Single Judge in reducing the penalty without hearing the appellant.

14. That brings us to the question, whether the penalty prescribed

in Section 20 of the Act is mandatory and the scope of interference with such penalty in exercise of powers of judicial review under Article 226 of Constitution of India.

xxx *xxx* *xxx*

16. Once it is held that the quantum of fine is discretionary, there can be no challenge to the judicial review under Article 226 of the Constitution, of exercise of such discretion, of course within the well recognized limits. If this Court finds discretion to have been not appropriately exercised by the CIC, this Court can in exercise of its powers vary the penalty. In the facts of the present case, we find the learned Single Judge to have for valid reasons with which we have no reason to differ, reduced the penalty. We, therefore do not find any merits in this appeal and dismiss the same. No order as to costs."

7. This Court is of the view that the aforesaid law is applicable to not only proceedings under Section 20 (1) but also under Section 20(2) of the RTI Act. Consequently, this Court is of the opinion that the CIC was well entitled in its discretion not to direct initiation of the disciplinary proceedings under Section 20 (2) of the RTI Act, especially, when the information sought by the petitioner had been directed to be provided to him.

8. It is pertinent to mention that the petitioner's initial writ petition challenging the very same impugned orders had been dismissed by a coordinate Bench of this Court. Though the petitioner was given liberty in review petition to file a fresh petition seeking appropriate prayer, yet in the opinion of this Court the present petition amounts to re-litigation, as the same impugned orders have been challenged albeit on different grounds.

9. A Division Bench of this Court in ***N.D.Qureshi Vs. Union of***

India & Another, 2008 (13) DRJ 547 to which this Court was a party has observed as under:-

> *"12. Moreover, from the above narrated facts, it would be apparent that the petitioner has been re-litigating for a considerable number of years. In our view on the principle of res judicata and re-litigation the petitioner is even barred from raising new pleas for the same old relief. The Hon'ble Supreme Court in K.K.Modi Vs. K.N.Modi and others, reported in (1998) 3 SCC 573 has held that it is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. This re-agitation may or may not be barred as res judicata. But if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of the court. The Hon'ble Supreme Court has further held that if a spurious claim is made in a case, it may also amount to an abuse of process of the court. In our view, frivolous or vexatious proceedings amount to an abuse of the process of the court especially where the proceedings are absolutely groundless-like in the present case."*
>
> (emphasis supplied)

10. Consequently, the present writ petitions and pending application are dismissed but with no order as to costs.

MANMOHAN, J

JANUARY 12, 2016
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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 24.01.2017

\+ W.P.(C) 624/2017

B.B. DASH ..... Petitioner

versus

CENTRAL INFORMATION COMMISSION & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Aditya Singh with Mr. Raju Dalal, Advocates.

For the Respondents : None.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
24.01.2017

SANJEEV SACHDEVA, J. (ORAL)

CM No. 2874/2017 (exemption)

Exemption is allowed subject to all just exceptions.

W.P.(C) 624/2017 & CM No.2873/2017 (stay)

1. The petitioner impugns order dated 22.11.2016, whereby, the CIC has held the petitioner – CPIO liable for not providing the information to the respondents. It has been held that the petitioner has failed to provide information without any cogent reasons. Maximum

penalty, as prescribed, of Rs.25,000/- has been imposed on the petitioner.

2. The respondent No.2 had filed an application under the Right to Information Act, 2005 (hereinafter referred to as the Act) dated 25.08.2015 seeking certain information. The reply to the said information was given on 28.09.2015. The queries and the replies thereto are as under:-

"ICAR-Proiect Directorate on Foot and Mouth Disease
Information sought under Right to Information on Foot and Mouth Disease
3AB3 DIVA Statement of Cost Sheet for the year 2012-13 by Dimpal Kaushik

The above referred Right to Information reads as under:

A: Please inform weather the above document and/or its contents are in the knowledge of ICAR Team at Headquarters at Krishi Bhawan, New Delhi (Yes or NO)?

Ans: It is an institute matter

B: When did this document and/or its contents come into knowledge of ICAR Team at Headquarters at Krishi Bhawan, New Delhi (DD/MM/YYYY)?

Ans: How the document from file was obtained?

C: Please provide the copy-of covering letter under which this price of Rs 196.9733333 per unit was disclosed to ICAR Team at Headquarters at Krishi Bhawan, New Delhi or to the appropriate financial body of ICAR?

Ans: It is an institute matter

D: Please provide the copy of the Minutes of Meetings' in which the figure of Rs 196.9733333 per unit was stated and recorded by ICAR and/or its institutes. Please provide all minutes and any observations/noting made?

Ans: NO minutes

E: Please provide the name and designation of the ICAR official(s) who had instructed and/or authorized PDFMD to hold and utilize all the funds of AICRP-FMD with regards to purchase of 3AB3 Indirect ELISA Kits without allocating the funds for purchase of 3AB3 Indirect ELISA Kits to individual FMD centers/network units/any other public institutes engaged in FMD Sero-surveillance?

Ans: It is an institute matter

F: Please provide the particulars and a photocopy of financial directive vide which ICAR has permitted PDFMD to hold and utilized all the funds of AICRP-FMD with regards to the purchase of 3AB3 Indirect ELISA Kits without allocating the funds to the individual FMD centres/network units/any other public institutes engaged in FMD Sero-surveillance for the purchase of 3AB3 Indirect ELISA Kits?

Ans: No purchase of kit for supply to AICRP center

G: Please provide the name and designation of the ICAR official(s) who had instructed and/or authorized PDFMD to issue 3AB3 Indirect ELISA Kits at no charge basis to the individual FMD

centers/network units/any other public institutes engaged in FMD Sero-surveillance?

Ans: It is an institute matter

H: Please provide the particulars and a photocopy of the directive/instruction vide which PDFMD has been authorized to issue 3AB3 Indirect ELISA Kits at no charge basis to the individual FMD centers/network units/any other public institutes engaged in FMD Sero-surveillance?

Ans: It is an institute matter"

3. Since the respondent No.2 was not satisfied with the reply given, a complaint under Section 18 of the Act was filed with the CIC. The said complaint under Section 18 culminated in proceedings under Section 20 of the Act leading to the impugned order dated 22.11.2016.

4. By the impugned order, the CIC has held as under:-

"5. We asked Dr. B. B. Dash, CPIO of Project Directorate on Foot and Mouth Disease to explain his reply dated 28.9.2015 in response to various queries of the RTI application, in which he disposed of most of the queries by stating that it was an institute matter. He explained that by institute, he meant the Project Directorate on Foot and Mouth Disease. Explaining, his reply to point A, he stated that while the price was calculated, it was not implemented and not communicated to the ICAR. He stated that, therefore, the answer to point A was 'no'. However, he failed to explain as to how his reply "It is an institute matter" could be construed as his having said 'no'. He was also

unable to explain the lack of a reply to the specific query at point B. He stated that the Complainant's representative, who represents Arsh Biotech, had worked with the Project Directorate on Foot and Mouth Disease on some technology issues and he (Dr. B. B. Dash) wanted to know as to how some unnamed document was obtained from the file. We see no relevance of the above to the query at-point B; Similarly, the queries at C, E, G and H were also disposed of by saying that these were institute matters. What the CPIO was required to do was to provide such information, as was available on records, in response to these queries. In response to point D, seeking copy of the minutes of the meetings in which the price figure per unit was stated and recorded by ICAR and / or its institutes, the CPIO stated that there were no minutes. The representative of the Complainant submitted that since the price was calculated, there would have been some records in this regard. Similarly, the response to point F did not cover the specific query contained therein.

6. *Dr. B. B. Dash, CPIO stated that the Complainant's company has gone to court in respect of another technology and has issued a legal notice to the Respondents in respect of the technology, which formed the subject matter of the RTI application dated 25.8.2015. On being asked to cite a specific Section of the RTI Act, under which information could be denied, the CPIO referred to Section 8 without mentioning any sub-section of Section 8. In response to our query, he stated that no court of law or tribunal has expressly forbidden disclosure of the information sought by the Appellant. He submitted that the matter is also under investigation in the ICAR, but*

made no submission as to how disclosure of the information sought by the Complainant would impede the process of investigation. Dr. Dash claimed that he did not receive Dr. Prakash's letter dated 30.10.2015 mentioned in paragraph 4 above. We find it difficult to believe that a letter from one office of the public authority did not reach another office.

7. *Taking into account the totality of the facts placed before us, the inescapable conclusion is that Dr. B. B. Dash, CPIO failed to provide the information without any cogent reason. The nature of his replies, to various queries in his letter dated 28.9.2015 shows that these were meant to circumvent the queries raised by the Complainant in her application. All this is a pointer to wilful denial of information. Therefore, in our view, this is a fit case for imposition of the maximum penalty of Rs. 25,000/- on Dr. B. B. Dash, CPIO under Section 20 (1) Of the RTI Act. Therefore, by virtue of the power vested in us in Section 20 (1) of the RTI Act, we impose the maximum penalty of Rs. 25,000/- on Dr. B. B. Dash, CPIO, Project Directorate on Foot and Mouth Disease. The Head of the Project Directorate on Foot and Mouth Disease is directed to ensure that the above amount of penalty is recovered in five equal instalments from the monthly pay of Dr. B. B. Dash, CPIO, beginning with his pay for the month of December 2016. The amounts so deducted should be remitted to the Deputy Registrar, Central Information Commission, Room No. 305, August Kranti Bhawan, Bhikaji Cama Place, New Delhi -110066 by way of Demand Draft drawn in favour of Pay and Accounts Officer, Central Administrative Tribunal, New Delhi."*

5. Since to most of the queries, the response of the petitioner was "It is an institute matter", the CIC sought an explanation from the petitioner as to what the response "It is an institute matter" meant. He explained that by institute, he meant the Project Directorate on Foot and Mouth Disease. He failed to render sufficient explanation with regard to his response. Taking into account the totality of the facts placed before the CIC, the CIC came to the conclusion that the petitioner failed to provide the information without any cogent reason. The CIC came to the conclusion that the nature of his replies, to various queries showed that these were meant to circumvent the queries raised by the Complainant in her application, which amounted to wilful denial of information.

6. From the reply dated 28.09.2015, it is apparent that the petitioner has not responded to the queries raised by the respondents. The response given by the petitioner "it is an institute matter" does not convey any meaning to the applicant.

7. In response to an application, seeking information under the Act, the CPIO is to provide the information sought and in case the information is not liable to be provided on account of it being exempt, give sufficient reasons for denying the supply of information. Needless to state that the denial of information can only be in terms of the Act.

8. The response to the various queries "it is an institute matter", neither answers the queries nor renders an explanation claiming exemption from providing information.

9. Perusal of the impugned order shows that the CIC has not erred in returning a finding that information sought has not been provided to the respondent No.2. No cogent explanation has been rendered for non-supply of the information. Thus, the order of the CIC dated 22.11.2016 cannot be faulted.

10. In view of the above, I find no merit in the petition. The petition is, accordingly, dismissed.

SANJEEV SACHDEVA, J

JANUARY 24, 2017
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IN THE HIGH COURT OF DELHI AT NEW DELHI
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W.P.(C) 9169 of 2009 and CM Appl. 6802/2009

N.K. PANDEY ..... Petitioner
Through Mr. Sunil Malhotra, Advocate.

versus

PUNEET GUPTA .....
Respondent
Through None

CORAM: JUSTICE S. MURALIDHAR

O R D E R
07.09.2010

1. Despite service, none appears for the Respondent.

2. By the impugned order dated 20th October 2008, the Central Information Commission (?CIC?) has levied a penalty of Rs. 25,000/- on the Petitioner for the delay of more than 100 days in providing information to the applicant. The CIC found that in response to a show cause notice issued to him, the Petitioner submitted that ?the delay was inadvertant and unintentional because he had to visit his sick kin in Mumbai and Muzaffarpur.? However, the Petitioner did not attach the record of long leave and, therefore, it was concluded that his explanation was unacceptable.

3. Mr. Sunil Malhotra, learned counsel appearing for the Petitioner referred to the judgment of this Court in Bhagat Singh v. Chief Information Commissioner 146 (2008) DLT 385 and submitted that unless withholding of information was held to be malafide, the explanation offered by the Petitioner ought to have been accepted.

4. Section 20 (1) of the Right to Information Act, 2005 (?RTI Act?) reads as under:
?20 (1) Penalties:- 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.?

4. This Court finds that Section 20 (1) of the Right to Information Act, 2005 (?RTI Act?) does not require any malafide intention on the part of the statutory authorities in withholding information, for the penalty to be attracted. If there is a delay in providing the information, which is not a satisfactorily explained, a penalty of Rs. 250/- for every day?s delay can be levied on such officer, subject to the maximum limit of Rs. 25,000/-. The first proviso to Section 20 (1) states that the persons against whom the penalty order is

proposed should be given an opportunity of being heard. The second proviso placed the burden on the officer concerned to show that he acted reasonably and diligently. In the instant case, the Petitioner was given such an opportunity but he could not provide any document in support of his explanation for the delay in providing the information. Consequently, the impugned order of the CIC cannot really be faulted.

5. Mr. Malhotra then pleads that it was on account of the ill-health of the Petitioner?s brother that he had to be frequently travel between Muzaffarpur, Mumbai and Delhi and this was known to the management of the College where he was working. He volunteers that the Petitioner is prepared to produce the affidavit of the College in support of the above plea.

6. Considering the above submission, this Court is inclined to give the Petitioner one more opportunity to go before the CIC to produce the affidavit of the College management to substantiate his plea that the delay in providing information was for genuine reasons.

7. Consequently, the impugned order is set aside. The case will be now listed before the CIC on 1st October 2010 for fixing a date of hearing for the purposes of determining whether penalty should be levied and if so to what extent. The Petitioner is afforded one opportunity to produce before the CIC the affidavit of the management of the College in which he is working in support of his plea. The CIC will consider such plea and pass a fresh order on the question of penalty. It is made clear that this Court has not expressed any view on merits and the CIC will take an independent view in the matter after considering the affidavit produced by the Petitioner.

8. With the above directions, the writ petition is disposed of. The pending application is also disposed of.

S.MURALIDHAR,J
SEPTEMBER 07, 2010
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1882/2017

HARKRISHAN DAS NIJHAWAN ..... Petitioner

versus

SATYAVIR KATAR, CPIO DELHI POLICE LICENSING UNIT & ORS ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Petitioner in person.

For the Respondent : Mr. Arun Panwar and Mr. Akshay Choudhary, Advocates for GNCTD

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT
24.04.2017

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner by the present petition seeks quashing of order dated 29.12.2017 whereby the application of the petitioner under Section 20(1) of the Right to Information Act, 2005 (hereinafter referred to as the Act) has been rejected. The petitioner further seeks initiation of disciplinary inquiry against the respondent no. 1 to 4 in response to show cause notice under Section 20(1) of the Act.

2. The petitioner had sought certain information from the respondents under the Act. The information was denied. The petitioner aggrieved there from filed an application under Section 20(1) of the Right to Information Act, 2005. The proceedings initiated under Section 20(1) of the Act have been closed vide the impugned order dated 29.12.2016.

3. It is an admitted position that the information has already been furnished to the petitioner. The CIC had directed that redacted information be provided. The petitioner has already received un-redacted information in a public interest litigation filed by the petitioner.

4. The petitioner being aggrieved there from, filed an application under Section 20(1) of the Act. The proceedings initiated under Section 20(1) of Act the have been closed by the impugned order dated 29.12.2016.

5. The CIC in the impugned dated 29.12.2016 has recorded as under:-

> *"**Hearing on 22.11.2016:***
>
> *11. The respondents S/Shri Satyavir Katara, DCP (Licencing), Ved Parkash, ACP(Licencing) and SI Kamal Kishore were present in person.*

12. The respondent in his written submissions dated 21.10.2016 and 22.11.2016 has submitted that there was no intention to deny any information to the complainant. However, the reasons for not furnishing the information to their complainant is that the report of Special Branch' contains the enquiry, report in respect of the complainant and as such the information was denied under Section 8(l)(g) of the RTI Act because the disclosure of information would endanger physical safety of the person/enquiry officer, who prepared the enquiry report. In view of this, a view was taken that the disclosure of the information sought was exempted under Section 8(l)(g) of the RTI Act. The respondent agreed that information could have been provided after severance of the information whose disclosure was exempted under the RTI Act. However, inadvertently the reply dated 26.06.2015 was furnished to the complainant. The respondent stated that their act was, however, not intentional or deliberate. The respondent further submitted that the information sought can be provided to the complainant. The respondent also stated that the lapse was due to incorrect interpretation of the provision of the RTI Act, and not due to malafide intent to deny information to the complainant. Hence, the respondent requested the Commission to drop the Show Cause notice issued against them.

Decision:

13. The Commission, after hearing the submissions of the respondent and perusing the records, observes that the disclosure of the information sought on the point nos. 2 and 3 of the RTI application could have endangered the physical safety of the person/enquiry officer, who had

prepared the enquiry report. However, the Commission is of the opinion that the information could have been provided after severance of the information, disclosure of which was exempted under the RTI Act. Hence, the respondent has not interpreted the provisions of Section 8 (1) (g) of the RTI Act, 2005 in the right perspective to deny information to the complainant. However, this was done in good faith and there was no malafide intent on part of the respondent to deny or obstruct the flow of information to the complainant. The denial, therefore, was on account of incorrect interpretation of Section 8(1) (g) of the RTI Act, by the respondent, who as per his own understanding, interpreted and applied it to the facts of the present case, in order to prevent any danger to the physical safety of the person/enquiry officer, who had prepared the enquiry report. In view of this, it would not be appropriate to impose a penalty on the CPIO. The show cause notice against the respondent is, therefore dropped."

6. The CIC has accepted the explanation rendered by the respondent that information was bonafidely not provided and the action was taken in good faith. The CIC has further accepted the explanation that there was no malafide intention on the part of the respondent to deny or obstruct the flow of information to the complainant.

7. The information was withheld as the respondents were of the view that disclosure of information could have endangered the

physical safety of the person/enquiry officer, who had prepared the enquiry report. The Respondent had interpreted the provisions of the Act and declined to provide information in order to prevent any danger to the physical safety of the person/enquiry officer, who had prepared the enquiry report.

8. I am of the view that the view taken by the CIC is a plausible view. The application under Section 20(1) of the Act is really between the CIC and CPIO. The CIC has rightly decided not to take any further action and the view taken by the CIC is a plausible view.

9. I find no infirmity with the view taken by the CIC and find no ground to interfere with the order passed by the CIC. I find no merit in the petition. The writ petition is accordingly dismissed. No order as to cost.

SANJEEV SACHDEVA, J

APRIL 24, 2017
'*rs*'

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 29th March, 2012**

\+ **LPA No.777/2010**

% **ANAND BHUSHAN** **....Appellant**
Through: Ms. Girija Krishan Varma, Adv.

Versus

R.A. HARITASH **..... Respondent**
Through: Mr. P.S. Parma, Adv. for Mr. A.S. Chandhiok, ASG/Amicus Curiae

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This Intra Court appeal impugns the order dated 26th May, 2010 of the learned Single Judge allowing W.P.(C) No.3670/2010 preferred by the respondent. The respondent, at the relevant time was the Dy. Director of Education and Public Information Officer of the Directorate of Education, Govt. of NCT of Delhi. The respondent had filed the writ petition impugning the order dated 14th April, 2010 of the Central Information Commission (CIC) imposing maximum penalty of Rs.25,000/- on the respondent, under Section 20(1) of the Right to Information Act, 2005 for the delay of over 100 days in furnishing the information to the appellant. The Chief Secretary, Govt. of Delhi was directed to recover the said amount from the salary of the respondent @ ₹5,000/- per month.

2. The learned Single Judge, vide order impugned in this appeal, reduced the penalty amount to ₹2,500/- recoverable from the salary of the respondent in ten equal monthly installments of ₹250/- per month. The learned Single Judge held that the question of penalty is essentially between the Court and the respondent and did not really concern the appellant who has been provided with the information. Yet another reason given for so reducing the penalty was that the respondent had taken charge of the said post 14 days after the subject RTI application of the appellant had been filed.

3. Notice of this appeal was issued primarily on the ground, that the learned Single Judge, being of the view aforesaid, had decided the writ petition even without issuing notice to the appellant, though the appellant had been impleaded as respondent in the writ petition. Hearing in this appeal was commenced on 11th March, 2011 when the following order was passed:-

> "Heard Ms. Girija Krishan Varma, learned counsel for the appellant and the respondent in person. In course of hearing of this appeal, Ms. Verma has raised the following contentions:-
>
> (a) The learned single Judge has disposed of the writ petition without notice to the appellant, who had sought the information under the Right to Information Act, 2005 on the ground that the question of penalty is essentially between the Court and the petitioner and does not really concern the respondents which makes the order vulnerable as the exposition of law in the said manner is contrary to the spirit of the 2005 Act.
>
> (b) If, the language employed under Section 20 of the 2005 Act, which deals with penalties, is appropriately read it would clearly convey that every day's delay shall invite penalty of Rs.250/- with the rider that the said penalty shall not exceed Rs.25,000/- and the first proviso deals with grant of reasonable opportunity to bring the

concept of natural justice and the second proviso requires reasonable diligence but if reasonable diligence is not shown, discharging regard being had to the onus of proof as engrafted in the said proviso, it is obligatory on the part of the Commission to impose penalty of Rs.250/- per day. Elaborating the said submission, it is contended by her that certain days' delay may be explained and some days' delay, if not explained, would invite the penalty which is mandatory because of the words used in Section 20 of the Act viz., "shall impose penalty"

(c) If there is penalty provision in the Act, the High Court in exercise of power of judicial review cannot reduce the said penalty unless a categorical finding is recorded that reasonable explanation has been proffered/offered for certain days. Pyramiding the said contention, it is put forth by Ms. Verma that the discretion by the Court is not attracted in exercise of power under Articles226 or 227 of the Constitution of India unless the finding with regard to reasonable explanation as recorded by the Commission is reversed.

(d) If the Court in exercise of power of judicial review is allowed to reduce the penalty that would frustrate the purpose of the Act which is a progressive legislation to introduce transparency in democracy for the purpose of good governance. In view of the issues raised, we would like to have the assistance of the learned Solicitor General in the matter. Let the matter be listed on 3rd May, 2011 at 2.15 pm. Ms. Zubeda Begum, learned counsel for the State undertakes to apprise the learned Solicitor General about the order passed today.

A copy of the order be given dasti under signature of the Court Master to Ms. Zubeda Begum."

4. The matter was thereafter adjourned from time to time.

5. We have however recently vide our judgment dated 9th January, 2012 in LPA 764/2011 titled ***Ankur Mutreja v. Delhi University*** held that;

a). the Act does not provide for the CIC to, in the penalty proceedings, hear the information seeker, though there is no bar

also thereagainst if the CIC so desires;

b). that the information seeker cannot as a matter of right claim audience in the penalty proceedings which are between the CIC and the erring information officer;

c). there is no provision in the Act for payment of penalty or any part thereof imposed/recovered from the erring information officer to the information seeker;

d). the penalty proceedings are akin to contempt proceedings, the settled position wherein is that after bringing the facts to the notice of the Court, it becomes a matter between the Court and the contemnor and the informant or the relator does not become a complainant or petitioner in contempt proceedings.

6. The aforesaid judgment was brought to the attention of the counsel for the appellant. The counsel for the appellant has however besides orally arguing the matter also submitted written submissions. Her arguments may be summarized as under:-

i). that the use of the word "shall" in Section 20(1) is indicative of, the imposition of penalty being mandatory, where the information officer has refused to or delays in receiving the RTI application or when does not give or delays in giving the information sought;

ii). that the presence of the information seeker is essential not only for computing the penalty but also for establishing the default of the information officer;

iii). that the penalty proceedings under Section 20(1) are adversarial in nature;

iv). that the position of the information seeker, in penalty proceedings, is akin to that of public prosecutor;

v). that since Section 20(1) provides for a hearing to be given to the information officer, there can be no hearing without the information seeker;

vi). the second proviso to Section 20(1), putting the burden of proving that he acted reasonably and diligently, on the information officer is also indicative of the penalty proceedings being adversarial in nature; if the information seeker was not to be a party to the said proceedings, the question of onus/burden would not have arisen; the question of shifting the burden arises only in an adversarial situation;

vii). that the role of CIC is only that of an Adjudicator;

viii). that exclusion of the information seeker from penalty proceedings would dilute the spirit of the Act;

ix). that the Act is not only about sharing of information and promoting transparency but is also intended to bring about accountability and taking away the right of the information seeker to participate in the penalty proceedings is against the principle of accountability;

x). Section 23 of the Act bars the jurisdiction of Courts; the information seeker thus has no other remedy against the erring information officer.

7. The counsel for the appellant has also handed over a compilation of the following judgments:-

(i). ***Surya Dev Rai v. Ram Chander Rai*** (2003) 6 SCC 675;

(ii). ***Nathi Devi v. Radha Devi Gupta*** (2005) 2 SCC 271;

(iii). ***The State of U.P. v. Raj Narain*** (1975) 4 SCC 428;

(iv). ***Bhagat Singh v. Chief Information Commissioner*** 146(2008) DLT 385 &

(v). ***Sree Narayana College v. State of Kerala*** MANU/KE/0238/2010.

and of certain Articles, Parliamentary debates etc. on the Act.

8. We have in ***Ankur Mutreja*** (supra) given detailed reasons for the conclusions aforesaid reached therein and which cover contentions 6(ii) to (viii) & (x) aforesaid of the counsel for the appellant herein and we do not feel the need to reiterate the same. We may only add that the role of the CIC, under the Act, is not confined to that of an Adjudicator. The CIC under the RTI Act enjoys a dual position. The CIC, established under Section 12 of the Act, has been, a) under Section 18 vested with the duty to receive and enquire into complaints of non-performance and non-compliance of provisions of the Act and relating to access to records under the Act; b) empowered under Section 19(3) to hear second appeals against decision of Information Officer and the First Appellate Authority; c) empowered under Section 19(8) to,

while deciding such appeals, to require any public authority to take such steps as may be necessary for compliance of provisions of the Act; and, d) and is to, under Section 25 of the Act prepare annual report on the implementation of the provisions of the Act. The CIC thus, besides the adjudicatory role also has a supervisory role in the implementation of the Act.

9. The power of the CIC, under Section 20, of imposing penalty is to be seen in this light and context. A reading of Section 20 shows (as also held by us in ***Ankur Mutreja***) that while the opinion, as to a default having been committed by the Information Officer, is to be formed 'at the time of deciding any complaint or appeal', the hearing to be given to such Information Officer, is to be held after the decision on the complaint or the appeal. The proceedings before the CIC, of hearing the Information Officer qua whom opinion of having committed a default has been formed and of imposition of penalty, are in our opinion, in the exercise of supervisory powers of CIC and not in the exercise of adjudicatory powers. As already held by us in ***Ankur Mutreja,*** there is no provision, for payment of penalty or any part thereof, to the information seeker. The information seeker has no locus in the penalty proceedings, beyond the decision of the complaint/appeal and while taking which decision opinion of default having been committed is to be formed, and at which stage the complainant/information seeker is heard.

10. The Supreme Court in ***Competition Commission of India vs. Steel Authority of India Ltd.*** (2010) 10 SCC 744 held that the Competition Commission constituted under the Competition Act, 2002 discharges

different functions under different provisions of the Act and the procedure to be followed in its inquisitorial and regulatory powers/functions is not to be influenced by the procedure prescribed to be followed in exercise of its adjudicatory powers. In the context of the RTI Act also, merely because the CIC, while deciding the complaints/appeals is required to hear the complainant/information seeker, would not require the CIC to hear them while punishing the erring Information Officer, in exercise of its supervisory powers.

11. We may reiterate that the complainant/information seeker has the remedy of seeking costs and compensation and thus the argument of 'being left remediless' is misconceived. However 'penalty' is not to be mixed with costs and compensation.

12. We are also of the view that the participation of the information seeker in the penalty proceeding has nothing to do with the principle of accountability.

13. Needless to say that if the information seeker has no right of participation in penalty proceedings, as held by us, the question of right of being heard in opposition to writ petition challenging imposition of penalty does not arise. We therefore hold that no error was committed by the learned Single Judge in reducing the penalty without hearing the appellant.

14. That brings us to the question, whether the penalty prescribed in Section 20 of the Act is mandatory and the scope of interference with such

penalty in exercise of powers of judicial review under Article 226 of Constitution of India.

15. We may at the outset notice that a Division Bench of this Court in judgment dated 6th January' 2011 in LPA 782/2010 titled ***Central Information Commission v. Department of Posts***, inspite of the argument raised that that Single Judge ought not to have reduced the penalty imposed by the CIC but finding sufficient explanation for the delay in supplying information, upheld the order of the Single Judge, reducing the penalty. Though Section 20(1) uses the word 'shall', before the words 'impose a penalty of Rs. two hundred and fifty rupees' but in juxtaposition with the words 'without reasonable cause, malafidely or knowingly or obstructed.' The second proviso thereto further uses the words, 'reasonably and diligently '. The question which arises is when the imposition of penalty is dependent on such variables, can it be said to be mandatory or possible of calculation with mathematical precision. All the expressions used are relative in nature and there may be degrees of, without reasonable cause, malafide, knowing or reasonableness, diligence etc. We are unable to bring ourselves to hold that the aforesaid provision intends punishment on the same scale for all degrees of neglect in action, diligence etc. The very fact that imposition of penalty is made dependent on such variables is indicative of the discretion vested in the authority imposing the punishment. The Supreme Court in ***Carpenter Classic Exim P. Ltd. V. Commnr. of Customs (Imports)*** (2009) 11 SCC 293 was concerned with Section 114 A, Customs Act, 1962 which also used the word 'shall' in conjunction with expression 'willful mis- statement or suppression of facts'; it was held that provision of

penalty was not mandatory since discretion had been vested in the penalty imposing authority. Similarly in ***Superintendent and Remembrancer of Legal Affairs to Government of West Bengal V. Abani Maity*** (1979) 4 SCC 85, the words 'shall be liable for confiscation' in section 63 (1) of Bengal Excise Act, 1909, were held to be not conveying an absolute imperative but merely a possibility of attracting such penalty inspite of use of the word 'shall'. It was held that discretion is vested in the court in that case, to impose or not to impose the penalty.

16. Once it is held that the quantum of fine is discretionary, there can be no challenge to the judicial review under Article 226 of the Constitution, of exercise of such discretion, of course within the well recognized limits. If this Court finds discretion to have been not appropriately exercised by the CIC, this Court can in exercise of its powers vary the penalty. In the facts of the present case, we find the learned Single Judge to have for valid reasons with which we have no reason to differ, reduced the penalty. We, therefore do not find any merits in this appeal and dismiss the same. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 29, 2012
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8315/2017 & CM No. 34196/2017

KRIPA SHANKER ..... Petitioner

Through: Ms Tripta Kanojia, Advocate.

versus

LD CENTRAL INFORMATION COMMISSION AND ORS ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 18.09.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 19.07.2017 (hereafter 'the impugned order'), whereby the Central Information Commission (CIC) had imposed a penalty of ₹25,000/- on the petitioner for failure to supply the information as sought by respondent no.4 under the Right to Information Act, 2005 (hereafter 'the Act').

2. Ms Kanojia, learned counsel for the petitioner advanced submissions on three fronts. First, she submitted that the CIC was considering a complaint that had been treated as Second Appeal under Section 19(3) of the Act and, therefore, no penalty would be imposed in such proceedings. She referred to the decision of the Supreme Court in ***Chief Information Commissioner & Ors v. State of Manipur: 2012 (286) ELT 485 SC*** in support of her contention that the procedures under Section 19(3) and under

Section 18 are different. Second, she submitted that there was no finding as to *malafide* or unreasonable conduct and, therefore, no penalty could be levied against the petitioner. She referred to the decision of this Court in ***Registrar of Companies and Ors. v. Dharmender Kumar Garg and Anr. ILR (2012) VI DELHI 499*** and drew the attention of this Court to paragraph 60 of the said decision wherein, this Court had held that merely because the CIC eventually finds that the view taken by the Public Information Officer (hereafter 'PIO') was not correct, it cannot automatically lead to issuance of Show Cause Notice under Section 20 of the Act and imposition of penalty. Lastly, she contended that the petitioner had been singled out for imposition of penalty, although the show cause notice was also issued to another CPIO.

3. A bare perusal of the impugned order indicates that respondent no.4 (who was the appellant before the CIC) had filed an application for disclosure of certain information regarding certain appeals filed before the Central Excise and Service Tax Tribunal (CESTAT). The said application was admittedly marked to the petitioner and he in turn marked the same to the Head Clerk. The First Appellate Authority (hereafter 'FAA') had also passed orders directing disclosure of information sought. Concededly, the information sought for was not supplied despite orders passed by the FAA to do so.

4. Respondent no.4 had, thereafter, filed a complaint regarding non supply of information despite orders being passed in his favour by FAA. The said complaint was treated by the CIC as a second appeal under Section 19(3) of the Act and it was directed that the information as sought for, be supplied. During the course of the proceedings, the CIC formed a view that

an inquiry regarding denial of information and for levy of penalty was warranted and, accordingly, issued a Show Cause Notice to the petitioner and another CPIO.

5. The petitioner responded to the said Show Cause Notice; clearly, admitting that the application for information along with the order passed by the FAA was received by the petitioner and had been marked to the Head Clerk, who failed to respond within the stipulated period. It is the petitioner's case that the Head Clerk was custodian of all RTI applications and, therefore, was in a better position to respond to the Show Cause Notice issued by the CIC.

6. The CIC had, thereafter, considered the said response and had concluded that there were grave violations of the provisions of the Act. The CIC concluded that it was not the Head Clerk who could be held responsible, but the PIO as he was charged with the duty to ensure that the information as sought is provided to the information seeker. In the present case, the petitioner had failed to provide any reason which would adequately justify failure to provide the information sought. The CIC after considering the matter found that the petitioner had dealt with the application and the order was passed by the FAA in a callous manner and accordingly, concluded that the petitioner was liable to be penalised under Section 20 of the Act.

7. The petitioner's contention that no penalty could be imposed as the proceedings before the CIC was treated as proceedings under Section 19(3) of the Act, is unmerited.

8. A plain reading of section 20(1) of the Act indicates that if the CIC or the State Information Commission (SIC) at the time of deciding "*any complaint or appeal"* is of the opinion that the information has been withheld without any reasonable cause or incorrect or incomplete information has been given or that the information has been destroyed or the request of the information seeker has been obstructed in any manner, the CIC would be well within its jurisdiction to enquire into the matter and impose the penalty as specified under Section 20(1) of the Act.

9. The proviso to Section 20(1) of the Act, enjoins the CIC to give a reasonable opportunity to the concerned CPIO to be heard. And, admittedly, such opportunity was provided to the petitioner.

10. It is apparent from the plain language of Section 20(1) of the Act that the proceedings for levy of penalty can be undertaken while considering an appeal under Section 19(3) of the Act, and it is not necessary that a separate complaint under Section 18 be filed. The decision of the Supreme Court in the case of ***Chief Information Commissioner & Ors v. State of Manipur*** (*supra*) is not an authority for the proposition that the CIC cannot levy penalty in proceedings instituted under Section 19 (3) of the Act. In that case, the Supreme Court had observed that a complaint under Section 18 could not be treated as an appeal and, therefore, CIC would not have the jurisdiction to direct disclosure of information while examining a complaint under Section 18 of the Act.

11. If a person is aggrieved by denial of information, he would have the right to file a first appeal before the FAA and if aggrieved by the order of

the FAA, he can prefer a second appeal under Section 19(3) of the Act. These are the remedies provided under the Act for seeking information.

12. An information seeker can also file a complaint under Section 18 of the Act, in respect of matters set out in clauses (a) to (f) of section 18(1) of the Act, which includes a case where access to any information has been refused. In terms of Section 18(2) of the Act, if the CIC is satisfied that there is a reasonable ground to enquire into the matter, the CIC may initiate an inquiry with respect thereof. There is no provision in Section 18 of the Act, which enables the CIC to direct disclosure of information. However, the CIC has the power to commence proceedings for imposition of penalty in case of proceedings under Section 19(3) of the Act as is apparent from the plain language of section 20(1) of the Act.

13. The reliance placed by the learned counsel for the petitioner in the case of ***Registrar of Companies*** (*supra*) is also misplaced. Indisputably, merely because the view taken by a PIO is not correct, it would not lead to an inference that he is liable to penalty. There may be cases where the PIO is of the view that the information sought is exempt from disclosure under Section 8 of the Act. If this view is subsequently found to be incorrect, it would not necessarily mean that he would be subjected to penalty. The question of imposition of penalty depends on whether the conduct of PIO is reasonable and whether there is any *bonafide* justification for denial of information; penalty is levied only if it is found that the information was denied without reasonable cause.

14. In the present case, the FAA had already passed an order for

disclosure of information. Despite the same, the petitioner had not ensured that the information was supplied within the stipulated time. The conduct of the petitioner was examined and the CIC found that there is no reasonable justification for the petitioner's conduct.

15. This Court finds no infirmity with the view expressed by the CIC. The petition is, accordingly, dismissed.

VIBHU BAKHRU, J

SEPTEMBER 18, 2017
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 3550/2013**

RK JAIN ..... Petitioner

Through Mr J.K. Mittal, Advocate.

versus

CENTRAL INFORMATION COMMISSION
THROUGH ITS SECRETARY ..... Respondents

Through Mr Sanjev Narula and Ms Kaanan Gupta, Advocate for CIC.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 04.09.2017

1. The petitioner has filed the present petition, *inter alia*, praying as under:

> "a. issue any appropriate writ or direction against the Respondent that Hon'ble Central Information Commission is to maintain and keep the records of proceedings or order sheet of the hearings before the Central Information Commission under the Right to Information Act, 2005; and/or
>
> b. Issue any appropriate writ or direction declaring that the Hon'ble Central Information Commission should pronounce and passed an written order immediately after the hearing unless order is reserved and in case of reserved order, within 30-60 days of date when such order is reserved or any other period which this Hon'ble Court deem fit and proper in view of the objective of the Right to Information Act, 2005; and/or
>
> c. issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction by quashing the impugned order dated

10.01.2013 passed by the Central Information Commission/ Respondent; and/or"

2. The only controversy that remains to be addressed is whether the respondent ('hereafter CIC') is required to maintain record of daily orders. The learned counsel appearing for the respondent submits that most of the cases are decided on the basis of a single hearing and, therefore, there is no requirement for maintaining the record of daily orders. This submission is *ex-facie* unacceptable. The functioning of the CIC must be transparent, and it is necessary that a record of daily proceedings be maintained. Even, if the hearing is concluded on a single date, the order sheet maintained on that day should clearly reflect that the hearing is concluded, although the decision may be rendered, subsequently. The learned counsel for CIC had filed certain documents on 18.12.2016, which include a proforma of the order sheet. The said order sheet must be filled for each hearing.

3. Attention of this Court has also been drawn to order dated 23.03.2016, which indicates that the learned counsel for the CIC had unequivocally stated that the CIC is willing to maintain the daily order sheets and had prayed for some time to evolve a procedure. Thus, sufficient time has been provided to the CIC to put in place a procedure for recording of order sheets; however, even today the learned counsel is not in a position to inform this Court, the procedure for ensuring recording of order sheets.

4. In view of the above, the CIC is directed to maintain the order sheets for each hearing in the form, as indicated in the documents filed on behalf of the CIC on 18.10.2016. The said order sheet would also be uploaded as expeditiously as possible and in any case not later than three days from the date of hearing. The CIC shall ensure that all the systems are accordingly

modified to accommodate the aforesaid directions.

5. No further orders are required to be passed in this petition. The same is disposed of.

VIBHU BAKHRU, J

SEPTEMBER 04, 2017
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IN THE HIGH COURT OF DELHI AT NEW DELHI
R-29

W.P.(C) 14120/2009

MUNICIPAL CORPORATION OF DELHI ..... Petitioner
Through : Mr. Gaurang Kanth, Advocate.

versus

SHRI R.K. JAIN .....
Respondent
Through : None.

CORAM: JUSTICE S. MURALIDHAR

O R D E R
23.09.2010

1. There are two principal grounds urged by the petitioner, Municipal Corporation of Delhi (?MCD?), to assail the impugned order dated 30th October, 2009 passed earlier by the Central Information Commission (?CIC?) levying a penalty of `10,750/- on Mr. A Karthikeyan, Head Clerk of MCD and `19,000/- to be recovered from Mr. Ravinder Kumar, Public Information Officer (?PIO?) for their respective roles in the delay in furnishing to the Respondent the information sought by him.

2. On 27th April, 2009, the Respondent filed an application under the Right to Information Act, 2005 (?RTI Act?) before the PIO seeking a complete set of attested copies of the file notings as well as the correspondence side of the file wherein a note which had been moved by the Central Vigilance officer (?CVO?) suggesting that MCD should appeal against the judgment dated 26th March, 2009 of the Central Administrative Tribunal (?CAT?). By the said judgment the CAT had set aside an order dated 7th April, 2006 of the MCD dismissing the Respondent and 16 other Executive Engineers (Civil). The CAT ordered their reinstatement. It appears that although the stand taken by the Head Clerk was

that he had forwarded the application for information under the RTI Act to Mr. Anil Kumar Gupta who was supposed to provide the information, on the same date i.e. 27th April, 2009, he was unable to produce before the CIC any documentary proof to that effect. The records showed that the RTI application was eventually received by Mr. Anil Kumar Gupta only on 10th July, 2009 by which time 43 days had already elapsed. Since the date of seeking the information in terms of Section 7(1), the information should be provided to the Respondent within thirty days from 27th April, 2009.

3. It may be noticed at this stage that neither before the CIC nor before this Court the Petitioner has been able to provide any justification for the above delay of 43 days in forwarding the Respondent?s RTI application to the concerned officer of the MCD which had to provide the information. It is also stated that the penalty of ` 10,750/- levied on Mr. Karthikeyan already stands deducted from his salary. Accordingly, that part of the impugned order of the CIC calls for no interference.

4. As far as the PIO was concerned, by the time request reached him, the respondent herein had already filed an appeal before the CIC. On 7th July, 2009, the CIC issued notice to the PIO asking him to provide information to the Respondent before 1st August, 2009. In response thereto the PIO wrote to the Respondent on 31st July, 2009 stating that the order of the CAT had been challenged in this Court by means of a writ petition which was pending. A stay had been granted against the judgment of the CAT. It was accordingly contended by the PIO that since the petition was sub-judice, the copies of the notings side of the file as well as the correspondence side could not be provided. It was stated by the PIO that the information sought was exempt from disclosure under Section 8(1)(d) of the RTI Act.

5. As the CIC has rightly noted, there was no explanation why Section 8(1)(d) would apply. That exemption applies only to matters relating to commercial confidence, trade secrets or intellectual property. The matter being sub judice before a court is not one of the categories of information which is exempt from disclosure under any of the clauses of Section 8(1) of the RTI Act.

6. It may be noted that as regards the above finding of the CIC, there is again no defence of the MCD. The disclosure of the information sought could not have been withheld only on the ground that the matter was sub judice before this Court.

7. The first point put forth by the learned counsel for the Petitioner is that the Respondent could not have, without first exercising the remedy of going before the Appellate Authority of the MCD, filed an appeal directly before the CIC. Reliance is placed on the decision of the CIC passed in Shri Milap Choraria v. Shri Jai Raj Singh, Commissioner of Income Tax (decided on 9th April, 2007). This Court does not find any merit in this contention. The Appellate Authority in this case would have been an officer of the MCD. It is unlikely he would have decided the appeal contrary to the stand of the MCD that since the matter was sub judice, the information could not be provided to the Respondent. Moreover, no such plea questioning the non- exhaustion of the remedy of first appeal appears to have been raised before the CIC.

8. The second point urged is that in terms of Section 20(1) RTI Act, the maximum penalty for delay in providing information was `25,000/- whereas the penalty imposed on both, Mr. A.Karthikeyan and Mr. Ravinder Kumar worked out to be more than `25,000/-. It is, also, urged that the penalty on Mr. Ravinder Kumar was not leviable for he had reasonable grounds for not providing the information.

9. As regards the second submission regarding the total amount of penalty, this Court finds merit in the contention that in terms of Section 20(2) of the RTI Act the maximum penalty vis-a-vis a complaint about the delay in providing information cannot exceed `25,000/-.

10. Section 20 reads as under:-
?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.?

11. This Court is unable to accept the contention of the Petitioner that unless the information was deliberately withheld a penalty should not be levied. The mere fact that the information was not disclosed in the time specified under Section 7(1) of the Act, is enough to attract the penalty already fixed under Section 20(1). There is also no discretion but to award penalty of `250/- for every day of delay subject however to a maximum of `25,000/- . In this case, the

mere fact that the information was provided to the Respondents after a delay of 76 days attracted Section 20(1). It may be noticed that there is no denial by the MCD that the information sought was ultimately provided only on 15th October, 2009 with a delay of 76 days.

12. Secondly, since this Court accepts the submission that the total amount of penalty leviable was `25,000/- and since learned counsel for the MCD informed the Court that the penalty of `10,750/- levied on Mr. Karthikeyan had already been recovered, the penalty levied on Mr. Ravinder Kumar is reduced from `19,000/- to `14,250/- in terms of Section 20(1) of the RTI Act.

13. Only to this limited extent, the impugned order of the CIC dated 30th October, 2009 and subsequent order dated 1st December, 2009 rejecting the review petition of Mr. Ravinder Kumar will stand modified.

14. In compliance of the CIC?s order, the extent of the penalty amount of `14,250/- that is to be recovered from Mr. Ravinder Kumar, would be by way of three installments of `.5,000/-, `5,000/- and `4,250/- to be deducted from the salary of Mr. Ravinder Kumar beginning from October, 2010. The necessary compliance be filed before the Joint Registrar of the CIC as directed in the impugned order.

15. The writ petition is disposed of in the above terms without any order as to costs.

S. MURALIDHAR, J
SEPTEMBER 23, 2010
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W.P.(C) 14120/2009
Page 1 of 7

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 5371/2016 & CM No. 22392/2016**

V. RAJAN ..... Petitioner

Through: Mr Rituraj Biswas and Mr Rituraj Choudhary, Advocates.

versus

NEERAJ KUMAR & ANR. ..... Respondents

Through: Mr Y. Mishra, Advocate for R-1. Ms Shikha Tandon and Ms Anu shrivastava, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 02.11.2017

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 22.04.2016 passed by the Central Information Commission (hereafter 'the CIC'), whereby the CIC had directed respondent no. 2 to pay the compensation of ₹65000/- to respondent no. 1 (who was the appellant before the CIC). In addition, the CIC has also imposed a penalty of ₹25000/- on the petitioner (who was then the CPIO of respondent no. 2/Public Authority) as well as penalty of ₹9500/- on Shri Sanjeev Shrivastava, Assistant Public Information Officer (APIO).

2. Briefly stated, the facts necessary to address the controversy are as under:-

2.1 Respondent no.1 filed an application with respondent no.2, *inter alia*, seeking the following information:-

a. National Housing bank conducted an investigation regarding irregularities of Shivkala Charms, golf course cooperative housing society limited, plot no.7, sect.PI-II, provide a copy of that investigation report.

b. On the basis of above investigation report, provide copies of the letters which was sent by National Housing Bank to public/private banks/NBFC's concerned with financial irregularities for action against the cooperative society.

c. Provide updated information about the action has been taken by the respective banks perspective of letters written by National Housing bank"

2.2 The petitioner who was at the material time the Public Information Officer of respondent no. 2 responded to the aforesaid request by stating that "*we have no information to furnish in this regard*".

2.3 Respondent no. 1, thereafter, filed an appeal before the First Appellate Authority (hereafter 'the FAA') which was also disposed of by an order dated 17.10.2014.

3. Respondent no. 2 became aware that a letter dated 18.04.2012 had been addressed by the petitioner (in his capacity as a Deputy General Manager of respondent no.2) to the Chief Executive Officer of one Indo Pacific Housing Finance Ltd., *inter alia,* stating as under:-

> "1. It has come to our notice that HFCs and banks have made multiple financing of the flats in a Housing Project, namely, "Shiv Kala Charms" undertaken by Golf Course Sehkari Awas Samiti Limited on Plot No.7, Greater Noida. Base on the information available, list of flats financed by HFC's prepared by us is annexed herewith. It appears that one of the reason may be due to lack of proper due-diligence by the concerned HFCs,

while approving the captioned project/sanctioning the loan to the individual borrowers.

2. You are hereby requested to look into the matter and also furnish us the following information, at the earliest-

respondent no. 2 *inter alia* seeking the information as under:-

i. The attributable reasons for multiple financing in each case;
ii. Action taken by the HFC against the concerned officials;
iii. Action taken to tone-up the process in your HFC, to avoid recurrence of such frauds in future;
iv. Detailed report on the present stage of investigation of the case by out-side agencies; and
v. The efforts made to mitigate hardship faced by the borrowers/purchasers.

3. You are also advised to place the status report of the case at regular intervals to your Board till the satisfactory resolution of the case, and also keep us posted with the developments in the matter."

4. A bare perusal of the said letter indicates that the petitioner's response to respondent no. 1's queries was inapposite. Clearly petitioner was fully aware that an enquiry was made regarding multiple financing of the flats in Housing Project in question. A plain reading of the petitioner's request for information also indicates that he was seeking information regarding irregularities in the project in question. It was petitioner's case that although enquiries had been made and respondent no. 2 had also called upon the housing finance companies to give a status report, no formal investigation was conducted and therefore, the question of providing any investigation

report to respondent no. 1 did not arise.

5. The aforesaid contention did not find favour with the CIC.

6. This Court is also of the view that the least that the petitioner should have done was to inform respondent no. 1 that only inquiries had been made and no formal investigation had been conducted; this is assuming that the petitioner felt compelled to deny respondent no.1 the relevant information regarding the enquiries being made. However, the petitioner's response to respondent no. 1's queries was that he had no information in that regard. The statement that the petitioner had no information to furnish - even though not technically incorrect considering that the queries were with regard to a investigation report - was not an apposite response. This is so because it did not indicate the correct position that no investigation was conducted and only inquiries were made.

7. The petitioner, however, states that no penalty can be levied on the petitioner since the request made by respondent no.1 for information related to an investigation report and there was no investigation and, therefore, no such report could be furnished.

8. Although this Court is of the view that the petitioner's response was not an apposite one, nonetheless, this Court is also of the view that no penalty could be imposed on the petitioner. The provision of Section 20(1) of the Right to Information Act, 2005, (hereafter 'the Act') being a penal provisions must be construed strictly. In terms of Section 20(1) such penalty can be levied only in cases where (i) the Central Information Public Information Officer or State Public Information Officer has without any reasonable cause refused to receive an application for information; or (ii) has not furnished information within the time specified under Section 7(1) of the

Act; or (iii) malafidely denied the request for information; or (iv) knowingly given incorrect, incomplete or misleading information; or (v) destroyed information which was the subject of the request; or (vi) obstructed in any manner in furnishing of the information. In the present case, the only question that arises is whether the petitioner can be held guilty of providing incomplete or misleading information. Although, the petitioner's response to respondent no. 1's request for information may not be apposite, the same does not attract the penal persons of Section 20(1) of the Act. The queries were specifically regarding furnishing the investigation report and other matters relating thereto; since there was no investigation report on record, *stricto sensu*, the petitioner cannot be said to have fallen foul of the provisions of Section 20(1) of the Act.

9. Insofar as the direction to respondent no.2 to provide compensation is concerned, the learned counsel for respondent no.2 states that the same has already been paid by respondent no.2. Further respondent no.2 has also not appealed against the direction to pay compensation. In this view, no further interference with the said direction to pay compensation is called for.

10. In view of the above, the impugned order to the extent that it imposes a penalty on the petitioner, is set aside. The parties are left to bear their own costs.

11. The petition is disposed of.

VIBHU BAKHRU, J

NOVEMBER 02, 2017
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 22.05.2012

% Judgment delivered on: 01.06.2012

\+ **W.P.(C) 11271/2009**

REGISTRAR OF COMPANIES & ORS ..... Petitioners

Through: Mr. Pankaj Batra, Advocate.

versus

DHARMENDRA KUMAR GARG & ANR ..... Respondents

Through: Mr. Rajeshwar Kumar Gupta and Ms. Shikha Soni, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition has been preferred by the Registrar of Companies, NCT of Delhi & Haryana (ROC) and its CPIOs Sh. Raj Kumar Shah and Sh. Atma Shah to assail two similar orders dated 14.07.2009 passed by the Central Information Commission (CIC) in complaint case Nos. CIC/SG/C/2009/000702 and CIC/SG/C/2009/000753. By these similar orders, the appeals preferred by the same respondent- querist were allowed, rejecting the defence of the petitioners founded upon

Section 610 of the Companies Act, 1956, and it was directed that the complete information sought by the respondent-querist in his two applications under the Right to Information Act (RTI Act) be provided to him before 25.07.2009. The CIC has also directed issuance of show-cause notice to the petitioner-PIOs under Section 20(1) of the RTI Act asking them to show-cause as to why penalty should not be imposed upon them for not furnishing information as sought by the querist within thirty days.

2. The querist-Shri Dharmendra Kumar Garg filed an application under the RTI Act on 28.05.2009 requiring the PIO of the ROC to provide the following information in relation to company No. 056045 M/s Bloom Financial Services Limited:

> *"1. Who are the directors of this company? Please provide their name, address, date of appointment and copies of consent filed at ROC alongwith F-32 filed.*
>
> *2. After incorporation of above company, how many times directors were changed? Please provide the details of documents files and copies of Form 32 filed at ROC.*
>
> *3. Please provide the copies of Annual Returns filed at ROC since incorporation to 1998*
>
> *4. On what ground prosecution has been filed. Please provide the details of prosecution and persons included for prosecution. Please provide the copies of Order Sheets and related documents.*
>
> *5. On what ground the name of Dharmender Kumar Garg has been included for prosecution?*
>
> *6. Please provide the copies of Form No 5 and other documents filed for increase of capital?*

7. How much fee was paid for increase of Capital of above company? Please provide the details of payment of fee at ROC.

8. Please provide the copies of Statutory Report and Special Leave Petition (Statement in lieu of prospectus) filed at ROC."

3. The PIO-Sh. Atma Shah responded to the said queries on 29.05.2009. In respect of queries No. 1, 2, 3, 6, 7 & 8, the stand taken by the PIO was as follows:

"that in view of the provisions of Section 610 of the Companies Act, 1956 read with Companies (Central Government's) General Rules and Forms, 1956 framed in exercise of powers conferred by clauses (a) & (b) of sub-section (1) of Section 642 of the Companies Act, 1956, the documents filed by companies pursuant to various provisions of the Companies Act, 1956 with the ROCs are to be treated as 'information in public domain' and such information is accessible by public pursuant to the provisions of Section 610 of the Companies Act, 1956. There is an in built mechanism under the provisions of the Companies Act, 1956 for accessing information relating to documents filed which are in the public domain on payment of fees prescribed under the provisions of the Companies Act, 1956 and the Rules made there under. Hence you can obtain the desired information by inspecting the documents filed by the company in this office before filing of documents online i.e. prior to 8/03/2006 at O/o Registrar of Companies, NCT of Delhi & Haryana, 131, Sector-5, IMT Manesar, Haryana and after 18/3/06 on the Ministry's website www.mca.gov.in. Further certified copies of the desired documents can also be obtained on payment of fees prescribed thereof. In view of this, the information already available in the public domain would not be treated as 'information held by or under the control of public authority' pursuant to Section 2(j) of the Right to Information Act, 2005. Therefore, the provisions of RTI Act, 2005 would not be applicable for providing inspection/copies of such documents/information to the

public."

4. The queries at serial Nos. 4 & 5, as aforesaid, were also responded to by the PIO. However, I am not concerned with the answers given in response to the said queries, as the legal issue raised in the present petition by the petitioners relates to the interplay between Section 610 of the Companies Act on the one hand, and the provisions of the RTI Act on the other hand. Not satisfied with the response given by the PIO Sh. Atma Shah, as aforesaid, the respondent-querist, without preferring a first appeal, straightway preferred an appeal before the CIC, which has been disposed of vide impugned order dated 14.07.2009 in complaint case No. CIC/SG/C/2009/000702.

5. The respondent-querist raised further queries in respect of the same company vide an RTI application dated 06.06.2009. This application was also responded to by the PIO Sh. Atma Shah on 23.06.2009. In this reply as well, in respect of certain queries, the PIO responded by placing reliance on Section 610 of the Companies Act and gave more or less the same reply, as extracted above. Since the respondent-querist was not satisfied with the said response, he preferred a petition before the CIC, once again by-passing the statutory first appeal provided under the RTI Act. This appeal was registered as complaint case No. CIC/SG/C/2009/000753.

6. Before the CIC, the petitioners contended that the information which could be accessed by any person by resort to Section 610 of the Companies Act is information which is already placed in the public domain, and it cannot be said that the said information is "held by" or is "under the control" of the public authority. It was contended that such information, as has already been placed in the public domain, does not fall within the scope of the RTI Act and a citizen cannot by-pass the procedure, and avoid paying the charges prescribed for accessing the information placed in the public domain, by resort to provisions of the RTI Act.

7. In support of their submissions, before the CIC the petitioners placed reliance on a departmental circular No. 1/2006 issued by the Ministry of Company Affairs, wherein the view taken by the Director, Inspection & Investigation was that in the light of the provisions of Section 610 of the Companies Act read with Companies (Central Government's) General Rules & Forms, 1956 (Rules), framed in exercise of powers conferred under clauses (a) & (b) of sub-Section 1 of Section 642 of the Companies Act, the documents filed by the Companies pursuant to various provisions of the Companies Act with the ROC are to be treated as information in the public domain. It was also his view that there being a complete mechanism provided under the provisions of the Companies Act for accessing information relating to documents filed, which are in public domain, on payment of fees

prescribed under the Companies Act and the Rules made thereunder, such information could not be treated as information held by, or under the control of, the public authority. His view was that the provisions of RTI Act could not be invoked for seeking copies of such information by the public.

8. The petitioners also placed reliance on various earlier orders passed by the different CICs, upholding the aforesaid stand of the ROC and, in particular, reliance was placed on the decision of Sh. A.N. Tiwari, Central Information Commissioner in F.No. CIC/80/A/2007/000112 decided on 12.04.2007. Reference was also made to various orders of Prof. M.M. Ansari, Central Information Commissioner taking the same view. The petitioner has placed all these orders before this Court as well, as Annexure A-7(Colly.)

9. The first submission of learned counsel for the petitioners is that, while passing the impugned orders, the Central Information Commissioner Sh. Shailesh Gandhi has acted with impropriety. Despite the earlier orders of two Central Information Commissioners – taking the view that the information placed by the petitioner-ROC in the public domain and accessible under Section 610 of the Companies Act are out of the purview of the RTI Act, being specifically brought to his notice, he has simply brushed them aside after noticing them by observing that he differs with these decisions. It is submitted that

even if Sh. Shailesh Gandhi, Central Information Commissioner, was of the opinion that the earlier views taken by two other learned CICs were not correct, the proper course of action for him to adopt would have been to record his reasons for not agreeing with the earlier views of the Central Information Commissioners, and to refer the said issue for determination by a larger bench of the Central Information Commission. Sitting singly, Sh. Shailesh Gandhi, Central Information Commissioner, could not have taken a contrary view by merely observing that he disagrees with the earlier views.

10. The further submission of learned counsel for the petitioners is that, even on merits, the view taken by the CIC in the impugned orders is illegal and not correct. It is argued that Clause (a) of Section 610 (1) of the Companies Act, inter alia, entitles “any person” to inspect any document kept by the Registrar, which may have been filed or registered by him in pursuance of the Companies Act, or may inspect any document, wherein the Registrar has made a record of any fact required or authorized to be recorded to be registered in pursuance of the Companies Act, on payment for each inspection of such fee, as may be prescribed.

11. Further, by virtue of Clause (b) of Section 610 (1) any person can require the Registrar to provide certified copies of the Certificate of Registration of any company, or a copy or extract of any other

document, or any part of any other document, on payment in advance of such fee, as may be prescribed. It is submitted that the Registrar of Companies has placed all its records pertaining to, and in relation to the companies registered with it in the public domain. They have either been placed on the website of the ROC, or are available for inspection at the facility of the ROC. Any person can inspect such records either on-line, or at the facility of the petitioner-ROC and if the person so desires, can also obtain copies of all or any of such documents on payment of charges, as prescribed under the Rules.

12. Learned counsel for the petitioners submits that the Companies (Central Government's) General Rules & Forms, 1956, which have been framed in exercise of the power conferred upon the Central Government by clauses (a) & (b) of sub-Section (1) of Section 642 of the Companies Act, prescribe the fees for inspection of document and for obtaining certified copies thereof in Rule 21 A, which reads as follows:

> *"21A. Fees for inspection of documents etc.—The fee payable in pursuance of the following provisions of the Act, shall be—*
>
> | | | |
> |---|---|---|
> | *(1)* | *Clause (a) of sub-section (1) of section 118* | *rupees ten.* |
> | *(2)* | *Clause (b) of sub-section (1) of section 118* | *rupee one.* |
> | *(3)* | *Sub-section (2) of section 144* | *rupees ten.* |
> | *(4)* | *Clause (b) of sub-section (2) of section 163* | *rupees ten.* |

(5)	*Clause (b) of sub-section (3) of section 163*	*rupee one.*
(6)	*Sub-section (2) of section 196*	*rupee one.*
(7)	*Clause (a) of sub-section (1) of section 610*	*rupees fifty.*
(8)	*Clause (b) of sub-section (1) of section 610—*	
	(i) For copy of certificate of incorporation	*rupees fifty.*
	(ii) For copy of extracts of other documents including hard copy of such documents on computer readable media	*rupees twenty five per page."*

13. Learned counsel submits that there are two kinds of information available with the ROC. The first is the information/ documents, which the ROC is obliged to receive, record and maintain under the provisions of the Companies Act, and the second kind of information relates to the administration and functioning of the office of the ROC. The first kind of information, i.e., the returns, forms, statements, etc. received, recorded and maintained by the ROC in relation to the companies registered with it, is all available for inspection, and the certified copies thereof can be obtained by resort to Section 610 of the Companies Act and the aforesaid Rules. He submits that since this information is already in the public domain, same cannot be said to be information held by, or in the control of the public authority, i.e., ROC. He submits that it is the second kind of information, as aforesaid, which a citizen can seek by invoking provisions of the RTI Act from the ROC, and not the first kind of information which, in any event, is already available in

the public domain, and accessible to one and all, including non-citizens.

14. He submits that the right to information vested by Section 3 of the RTI Act is available only to citizens. However, the right vested by virtue of Section 610 of the Companies Act can be exercised by any person, whether, or not, he is a citizen of India. Therefore, the right vested by Section 610 of the Companies Act is much wider in its scope than the right vested by Section 3 of the RTI Act. It is argued that the object of the RTI Act is to enable the citizens to access information so as to bring about transparency in the functioning of public authorities, which is considered vital to the functioning of democracy and is also essential to contain corruption and to hold governments and their instrumentalities accountable to those who are governed, i.e., the citizens. The information accessible under Section 610 is, in any event, freely available and all that the person desirous of accessing such information is required to do, is to make the application in terms of the said provision and the Rules, to become entitled to receive the information.

15. Learned counsel submits that the fees prescribed for provision of information under the RTI Act is nominal and much less compared to the fees prescribed under Rule 21 A. Learned counsel for the petitioners submits that the petitioners have consciously prescribed

the fees under the RTI Act as a nominal amount of Rs.10/- per application since the petitioner-ROC does not wish to make it inconvenient or difficult for the citizens to obtain information held by or under the control of the ROC under the said Act. However, the said provision cannot be exploited or misused by a citizen for the purpose of seeking information, which is available in the public domain and is accessible under Section 610 of the Companies Act by payment of prescribed fee under Rule 21 A of the aforesaid Rules.

16. On the other hand, the submission of learned counsel for the respondent-querist is that the provisions of the RTI Act 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 the RTI Act itself. In this respect reference is made to Section 22 of the RTI Act. It is, therefore, argued that a citizen has an option to seek information from the ROC, either by resort to Section 610 of the Companies Act or by resort to the provisions of the RTI Act. Merely because Section 610 exists on the Statute Book, it does not mean that the right available under the RTI Act to seek information can be curtailed or denied.

17. Learned counsel for the respondent further submits that under Section 610 of the Companies Act, a person can access only such

information which has been filed or registered by him (i.e., the person seeking the information), in pursuance of the Companies Act. He submits that the expression *"being documents filed or registered by him in pursuance of this Act"* used in Section 610(1)(a) of the Companies Act connect with the words *"any person"* and not with the words *"inspect any documents kept by the Registrar"*.

18. Section 610 of the Companies Act, 1956 reads as follows:

> "*610. Inspection, production and evidence of documents kept by Registrar.*
>
> *(1) [Save as otherwise provided elsewhere in this Act, any person may]-*
>
> *(a) inspect any documents kept by the Registrar [in accordance with the rules made under the Destruction of Records Act, 1917] being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection, of [such fees as may be prescribed];*
>
> *(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, [on payment in advance of [such fees as may be prescribed:]*
>
> *Provided that the rights conferred by this sub-section shall be exercisable-*
>
> *(i) in relation to documents delivered to the Registrar with a prospectus in pursuance of sub-clause (i) of clause (b) of sub-section (1) of section 60, only during the fourteen days beginning with the date of publication of the prospectus; and at other times, only with the permission of the Central Government; and*

(ii) in relation to documents so delivered in pursuance of clause (b) of sub-section (1) of section 605, only during the fourteen days beginning with the date of the prospectus; and at other times, only with the permission of the Central Government.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court [or the [Tribunal]] except with the leave of that Court [or the [Tribunal]] and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court [or the [Tribunal]].

(3) A copy of, or extract from, any document kept and registered at any of the officers for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document".

19. The submission of learned counsel for the respondent that only the person who has filed documents with the Registrar of Companies is entitled to inspect the same is wholly fallacious and deserves to be outrightly rejected. This interpretation is clearly not borne out either from the plain language of section 610 or upon a scrutiny of the object and purpose of the said provision. Section 610 enables "any person" to inspect any documents kept by the registrar, being documents "filed or registered by him in pursuance of this Act". The obligation to file and register the documents, which may be submitted by a company registered, or seeking registration with the Registrar of Companies, is that of the Registrar of Companies. It is the Registrar, who makes a

record of any fact required or authorized to be recoded or registered in pursuance of the Companies Act, and not “any person”.

20. If the submission of learned counsel for the respondent were to be accepted, it would mean that it is the applicant under section 610, who is obliged to make a record of any fact required, or authorized to be recorded or registered in pursuance of the Companies Act, which is not the case. It is also not the obligation of “any person” either to file, or to receive and put on record, or to register, the documents lodged by him in the office of the ROC. That is the obligation of the Registrar of Companies. The whole purpose of section 610 is to bring about full and complete transparency in the matter of registration of companies and in the matter of their accounts and directorship, so that any person can obtain all the relevant information in relation to any registered company.

21. Pertinently, the language used in clause (b) does not support the submission of the respondent at all. If the submission of learned counsel for the respondent were to be accepted, it would mean that while a person can inspect only those documents which he has lodged in the office of the Registrar of Companies (by virtue of clause (a)), at the same time, under clause (b) of section 610(1), he can obtain the certificate of incorporation of any company, or a copy or extract of any other document or any part of any other document duly certified by

the Registrar.

22. Section 610(2) puts a check on issuance of a process for compelling the production of any document by the Registrar, by any Court or Tribunal. It requires that such process would not be issued except with the leave of the Court or the Tribunal. This check has been placed, since any person can obtain information either through inspection, or by obtaining certified copies of documents filed by any company, by following the procedure prescribed, and a certified true copies of any such documents or extracts is admissible in evidence in all legal proceedings, and has the same efficacy and validity as the original documents filed and registered by the Registrar of Companies (see section 610(3)).

23. There can be no doubt that the documents kept by the Registrar, which are filed or registered by him, as well as the record of any fact required or authorized to be recorded by the Registrar or registered in pursuance of the Companies Act qualifies as "information" within the meaning of that expression as used in Section 2(f) of the RTI Act. However, the question is — whether the mere fact that the said documents/record constitutes "information", is sufficient to entitle a citizen to invoke the provisions of the RTI Act to access the same?

24. The Parliament has defined the expression "right to information" under Section 2(j). The same reads as follows:

> *"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;"*

25. The right to information is conferred by section 3 of the RTI Act, which reads as follows:

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

26. Pertinently, the Parliament did not use the language in Section 3: *"Subject to the provisions of this Act, citizens shall have a right to access all information",* or the like. Therefore, the right conferred by Section 3 of the RTI Act, which is the substantive provision, means the right to information "*accessible under the Act which is held by or under the control of any public authority and includes ....".*

27. It is not without any purpose that the Parliament took the trouble of defining "right to information". Parliament does not undertake a casual or purposeless legislative exercise. The definition of "right to information" specifically qualifies the said right with the words:

(1) "*accessible under this Act*", and;

(2) *"which is held by or under the control of any public authority"*.

28. The information should, firstly, be accessible under this Act. This means that if there is information which is not accessible under this Act, there is no "right to information" in respect thereof. Consequently, there is no right to information in respect of information, which is exempted from disclosure under Section 8 or Section 9 of the RTI Act.

29. A particular information may not be held by, or may not be under the control of the public authority concerned. There would be no right in a citizen to seek such information from that particular public authority, though he may have the right to seek the same information from another public authority who holds or under whose control the desired information resides. That is why Section 6(3) provides that an application to seek 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, shall be transferred to that other public authority.

30. But is that all to the expression "*held by or under the control of any public authority*" used in the definition of "Right to information" in

Section 2(j) of the RTI Act?

31. In the context of the object of the RTI Act, and the various provisions thereof, in my view, the said expression "*held by or under the control of any public authority*" used in section 2(j) of the RTI Act deserves a wider and a more meaningful interpretation. The expression "Hold" is defined in the Black's Law dictionary, 6th Edition, inter alia, in the same way as "*to keep*" i.e. to retain, to maintain possession of, or authority over.

32. The expression "held" is also defined in the Shorter Oxford Dictionary, inter alia, as "*prevent from getting away; keep fast, grasp, have a grip on*". It is also defined, inter alia, as "*not let go; keep, retain".*

33. The expression "control" is defined in the Advanced Law Lexicon by P.N. Ramanatha Aiyar 3rd Edition Reprint 2009 and it reads as follows:

> *"(As a verb) To restrain; to check; to regulate; to govern; to keep under check; to hold in restraint; to dominate; to rule and direct; to counteract; to exercise a directing, restraining or governing influence over; to govern with reference thereto; to subject to authority; to have under command, and authority over, to have authority over the particular matter. (Ame. Cyc)"*

34. From the above, it appears that the expression "held by" or "under the control of any public authority", in relation to "information",

means that information which is held by the public authority under its control to the exclusion of others. It cannot mean that information which the public authority has already "let go", i.e. shared generally with the citizens, and also that information, in respect of which there is a statutory mechanism evolved, (independent of the RTI Act) which obliges the public authority to share the same with the citizenry by following the prescribed procedure, and upon fulfillment of the prescribed conditions. This is so, because in respect of such information, which the public authority is statutorily obliged to disseminate, it cannot be said that the public authority "holds" or "controls" the same. There is no exclusivity in such holding or control. In fact, the control vests in the seeker of the information who has only to operate the statutorily prescribed mechanism to access the information. It is not this kind of information, which appears to fall within the meaning of the expression "right to information", as the information in relation to which the "right to information" is specifically conferred by the RTI Act is that information which *"is held by or under the control of any public authority"*.

35. The mere prescription of a higher charge in the other statutory mechanism (in this case Section 610 of the Companies Act), than that prescribed under the RTI Act does not make any difference whatsoever. The right available to any person to seek inspection/copies of documents under Section 610 of the Companies

Act is governed by the Companies (Central Government's) General Rules & Forms, 1956, which are statutory rules and prescribe the fees for inspection of documents, etc. in Rule 21A. The said rules being statutory in nature and specific in their application, do not get overridden by the rules framed under the RTI Act with regard to prescription of fee for supply of information, which is general in nature, and apply to all kinds of applications made under the RTI Act to seek information. It would also be complete waste of public funds to require the creation and maintenance of two parallel machineries by the ROC – one under Section 610 of the Companies Act, and the other under the RTI Act to provide the same information to an applicant. It would lead to unnecessary and avoidable duplication of work and consequent expenditure.

36. The right to information is required to be balanced with the need to optimize use of limited fiscal resources. In this context I may refer to the relevant extract of the Preamble to the RTI Act which, inter alia, provides:-

> *"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 confidentially of sensitive information;*
>
> *AND WHEREAS* ***it is necessary to harmonise these conflicting interests*** *while preserving the paramountancy of the democratic ideal;"* (emphasis supplied).

37. Section 4(1)(a) also lays emphasis on availability of recourses, when it talks about computerization of the records. Therefore, in the exploitation and implementation of the RTI Act, a delicate and reasonable balance is required to be maintained. Nobody can go overboard or loose ones equilibrium and sway in one direction or assume an extreme position either in favour of upholding the right to information granted by the RTI Act, or to deny the said right.

38. The Supreme Court in ***The Institute of Chartered Accountants of India Vs. Shaunak H. Satya & Others,*** *Civil Appeal No. 7571/2011 decided on 02.09.2011,* observed 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.****"*(emphasis supplied).

39. Therefore, if another statutory provision, created under any other law, vests the right to seek information and provides the mechanism for invoking the said right (which is also statutory, as in this case) that mechanism should be preserved and operated, and not destroyed

merely because another general law created to empower the citizens to access information has subsequently been framed.

40. Section 4 of the RTI Act obliges every public authority, inter alia, to publish on its own, information described in clause (b) of sub-Section (1) of Section 4. Sub-clause (xv) of clause (b) obliges the public authority to publish *"the particulars of facilities available to citizens for obtaining information ...."*. In the present case, the facility is made available – not just to citizens but to any person, for obtaining information from the ROC, under Section 610 of the Companies Act, and the Rules framed thereunder above referred to. Section 4(2) of the RTI Act itself postulates that in respect of information provided by the public authority *suo moto*, there should be minimum resort to use of the RTI Act to obtain information.

41. The submission of learned counsel for the respondent founded upon Section 22 of the RTI Act also has no merit. Section 22 of the RTI Act reads as follows:

> *"22. The provisions of this 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 this Act."*

42. Firstly, I may notice that I do not find anything inconsistent between the scheme provided under Section 610 of the Companies Act

and the provisions of the RTI Act. Merely because a different charge is collected for providing information under Section 610 of the Companies Act than that prescribed as the fee for providing information under the RTI Act does not lead to an inconsistency in the provisions of these two enactments. Even otherwise, the provisions of the RTI Act would not override the provision contained in Section 610 of the Companies Act. Section 610 of the Companies Act is an earlier piece of legislation. The said provision was introduced in the Companies Act, 1956 at the time of its enactment in the year 1956 itself. On the other hand, the RTI Act is a much later enactment, enacted in the year 2005. The RTI Act is a general law/enactment which deals with the right of a citizen to access information available with a public authority, subject to the conditions and limitations prescribed in the said Act. On the other hand, Section 610 of the Companies Act is a piece of special legislation, which deals specifically with the right of any person to inspect and obtain records i.e. information from the ROC. Therefore, the later general law cannot be read or understood to have abrogated the earlier special law.

43. The Supreme Court in ***Ashoka Marketing Limited and Another Vs. Punjab National Bank and Others****, (1990) 4 SCC 406,* applied and explained the legal maxim: *leges posteriors priores conterarias abrogant*, (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim: *generalia specialibus non derogant*, (a general provision does not derogate from

a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34). One of the principles of statutory interpretation is that the later law abrogates earlier contrary laws. This principle is subject to the exception embodied in the second latin maxim mentioned above. The Supreme Court in paragraphs 50-52 of this decision held as follows:

> *"50. One such principle of statutory interpretation which is applied is contained in the latin maxim: leges posteriors priores conterarias abrogant, (later laws abrogate earlier contrary. laws). This principle is subject to the exception embodied in the maxim: generalia specialibus non derogant, (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation p. 433-34).*
>
> *51. The rationale of this rule is thus explained by this Court in the J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. The State of Uttar Pradesh & Others, [1961] 3 SCR 185:*
>
> > *"The rule that general provisions should yield to specific provisions is not an arbitrary principle made by lawyers and judges but springs from the common understanding of men and women that when the same person gives two directions one covering a large number of matters in general and another to only some of them his intention is that these latter directions should prevail as regards these while as*

regards all the rest the earlier directions should have effect."

52. In U.P. State Electricity Board v. Hari Shankar Jain, [1979] 1 SCR 355 this Court has observed:

"*In passing a special Act, Parliament devotes its entire consideration to a particular subject. When a general Act is subsequently passed, it is logical to presume that Parliament has not repealed or modified the former special Act unless it appears that the special Act again received consideration from Parliament.*" *"*

44. Justice G.P. Singh in his well-known work *"Principles of Statutory Interpretation 12th Edition 2010"* has dealt with the principles of interpretation applicable while examining the interplay between a prior special law and a later general law. While doing so, he quotes Lord Philimore from ***Nicolle Vs. Nicolle,*** *(1922) 1 AC 284,* where he observed:

"it is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. This, as a matter of jurisprudence, as understood in England, has been laid down in a great number of cases, whether the prior law be an express statute, or be the underlying common or customary law of the country. Where general words in a later Act are capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, that earlier and special legislation is not to be held indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so."

45. The Supreme Court in ***R.S. Raghunath Vs. State of Karnataka & Another,*** *(1992) 3 SCC 335,* quotes from Maxwell on The Interpretation of Statutes, the following passage:

> "*A general later law does not abrogate an earlier special one by mere implication. Generalia specialibus non derogant, or, in other words, where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the special Act.*"

46. This principle has been applied in ***Maharaja Pratap Singh Bahadur Vs. Thakur Manmohan Dey & Others,*** *AIR 1996 SC 1931* as well. Therefore, Section 22 of the RTI Act, in any event, does not come in the way of application of Section 610 of the Companies Act, 1956.

47. Now, I turn to consider the submission of learned counsel for the petitioner that the Central Information Commissioner Sh. Shailesh Gandhi has acted with impropriety while passing the impugned order, by disregarding the earlier orders of the other Central Information Commissioners and by taking a decision contrary to them without even referring the matter to a larger bench.

48. In ***Sh. K. Lall Vs. Sh. M.K. Bagri, Assistant Registrar of Companies & CPIO,*** *F. No. CIC/AT/A/2007/00112,* the Central Information Commissioner Sh. A.N. Tiwari squarely considered the very same issue with regard to the interplay between Section 610 of the Companies Act and the rights of a citizen to obtain information under the RTI Act. Sh. A.N. Tiwari by a detailed and considered decision held that information which can be accessed by resort to Section 610 of the Companies Act cannot be accessed by resort to the provisions of the RTI Act. The discussion found in his aforesaid order on this legal issue reads as follows:

> *"9. It shall be interesting to examine this proposition. Section 2(j) of the RTI Act speaks of "the right to information accessible under this Act which is held by or under the control of any public authority……". The use of the words "accessible under this Act"; "held by" and "under the control of" are crucial in this regard. The inference from the text of this sub-section and, especially the three expressions quoted above, is that an information to which a citizen will have a right should be shown to be a) an information which is accessible under the RTI Act and b) that it is held or is under the control of a certain public authority. This should mean that unless an information is exclusively held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control of' the public authority and, thus would cease to be an information accessible under the RTI Act. This interpretation is further strengthened by the provisions of the RTI Act in Sections 4(2), 4(3) and 4(4), which oblige the public authority to constantly endeavour "to take steps in accordance with the requirement of clause b of subsection 1 of the Section 4 to provide as*

much information suo-motu to the public at regular intervals through various means of communication including internet, so that the public have minimum resort to the use of this Act to obtain information." (Section 4 sub-section 2). This Section further elaborates the position. It states that "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." The explanation to the subsection 4 section 4 goes on to further clarify that the word "disseminated" used in this Section would mean the medium of communicating the information to the public which include, among others, the internet or any other means including inspection of office of any public authority.

10. It is significant that the direction regarding dissemination of information through free or priced documents, or free or priced access to information stored on internet, electronic means, or held manually; free or on payment of predetermined cost for inspection of such documents or records held by public authorities, appear in a chapter on 'obligations of public authorities'. The inference from these sections is a) it is the obligation of the public authorities to voluntarily disseminate information so that "the public have minimum resort to the use of this Act to obtain information", b) once an information is voluntarily disseminated it is excluded from the purview of the RTI Act and, to that extant, contributes to minimizing the resort to the use of this Act, c) there is no obligation cast on the public authority to disseminate all such information free of cost. The Act authorizes the public authorities to disclose such information suo-motu "at such cost of a medium or the print cost price as may be prescribed", d) the RTI Act authorizes the public authority to price access to the information which it places in the public domain suo-motu.

11. These provisions are in consonance with the wording of the Section 2(j) which clearly demarcates the boundary between an information held or under the control of the public authority and, an information not so held, or under the control of that public authority who suo-motu places

that information in public domain. It is only the former which shall be "accessible under this Act" — viz. the RTI Act and, not the latter. This latter category of information forms the burden of sub-section 2, 3 and 4 of Section 4 of this Act.

12. The RTI Act very clearly sets the course for the evolution of the RTI regime, which is that less and less information should be progressively held by public authorities, which would be accessed under the RTI Act and more and more of such held information should be brought into the public domain suo-motu by such public authority. Once the information is brought into the public domain it is excluded from the purview of the RTI Act and, the right to access this category of information shall be on the basis of whether the public authority discloses it free, or at such cost of the medium or the print cost price "as may be prescribed". The Act therefore vests in the public authority the power and the right to prescribe the mode of access to voluntarily disclosed information, i.e. either free or at a prescribed cost / price.

13. The respondents are right therefore in arguing that since they had placed in the public domain a large part of the information requested by the appellant and prescribed the price of accessing that information either on the internet or through inspection of documents, the ground rules of accessing this information shall be determined by the decision of the public authority and not the RTI Act and the Rules. That is to say, such information shall not be covered by the provisions about fee and cost of supply of information as laid down in Section 7 of the RTI Act and the Rules thereof.

14. It is, therefore, my view that it should not only be the endeavour of every public authority, but its sacred duty, to suo-motu bring into public domain information held in its control. The public authority will have the power and the right to decide the price at which all such voluntarily disclosed information shall be allowed to be accessed.

15. There is one additional point which also needs to be considered in this matter. The appellant had brought up the issue of the overarching power of the RTI Act under Section 22. This Section of the Act states that the provisions of the 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 this Act. In his view, the pricing of the access to the records and information by the public authority at a scale different from the rates / fees for accessing the information prescribed under the Act amounts to inconsistency. A closer look at the provision shows that this is not so. As has been explained in the preceding paragraphs, the fees prescribed for access to information under the RTI Act applies only to information 'held' or 'under the control of' the public authority. It does not apply inferentially to the information not held or not under the control of the public authority having been brought into the public domain suo-motu in terms of sub-section 3 of Section 4. The price and the cost of access of information determined by the public authority applies to the latter category. As such, there is no inconsistency between the two provisions which are actually parallel and independent of each other. I therefore hold that no ground to annul the provision of pricing the information which the public authority in this case has done, exists.

16. In my considered view, therefore, the CPIO and the AA were acting in consonance with the provision of this Act when they called upon the appellant to access the information requested and not otherwise supplied to him by the CPIO, by paying the price / cost as determined by the public authority."

49. This view was followed by Sh. A.N. Tiwari in a subsequent order dated 29.08.2007 in ***"Shri Shriram (Dada) Tichkule Vs. Shri P.K. Galchor, Assistant Registrar of Companies & PIO".*** The same view was taken by another Central Information Commissioner namely, Prof. M.M. Ansari in his orders dated 29.03.2006 in ***Arun Verma Vs. Department of Company Affairs***, *Appeal No. 21/IC(A)/2006,* and in the case of ***Sh. Sonal Amit Shah Vs. Registrar of Companies***, *Decision No. 2146/IC(A)/2008 dated 31.03.2008,* and various others,

copies of which have been placed on record. It appears that all these decisions were cited before learned Central Information Commissioner Sh. Shailesh Gandhi. In fact, in the impugned order, he also refers to these decisions and states that *"I would respectfully beg to differ from this decision"*.

50. The Central Information Commission while functioning under the provisions of the RTI Act, no doubt, do not constitute a Court. However, there can be no doubt about the fact that Central Information Commission functions as a quasi-judicial authority, as he determines inter se rights and obligations of the parties in relation to the grant of information, which may entail civil and other consequences for the parties.

51. This Court in ***Union Public Service Commission Vs. Shiv Shambhu & Others,*** *L.P.A. No. 313/2007 decided on 03.09.2008*, while dealing with the issue whether the Central Information Commissioner should be impleaded as a party respondent in proceedings challenging its order and whether the Central Information Commission has a right of audience to defend its order before this Court in writ proceedings, observed as follows:

> *"2. At the outset this Court directs the deletion of the CIC which has been arrayed as Respondent No. 1 to this appeal, consequent upon it being arrayed as such in the writ petition. This Court has repeatedly issued practice directions stressing that a judicial or quasi-judicial body or Tribunal whose order is challenged in a writ petition (and*

thereafter possibly in appeal) ought not to itself be impleaded as a party respondent. The only exception would be if malafides are alleged against any individual member of such authority or Tribunal in which case again it would be such member, and not the authority/Tribunal, who may be impleaded as a respondent. Accordingly the cause title of the present appeal will read as ***Union Public Service Commission v. Shiv Shambhu & Ors.****"*

52. This decision has subsequently been followed in ***State Bank of India Vs. Mohd. Shahjahan****, W.P.(C.) No. 9810/2009*, wherein the Court held as follows:

"12. This Court is unable to accept the above submission. There is no question of making the CIC, whose order is under challenge in this writ petition, a party to this petition. Like any other quasi-judicial authority, the CIC is not expected to defend its own orders. Likewise, the CIC cannot be called upon to explain why it did not follow any of its earlier orders. That the CIC should not be made a party in such proceedings is settled by the judgment of the Division Bench in this Court in ***Union Public Service Commission v. Shiv Shambu 2008 IX (Del) 289.****"*

53. It is, therefore, a well-recognised position that the CIC discharges quasi-judicial functions while deciding complaints/appeals preferred by one or the other party before it.

54. It is a well-settled canon of judicial discipline that a bench dealing with a matter respects an earlier decision rendered by a coordinate bench (i.e., a bench of same strength), and is bound by the decision of a larger bench. If this discipline is breached, the same would lead to complete chaos and confusion in the minds of the

litigating public, as well as in the minds of others such as lawyers, other members/judges of quasi-judicial/judicial bodies, and the like. Breach of such discipline would result in discrimination and would shake the confidence of the consumers of justice. There can be no greater source of discomfiture to a litigant and his counsel, than to have to deal with diametrically opposite views of coordinate benches of the same judicial /quasi-judicial body. If the emergence of contradictory views is innocent i.e. due to ignorance of an earlier view, it is pardonable, but when such a situation is created consciously, with open eyes, and after having been put to notice, the judge/authority responsible for the later view should take the blame for creating confusion and for breaching judicial discipline.

55. The Supreme Court in ***Dr. Vijay Laxmi Sadho Vs. Jagdish***, *(2001) 2 SCC 247*, deprecated such lack of judicial discipline by observing as follows:

> *"33. As the learned Single Judge was not in agreement with the view expressed in Devilal's case, Election Petition No. 9 of 1980, it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed.* ***It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of***

law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs." (emphasis supplied)

56. In the present case, the Central Information Commissioner Mr.Shailesh Gandhi has also demonstrated complete lack of judicial discipline while rendering the impugned decisions. By no stretch of imagination, it cannot be said that the earlier decisions were not on the point. Particularly, the decision rendered by Sh. A.N. Tiwari in F. CIC/T/A/2007/0012 dated 12.04.2007 directly deals with the very same issue, and is an exhaustive, and detailed and considered decision. If the Central Information Commissioner Sh. Shailesh Gandhi had a different view in the matter – which he was entitled to hold, judicial discipline demanded that he should have recorded his disagreement with the view of Sh. A.N. Tiwari, Central Information Commissioner, and, for reasons to be recorded by him, required the constitution of a larger bench to re-examine the issue. He could not have ridden rough shot over the earlier decisions of Sh. A.N. Tiwari and Prof. M.M. Ansari, particularly when he was sitting singly to consider the same issue of law.

57. The consequence of the improper conduct of Sh. Shailesh Gandhi, Central Information Commissioner, is that there are now two sets of conflicting orders- taking diametrically opposite views, on the issue aforesaid. Therefore, unless the said legal issue is settled one

way or the other by a higher judicial forum, it would be open to any other Information Commissioner to choose to follow one or the other view. This would certainly lead to confusion and chaos. It would also lead to discrimination between the querists/public authority, who are either seeking information or are defending the action under the RTI Act. One such instance, cited by learned counsel for the petitioner is in the case of ***Smt. Dayawati Vs. Office of Registrar of Companies****, in CIC/SS/C/2011/000607 decided on 23.03.2012*. In this case, once again the same issue had been raised. The Central Information Commissioner Smt. Sushma Singh has preferred to follow the view of Sh. A.N. Tiwari in the case of ***K. Lall Vs. Ministry of Company Affairs****, Appeal No. CIC/AT/A/2007/00112 dated 14.04.2007*.

58. On this short ground alone, the impugned orders of the learned Central Information Commissioner deserve to be quashed and set aside.

59. The reasoning adopted by Shri Shailesh Gandhi, the learned Central Information Commissioner for taking a view contrary to that taken by Sh. A.N. Tiwari in his order dated 12.04.2007 (which has been extracted hereinabove), does not appeal to me. The view taken by Sh.A.N. Tiwari, Central Information Commissioner appeals to this Court in preference to the view taken by Sh. Shailesh Gandhi, Central Information Commissioner in the impugned orders. The impugned

orders do not discuss, analyse or interpret the expression "right to information" as defined in Section 2(j) of the RTI Act. They do not even address the aspect of Section 610 of the Companies Act being a special law as opposed to the RTI Act.

60. I may also observe that the approach of the Central Information Commission in seeking to invoke Section 20 of the RTI Act in the facts of the present case is wholly unjustified. By no stretch of imagination could it have been said that PIOs of the ROC had acted "*without any reasonable cause*" or "*malafidely denied the request for information or knowingly* gave incorrect, incomplete or misleading information, or destroyed information, which was the subject of the request, or obstructed in any manner the furnishing of information". The PIOs were guided by the departmental circular No. 1/2006 dated 24.01.2006 in the view that they communicate to the respondent-querist. This view was taken by none other than the Director Inspection & Investigation in the Ministry of Company Affairs, Government of India and circulated to all Regional Directors of Registrar of Companies and all Official Liquidators. There was nothing before the PIOs to suggest that the said view had been disproved by any judicial or quasi-judicial authority. Clearly, the PIOs acted bonafide and without any malice.

61. Even if it were to be assumed for the sake of argument, that the view taken by the learned Central Information Commissioner in the impugned order was correct, and that the PIOs were obliged to provide the information, which was otherwise retrievable by the querist by resort to Section 610 of the Companies Act, it could not be said that the information had been withheld malafide or deliberately without any reasonable cause. It can happen that the PIO may genuinely and bonafidely entertain the belief and hold the view that the information sought by the querist cannot be provided for one or the other reasons. Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show-cause notice under Section 20 of the RTI Act and the imposition of penalty. The legislature has cautiously provided that only in cases of malafides or unreasonable conduct, i.e., where the PIO, without reasonable cause refuses to receive the application, or provide the information, or knowingly gives incorrect, incomplete or misleading information or destroys the information, that the personal penalty on the PIO can be imposed. This was certainly not one such case. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with

objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute.

62. For all the aforesaid reasons, I allow the present petition and quash the impugned orders passed by Sh. Shailesh Gandhi, Central Information Commissioner. The parties are left to bear their respective costs.

(VIPIN SANGHI)
JUDGE

JUNE 01, 2012
'BSR'/sr

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WRIT PETITION (CIVIL) NO. 7265 OF 2007

Reserved on : 15th September, 2009.
% Date of Decision : 25th September, 2009.

POORNA PRAJNA PUBLIC SCHOOL ….Petitioner.

Through Mr. Maninder Singh, Sr. Advocate with Mr.Ankur S.Kulkarni, Mr.Nirnimesh Dube, advocates.

VERSUS

CENTRAL INFORMATION COMMISSION & OTHERS …..Respondents

Mr.Sanjeev Sabharwal, advocate for respondent no.2-GNCTD.
Mr.K.K. Nigam, advocate for respondent 3-CIC.
Mr.Tushti Chopra, advocate for respondent no.4.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J.:

1. The petitioner Poorna Prajna Public School is a private unaided school recognized under the Delhi School Education Act, 1973 (hereinafter referred to as DSE Act, for short). Mr. D.K.Chopra, respondent no.4 herein, father of a former student of the petitioner School, had filed an application under the Right to Information Act, 2005 (hereinafter referred to as the RTI Act, for short) before the Public Information Officer appointed by the Department of Education, Government of National Capital Territory of

Delhi(GNCTD, for short) on or about 18th September, 2006. Respondent no.4 had asked for the following information :-

> "1. Please provide me the information under RTI Act as to what decision were taken on my representations filed in your office Vasant Vihar file no.133/2005 and other offices. Why they were not communicated to me within stipulated period? What are the office rules?
>
> 2. MVS Thakur, Education Officer, told me on 25.1.2006 that they cannot interfere much in the non-aided school, but what is the role of your observer who was present in Executive Committee Meeting in Pooran Prajna Public School on 24.1.2006. If school does not do two meetings in a year what punishment can be given and who will give it.
>
> 3. I may be provided all copies of the minutes of the school since 1988 and action taken report."

2. Information in respect of query no.3 i.e. copies of the minutes of the managing committee were not available with the Department of Education. Accordingly, a request was sent by the Department of Education to the petitioner School. The petitioner School by their letter dated 30th August, 2007 submitted that they were a private unaided institution and not covered under the RTI Act and respondent no.4 had no *locus standi* to ask for information. It was pointed out that respondent no.4 had filed a writ petition in the High Court against the petitioner School which was dismissed. The petitioner also relied upon Rule 180(i) of the Delhi School Education Rules, 1973 (hereinafter referred to as DSE Rules, for short) and submitted that the information sought for cannot be furnished and was outside the purview of the RTI Act.

3. Not satisfied with the order passed by the public information officer, the respondent no.4 filed the first appeal and then approached the Central Information Commission (hereinafter referred to as CIC, for short).

4. The CIC by their impugned Order dated 12th September, 2007 has held that the petitioner School was indirectly funded by the Government as it enjoyed income tax concessions; was provided with land at subsidized rates etc. Further, the petitioner school was a 'public authority' as defined in Section 2(h) of the RTI Act. Lastly, the Information Commissioner has held that the public authority i.e. GNCTD can ask for information from the petitioner School and therefore the public information officer should have collected the information with regard to the minutes of the managing committee from the petitioner School and furnished the same to the respondent no.4. It was noted that all aided and unaided schools perform governmental function of promoting high quality education and further an officer of the GNCTD was nominated by the Directorate of Education as a member of the managing committee. GNCTD has control over the functioning of the private schools and has access to the information required to be furnished.

5. RTI Act was enacted in the year 2005 as a progressive and enabling legislation with the object of assigning meaningful role and providing access to the citizens. It ensures openness and transparency consistent with the concept of participatory democracy and constitutional right to seek information and be informed. It also ensures that the Government

and their instrumentalities are accountable to the governed and checks corruption, harassment and red-tapism.

6. The provisions of the RTI Act have not been challenged by the petitioner School in the present petition. The contentions raised and argued relate to interpretation of the provisions of RTI Act.

7. The terms "information" and "right to information" have been defined in Sections 2(f) and 2(j) of the RTI Act and read as under:-

> "**2(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"
>
> **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;"
>
> (emphasis supplied)

8. Information as defined in Section 2(f) means details or material available with the public authority. The later portion of Section 2(f)

expands the definition to include details or material which can be accessed under any other law from others. The two definitions have to be read harmoniously. The term "held by or under the control of any public authority" in Section 2(j) of the RTI Act has to be read in a manner that it effectuates and is in harmony with the definition of the term "information" as defined in Section 2(f). The said expression used in Section 2(j) of the RTI Act should not be read in a manner that it negates or nullifies definition of the term "information" in Section 2(f) of the RTI Act. It is well settled that an interpretation which renders another provision or part thereof redundant or superfluous should be avoided. Information as defined in Section 2(f) of the RTI Act includes in its ambit, the information relating to any private body which can be accessed by public authority under any law for the time being in force. Therefore, if a public authority has a right and is entitled to access information from a private body, under any other law, it is "information" as defined in Section 2(f) of the RTI Act. The term "held by the or under the control of the public authority" used in Section 2(j) of the RTI Act will include information which the public authority is entitled to access under any other law from a private body. A private body need not be a public authority and the said term "private body" has been used to distinguish and in contradistinction to the term "public authority" as defined in Section 2(h) of the RTI Act. Thus, information which a public authority is entitled to access, under any law, from private body, is information as defined under Section 2(f) of the RTI Act and has to be furnished.

9. It may be appropriate here to refer to the definition of the term "third party" in Section 2(n) of the RTI Act which reads as under:-

> "**2(n).** "third party" means a person other than the citizen making a request for information and includes a public authority."

10. Thus the term "third party" includes not only the public authority but also any private body or person other than the citizen making request for the information. The petitioner School, a private body, will be a third party under Section 2(n) of the RTI Act.

11. The above interpretation is in consonance with the provisions of Sections 11(1) and 19(4) of the RTI Act. Section 11 prescribes the procedure to be followed when a public information officer is required to disclose information which relates to or has been supplied by a third party and has been treated as confidential by the said third party. Section 19(4) stipulates that when an appeal is preferred before the CIC relating to information of a third party, reasonable opportunity of hearing will be granted to the third party before the appeal is decided. Third party as stated above includes a private body. As held above, a public authority is not a private body.

12. A private body or third party can take objections under Section 8 of the RTI Act before the public information officer or the CIC. In terms of Section 11(4) of the RTI Act, an order under Section 11(3) rejecting objections of the third party is appealable under Section 19 of the RTI Act before the CIC.

13. Information available with the public authority falls within section 2(f) of the RTI Act. The last part of section 2 (f) broadens the scope of the term 'information' to include information which is not available, but can be accessed by the public authority from a private authority. Such information relating to a private body should be accessible to the public authority under any other law. Therefore, section 2(f) of the RTI Act requires examination of the relevant statute or law, as broadly understood, under which a public authority can access information from a private body. If law or statute permits and allows the public authority to access the information relating to a private body, it will fall within the four corners of Section 2(f) of the RTI Act. If there are requirements in the nature of preconditions and restrictions to be satisfied by the public authority before information can be accessed and asked to be furnished from a private body, then such preconditions and restrictions have to be satisfied. A public authority cannot act contrary to the law/statute and direct a private body to furnish information. Accordingly, if there is a bar, prohibition, restriction or precondition under any statute for directing a private body to furnish information, the said bar, prohibition, restriction or precondition will continue to apply and only when the conditions are satisfied, the public authority is obliged to get information. Entitlement of the public authority to ask for information from a private body is required to be satisfied.

14. 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."

15. Section 22 of the RTI Act is an overriding clause but it does not modify any other statute or enactment, on the question of right and power of a public authority to call for information relating to a private body. A bar, prohibition or restriction in a statutory enactment, before information can be accessed by a public authority, continues to apply and is not obliterated by section 22 of the RTI Act. Section 2(f) of the RTI Act does not bring about any modification or amendment in any other enactment, which bars or prohibits or imposes pre-condition for accessing information from private bodies. Rather, it upholds and accepts the said position when it uses the expression "which can be accessed" i.e. the public authority should be in a position and entitled to ask for the said information. Section 22 of the RTI Act, an overriding provision does not mitigate against the said interpretation for there is no contradiction or conflict between the provisions of Section 2(f) of the RTI Act and other statutory enactments/law. Section 22 will apply only when there is a conflict between the RTI Act and Official Secrets Act or any other enactment. As a private body, the Petitioner School is entitled to plead that they cannot be compelled to furnish information because the public authority is not entitled to information/documents under the law. The petitioner school can also claim that information should not be furnished because it falls under any of the sub-clauses to Section 8 of the RTI Act. Any such claim, when made, has to be considered by the public information officer, first appellate authority and the CIC. In other words, a

private body will be entitled to the same protection as is available to a public authority including protection against unwarranted invasion of privacy unless there is a finding that the disclosure is in larger public interest.

16. Section 8 of the RTI Act is a non-obstante provision which applies notwithstanding other sections of the RTI Act. In other words, Section 8 over-rides other provisions of the RTI Act. Section 8 stipulates the exceptions or rules when information is not required to be furnished. Section 8 of the RTI Act is a complete code in itself. Section 8 does not modify the term "information" as defined in Section 2(f) of the RTI Act. Whether or not Section 8 applies is required to be examined when information under Section 2(f) is asked for. To deny "information" as defined in section 2(f), the case must be brought under any of the clauses of Section 8 of the RTI Act. "Right to information" under the RTI Act is a norm and Section 8 adumbrates exceptions i.e. when information is not to be supplied. It is not possible to accept the contention of the petitioner School that "information" as defined in Section 2(f) need not be furnished under the RTI Act for reasons and grounds not covered in Section 8. This will be contrary to the scheme of the RTI Act. Information as defined in Section 2(f) of the RTI Act is to be furnished and supplied, unless a case falls under sub-clauses (a) to (j) of Section 8(1) of the RTI Act. Thus all information including information furnished and relating to private bodies available with public authority is covered by Section 2(f) of the RTI Act. Further, information which a public authority can access under any other

law from a private body is also "information" under section 2(f). The public authority should be entitled to ask for the said information under law from the private body. Details available with a public authority about a private body are "information" and details which can be accessed by the public authority from a private body are also "information" but the law should permit and entitle the public authority to ask for the said details from a private body. Restrictions, conditions and prerequisites imposed and prescribed by law should be satisfied. The question whether information should be denied requires reference to Section 8 of the RTI Act.

17. Learned counsel for the petitioner School submitted that the Directorate of Education does not have an access to the minutes of the managing committee. Under Rule 180 (i) of the DSE Rules, the private unaided schools are required to submit return and documents in accordance with Appendix 2 thereto and minutes of the managing committee are not included in Appendix 2. Rule 180 (i) of the DSE Rules is not the only provision in the DSE Rules under which Directorate of Education are entitled to have access to the records of a private unaided school. Rule 50 of the DSE Rules, stipulates conditions for recognition of a private school and states that no private school shall be recognized or continue to be recognized unless the said school fulfills the conditions mentioned in the said Section. Clause (xviii) of Rule 50 of the DSE Rules reads as under:-

> "**50. Conditions for recognition.**- No private school shall be recognized, or continue to be

recognized, by the appropriate authority unless the school fulfills the following conditions, namely-

(i) - (xvii) x x x x x x

(xviii) the school furnishes such reports and information as may be required by the Director from time to time and complies with such instructions of the appropriate authority or the Director as may be issued to secure the continue fulfillment of the condition of recognition or the removal of deficiencies in the working of the school;"

18. Under Rule 50(xviii) of the DSE Rules, the Directorate of Education can issue instructions and can call upon the school to furnish information required on conditions mentioned therein being satisfied. Rule 50 therefore authorizes the public authority to have access to information or records of a private body i.e. a private unaided school. Validity of Rule 50(xviii) of the DSE Rules is not challenged before me. Under Section 5 of the DSE Act, each recognized school must have a management committee. The management committee must frame a scheme for management of the school in accordance with the Rules and with the previous approval of the appropriate authority. Rule 59(1)(b)(v) of the DSE Rules states that the Directorate of Education will nominate two members of the managing committee of whom one shall be an educationist and the other an officer of the Directorate of Education. Thus an officer of the Directorate of Education is to be nominated as a member of the management committee. Minutes of the management committee have to be circulated and sent to the officer of the Directorate of Education. Obviously, the minutes once circulated to the officer of the Directorate of Education have to be regarded as 'information' accessible to the Directorate of Education,

GNCTD. In these circumstances, it cannot be said that information in the form of minutes of the meeting of the management committee are not covered under Section 2(f) of the RTI Act.

19. In view of the above findings, the question whether the petitioner school is a public authority is left open and not decided.

Writ Petition has not merit and is accordingly dismissed. No costs.

(SANJIV KHANNA)
JUDGE

SEPTEMBER 25, 2009.
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **W.P.(C) 12428/2009 & CM APPL 12874/2009**

DEPUTY COMMISSIONER OF POLICE ..... Petitioner
Through Mr. Pawan Sharma, Standing counsel with Mr. Sanjay Lao, APP and Mr. Laxmi Chauhan, Advocate along with SI Anil Kumar, Anti Corruption Branch

versus

D.K.SHARMA ..... Respondent
In person.

CORAM: JUSTICE S. MURALIDHAR

O R D E R

% 15.12.2010

1. The Deputy Commissioner of Police, Anti Corruption Branch ('DCP') is aggrieved by an order dated 25th September 2009 passed by the Central Information Commission ('CIC') directing the Petitioner DCP to provide to the Respondent copies of the documents sought by him. These documents include certified copies of D.D. entry of arrest of the Respondent and various other documents relating to the investigation of the case, under FIR No. 52 of 2003. The CIC found the denial of the information by the Petitioner by taking recourse of Section 8 (1) of the Right to Information Act, 2005 ('RTI Act') to be untenable. It was held that none of the clauses under Section 8 (1) covered subjudice matters and therefore, the information could not be denied.

2. This Court has heard the submissions of Mr. Pawan Sharma, learned counsel appearing for the Petitioner, and the Respondent who appears in

person.

3. Mr. Pawan Sharma referred to Section 172 (2) of the Code of Criminal Procedure, 1973 ('CrPC') and submitted that copies of the case diary can be used by a criminal court conducting the trial and could not be used as evidence in the case. He submitted that even the accused was not entitled, as a matter of right, to a case diary in terms of Section 172 (2) CrPC and that the provisions of the RTI Act have to be read subject to Section 172 (2) CrPC. Secondly, it is submitted that the trial has concluded and the Respondent has been convicted. All documents relied upon by the prosecution in the trial were provided to the Respondent under Section 208 CrPC. The Respondent could have asked for the documents sought by him while the trial was in progress before the criminal court. He could not be permitted to invoke the RTI Act after the conclusion of the trial.

4. The Respondent who appears in person does not dispute the fact that the trial court has convicted him. He states that an appeal has been filed which is pending. He submits that his right to ask for documents concerning his own case in terms of the RTI Act was not subject to any of the provisions of the CrPC. Finally, it is submitted that no prejudice would be caused to the Petitioner at this stage, when the trial itself has concluded if the documents pertaining to the investigation are furnished to the Respondent.

5. The above submissions have been considered.

6. This Court is inclined to concur with the view expressed by the CIC that in

order to deny the information under the RTI Act the authority concerned would have to show a justification with reference to one of the specific clauses under Section 8 (1) of the RTI Act. In the instant case, the Petitioner has been unable to discharge that burden. The mere fact that a criminal case is pending may not by itself be sufficient unless there is a specific power to deny disclosure of the information concerning such case. In the present case, the criminal trial has concluded. Also, the investigation being affected on account of the disclosure information sought by the Respondent pertains to his own case. No prejudice can be caused to the Petitioner if the D.D. entry concerning his arrest, the information gathered during the course of the investigation, and the copies of the case diary are furnished to the Respondent. The right of an applicant to seek such information pertaining to his own criminal case, after the conclusion of the trial, by taking recourse of the RTI Act, cannot be said to be barred by any provision of the CrPC. It is required to be noticed that Section 22 of the RTI Act states that the RTI Act would prevail notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force.

7. Consequently, this Court is not inclined to interfere with the impugned order dated 25th September 2009 passed by the CIC.

8. The petition and the pending application are dismissed.

S.MURALIDHAR, J

DECEMBER 15, 2010
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement pronounced on:16.09.2013

\+ W.P.(C) 5959 of 2013

DIRECTORATE GENERAL
OF SECURITY AND ANR ..... Petitioners
Through: Mr. Ruchir Mishra & Mr. Sanjiv Saxena, Advs.

versus

HARENDER ..... Respondent
Through: Mr. Shanmuga Patro, Adv. with Respondent in person.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

The respondent before this Court is working with Aviation Research Centre, which is part of the Cabinet Secretariat. The respondent applied to the CPIO of the Cabinet Secretariat seeking photocopies of the proceedings and minutes of the DCPs held from 2000 to 2009 including of the file notings and correspondence led to the above-referred DPCs. The CPIO of the Cabinet Secretariat responded by claiming that the Right to Information Act, 2005 (for short 'RTI Act') did not apply to the Cabinet Secretariat. EA-II Section, since it was included in the Second Schedule appended to the RTI Act. The view taken by the CPIO was also maintained by the first appellate authority. Being aggrieved the respondent approached the Central Information Commission (for short 'CIC') by way of a second appeal. Allowing the appeal the CIC *inter alia* held as under:

> "4. During the hearing, the Respondents reiterated the same arguments. It is a fact that the public authority from which the information has been sought has been included in the second schedule. Ordinarily, the provisions of the Right to Information (RTI) Act would apply to it. However, in terms of first proviso to Section 24 (1) of the RTI Act, all information relating to the allegations of corruption and human rights violation will be provided. In this case, the Appellant, a member of the Schedule Caste alleged that the public authority has been extremely unfair to him in respect of his promotion and that it denied him promotion for a long period of time without explaining him the reasons thereby violating his human right. In the special circumstances, of this case wherein the information seeker is a member of the SC community alleging to have been deprived of his rights in a matter of promotion in the job place, we are inclined to treat this case as covered by the proviso to Section 24 (1) of the RTI Act and allow the information to be disposed. We, therefore, direct the CPIO to provide to the Appellant the desired information within 10 working days from the receipt of this order."

2. Being aggrieved from the order of the CIC, Directorate General of Security, Office of Director, Aviation Research Centre and CPIO of the Cabinet Secretariat are before this Court by way of this writ petition.

3. Section 24 of the RTI Act to the extent it is relevant reads as under:

> "**24. Act not to apply to certain organizations. –** (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government.
>
> Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:"

4. A perusal of the Second Schedule which enumerates the intelligence and security organisations established by the Central Government which are in Section 24 of the Act would show that Aviation Research Centre is

included in the said list at serial No.7. Admittedly the respondent was working in the Aviation Research Centre only. Therefore, the provisions of the RTI Act would not apply to the aforesaid organisation except in the matters relating to allegations of corruption and human rights violation. The information sought by the petitioner pertained to various DPCs held from 2000 to 2009 and such information is neither an information related to allegations of corruption nor to human rights violation. No violation of human rights is involved in service matters, such as promotion, disciplinary actions, pay increments, retiral benefits, pension, gratuity, etc. The Commission, therefore, was clearly wrong in directing supply of said information to the respondent.

5. For the reasons stated hereinabove the impugned order dated 29.3.2011 of the CIC is quashed. However, it is made clear that quashing of the aforesaid order will not come in the way of the respondent availing of such remedy as are open to him under the service law applicable to him or any other law, for the time being in force, for ventilation of his grievance.

The writ petition stands disposed of.

SEPTEMBER 16, 2013 V.K. JAIN, J.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 09.10.2013

\+ W.P.(C) 7453/2011

UNION OF INDIA AND ORS ..... Petitioner
Through: Mr Ankur Chhibber, Adv.
versus
ADARSH SHARMA ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The respondent before this Court, vide application dated 10.10.2009 sought the following information from CPIO of the Ministry of Home Affairs with respect to one Dr. Vijay Kumar Vyas:

> "1. Whether DR. VIJAY KUMAR VYAS is alive or dead.
>
> 2. Has he left India on 10.10.2009 for overseas?
>
> 3. What was his destination?"

Vide subsequent application dated 26.11.2009, the respondent intimated the petitioner that Dr. Vijay Kumar Vyas had left for overseas sometime in September-October, 2009, but he was declared dead on 03.09.2000. The following information was, therefore, sought from the CPIO of MHA:

"1. DATE OF LAST Departure from INDIA

2. DESTINATION

3. AIRLINES

4. PASSPORT NO."

Vide yet another application dated 09.12.2008, the respondent provided information such as passport number, date of departure, flight number and destination to which late Dr. Vijay Kumar Vyas had proceeded and sought the information desired earlier.

2. The applications submitted by the respondent were transferred by CPIO of MHA to the Intelligence Bureau. The CPIO of Intelligence Bureau vide communication dated 29.12.2009, informed the respondent that in view of the provisions of Section 24(1) read with the Second Schedule to RTI Act, 2005, the said Bureau is exempt from providing any information. Being aggrieved from the said communication, the respondent preferred an appeal before the Appellate Authority. The appeal having been dismissed by the First Appellate Authority, the respondent approached the Central Information Commission by way of second appeal vide impugned order dated 20.07.2011. The Central Information Commission directed as under:-

"11. Now, withstanding the fact that the Respondent No.2 is an exempt organization under Section 24 (1) of the RTI Act, it is nevertheless the duty of Respondent No.2, as an intelligence and security organization to inquire into the allegations made by the Appellant in this case. Not discharging its duty would tantamount to 'Nonfeasance', i.e., the omission of acts which a man was by law bound to do. The following excerpts from the judgement of Division Bench of the Hon'ble Gujarat High Court in **Union of India (UOI) and Ors. Vs. V. Shankaran and Anr.**[2008 (4) GLT 885] is of relevance here:

"25. […] "Official misconduct" defines in Black's Law Dictionary (7th Edition) as a public officer's corrupt violation of assigned duties by malfeasance; misfeasance; or nonfeasance, which is also termed as misconduct in office; misbehaviour in office; malconduct in office; misdemeanour in office; corruption in office and official corruption."

12. Thus, if the Intelligence Bureau simply refuses to take cognizance of allegations which are clearly based on reasonably sound legal evidence and omits to probe into such allegations when it was lawfully bound to do so, then such nonfeasance clearly amounts to an act of Corruption. If the nonfeasance results in allowing some allegedly dead person named Dr. Vijay Kumar Vyas to escape from being brought to justice in a pending legal proceeding involving him before the Hon'ble High Court of Rajasthan, then it will amount to

> corrupt practice on part of Respondent No.2. Thus, unless the Respondent No.2 inquires into the truthfulness of the Appellant's allegations with respect to the status of Dr. Vijay Kumar Vyas, it will clearly appear as if the Respondent No.2 has indulged in corrupt practices.
>
> 13. Thus, the facts and circumstances of the present case squarely attract the Proviso (I) to Section 24 (1) of the RTI Act and the information sought by the Appellant clearly relates to such information which pertains to allegation of corruption against the Respondent No.2.
>
> 14. In light of the above observations, reasoning and findings, the Commission hereby directs the CPIO of the Respondent NO.2 to provide information to the Appellant as to whether at all Dr. Vijay Kumar Vyas (alleged to be dead) departed from India for Auckland, New Zealand via Flight No.CX708 on 10/10/2009 on Passport No.H-0980681. The information shall be furnished within 20 days of receiving this Order."

Being aggrieved from the direction given by the Commission, the petitioner is before this Court by way of this writ petition.

3. As regards information sought by the respondent vide application dated 10.10.2009, the desired information could not have been provided by the petitioner in the absence of particulars as to when he left India,

and vide which particular flight. The same would be the position with respect to the information sought vide second application dated 26.11.2009. However, vide application dated 09.12.2009, the respondent gave particulars such as passport number of Dr. Vijay Kumar Vyas, the date of departure from India, flight number as well as the destination for which he was alleged to have left. The Immigration Office at the Airport is a wing of Intelligence Bureau and every person going out of India is required to obtain immigration clearance before, he can board the flight. Therefore, in case Dr. Vijay Kumar Vyas left India on 10.10.2009 for Auckland on flight No. CX708, such an information can be available with the Immigration Office controlled by Intelligence Bureau. However, the difficulty in the matter is Intelligence Bureau is one of the organizations included in the Second Schedule appended to the Right to Information Act and its name appears at Serial No. 1 of the Schedule. Section 24 of the RTI Act to the extent it is relevant reads as under:

> "**24. Act not to apply to certain organizations. –** (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government.

> Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:"

Therefore, the provisions of the RTI Act would not apply to the aforesaid organisation except in the matters relating to allegations of corruption and human rights violation.

4. The information sought by the respondent was neither any information related to the allegations of corruption in Intelligence Bureau nor an information related to the human rights violations. The Commission, therefore, was clearly wrong in directing the Intelligence Bureau to provide the said information to the respondent under the provisions of Right to Information Act. Therefore, the order passed by the Central Information Commission being contrary to the provisions of the Act, cannot be sustained and is hereby quashed.

5. However, in my view, if an information of the nature sought by the respondent is easily available with the Intelligence Bureau, the agency would be well-advised in assisting a citizen, by providing such an information, despite the fact that it cannot be accessed as a matter of right under the provisions of Right to Information Act. It appears that there is a litigation going on in Rajasthan High Court between the respondent and Dr. Vijay Kumar Vyas. It also appears that the

respondent has a serious doubt as to whether Dr. Vijay Kumar Vyas, who was reported to have died on 03.09.2009, has actually died or not. The Intelligence Bureau could possibly help in such matters by providing information as to whether Dr. Vyas had actually left India on 10.10.2009 for Auckland on flight No CX708. Therefore, while allowing the writ petition, I direct the Intelligence Bureau to consider the request made by the respondent on administrative side and take an appropriate decision thereon within four weeks from today. It is again made clear that information of this nature cannot be sought as a matter of right and it would be well within the discretion of the Intelligence Bureau whether to supply such information or not. Whether a person aggrieved from refusal to provide such information can approach this Court under Article 226 of the Constitution, is a matter which does not arise for consideration in this petition.

The writ petition stands disposed of. No order as to costs.

V.K. JAIN, J

OCTOBER 09, 2013
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 7439/2012**

CPIO CBI ..... Petitioner

Through: Mr Sanjeev Bhandari, Advocate for CBI.

versus

CJ KARIRA ..... Respondent

Through: Respondent in person.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 07.09.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 31.10.2012 passed by the Central Information Commission (hereafter 'CIC') whereby CIC had directed the petitioner to provide the information as sought by the petitioner.

2. It is the case of the petitioner that Central Bureau of Investigation (hereafter 'CBI') is included in the second schedule to the Right to Information Act, 2005 (hereafter 'the Act') and, by virtue of section 24(1) of the Act, is exempt from the purview of the Act.

3. The respondent disputes the above contention and claims that, by virtue of the proviso to section 24(1) of the Act, the information sought by him is not exempt from disclosure. The petitioner controverts the aforesaid

contention and contends that the information sought by the petitioner does not fall within the proviso to Section 24(1) of the Act.

4. In view of the above, the only controversy to be addressed is whether the information sought by the petitioner falls within the proviso to Section 24(1) of the Act.

5. The respondent had filed an application dated 31.01.2012 with the petitioner, *inter alia*, seeking the following information for the period January 2007 to December 2011.

> "1. All the Ministries / Departments of the Government of India.
>
> 2. Union Public Service Commission/Lok Sabha Secretariat/Rajya Sabha Secretariat/Cabinet Secretariat/Central Vigilance Commission/ President's Secretariat/Vice-President's Secretariat/Prima Minister's Office/Planning Commission/Election Commission.
>
> 3. Central Information Commission/State Information Commissions
>
> 4. Staff Selection Commission, CGO Complex, New Delhi
>
> 5. Office of the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi
>
> 6. All Officers/Desks/Sections, Department of Personnel & Training and Department of Pension & Pensions Welfare"

6. The petitioner had responded to the aforesaid request by a letter dated 05.03.2012 claiming that CBI was included within the second schedule to the Act and, thus, in terms of section 24(1) of the Act was excluded from the

applicability of the Act.

7. Before proceeding further, it would be relevant to refer to Section 24(1) of the Act, which is set out below:-

> "24. **Act not to apply in certain organizations**.—(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:
>
> Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:
>
> Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request."

8. It is apparent from the plain reading of the first proviso to Section 24(1) of the Act that information pertaining to allegations of corruption and human rights violation are not excluded from the purview. The petitioner contended that since the information sought related to allegations of corruption, the same were not excluded from the scope of Section 24(1) of the Act.

9. The learned counsel for the petitioner had countered the aforesaid contention and submitted that the proviso must be read in a restricted

manner and, only information pertaining to allegations of corruption relating to the public authority - in this case CBI - was excluded from the purview of Section 24(1) of the Act. It was contended that since the information sought by the respondent pertain to allegations of corruption in other organisations, the first proviso would be inapplicable and, the petitioner would not be obliged to disclose the same.

10. The aforesaid question is squarely covered by the decision of the Coordinate Bench of this Court in ***CPIO, Intelligence Bureau v. Sanjiv Chaturvedi: W.P.(C) 5521/2016, decided on 23.08.2017***, whereby this Court has held as under:-

> "29. The plain reading of the proviso shows that the exclusion is applicable with regard to any information. The term "any information" would include within its ambit all kinds of information. The proviso becomes applicable if the information pertains to allegations of corruption and human rights violation. The proviso is not qualified and conditional on the information being related to the exempt intelligence and security organizations. If the information sought, furnished by the exempt intelligence and security organizations, pertains to allegations of corruption and human rights violation, it would be exempt from the exclusion clause.
>
> 30. The proviso "Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section" has to be read in the light of the preceding phrase "or any information furnished by such organisations to that Government".
>
> 31. When read together, the only conclusion that can be drawn is that, if the information sought pertains to allegation of corruption and human right violation, it would be exempt from the exclusion clause, irrespective of the fact that the

information pertains to the exempt intelligence and security organizations or not or pertains to an Officer of the Intelligence Bureau or not."

11. The respondent who is present in Court states that the information sought by him has become stale and, he be permitted to file a fresh application under the Act. Plainly, the respondent is not precluded from filing an application before the petitioner for information relating to allegations of corruption or human rights violation. In the event such application is filed, the petitioner would examine the same. Although, it would not be open for the petitioner to claim that information relating to allegations of corruption in other organisation is exempt from disclosure, however, the petitioner would be at liberty to examine whether the information sought by the petitioner is exempt under any of the clauses of Section 8(1) of the Act.

12. The CIC had also awarded cost of ₹153/- to the petitioner, which the petitioner has not been paid as yet. The petitioner is directed to pay the sum alongwith interest at the rate of 12% per annum from 31.10.2012 till the date of payment. Such payment as directed be paid within a period of four weeks from today.

13. The petition is disposed of.

VIBHU BAKHRU, J

SEPTEMBER 07, 2017
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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 11.03.2014

LPA 229/2014

DR NEELAM BHALLA ..... Appellant

versus

UNION OF INDIA & ORS ..... Respondents

Advocates who appeared in this case:
For the Appellant : Mr R. Sathish, Advocate
For the Respondents : Mr Neeraj Chaudhari, Advocate for R-1 & R-2

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED, ACTING CHIEF JUSTICE
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, ACJ (ORAL)

CM 4556/2014

The exemption is allowed subject to all just exceptions.

LPA 229/2014

1. This appeal is directed against the judgment dated 03.02.2014 delivered by a learned Single Judge of this Court in W.P.(C) 83/2014 filed by the appellant/petitioner. The writ petition had been filed challenging the order dated 22.08.2013 passed by the Central Information Commission (CIC). The learned Single Judge has extracted the relevant portion of the order dated 22.08.2013 passed by the CIC which is to the following effect:-

"4. It is a matter of fact that Shri Bundela had provided inaccurate and incorrect information to the appellant but Shri Bundela's contention that he had transmitted information as received by him from CPIO of RAC cannot be disregarded. It is important to bear in mind that Shri Bundela was not the holder of information. The holder of information was CPIO, RAC. Whatever information was forwarded to Shri Bundela by CPIO, RAC, he transmitted the same to the appellant.

5. As to the question of award of compensation to the appellant for supply of inaccurate and incorrect information, it has to be kept in mind that DRDO is an exempted organization under section 24 of the RTI Act. This exemption is unequivocal and binding. DRDO does not fall under the ambit of RTI Act. Even so, by custom, this Commission had carved out a small jurisdiction for supply of establishment related information to the information seekers, to the total exclusion of tactical and strategic information. Even, if the appellant's contention that detriment has been caused to her due to supply of inaccurate and incorrect information is accepted, in my opinion, it would not be legally sound either to punish Shri Bundela or to award compensation to the appellant. In view of the above, I am constrained to close this matter.

6. Even so, before parting with this matter, I would like to caution Shri Bundela to exercise

> due diligence in responding to the RTI application in future."

2. From the above, it is apparent that the CIC had recognized the fact that the said Shri Bundela had provided inaccurate and incorrect information to the appellant/petitioner. But, the CIC also noted the fact that Shri Bundela was not the holder of the information and had merely transmitted the information which had been received by him from the CPIO of the Recruitment and Assessment Centre (RAC). Furthermore, the CIC noted that DRDO was an exempted organization under Section 24 of the Right to Information Act, 2005 (hereinafter referred to as 'the said Act'). Section 24(1) of the said Act reads as under:-

> "1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub- section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty- five days from the date of the receipt of request."

3. On a plain reading of the above provisions, it is evident that the Act does not apply to intelligence and security organizations specified in the

Second Schedule, being organizations established by the Central Government or to any information furnished by such organizations to that Government. It is an admitted position that DRDO is a Central Government organization and is specified in the Second Schedule. Therefore, in the first instance, DRDO is an exempted organization and the said Act does not apply to it. However, the first proviso to Section 24(1) of the said Act clearly stipulates that information pertaining to allegations of corruption and human rights violations are not to be excluded under this sub-section. In other words, the Act would apply to DRDO only to the extent of information pertaining to allegations of corruption and human rights violations.

4. In the present case, we note that the learned Single Judge has observed that the information sought by the appellant/petitioner did not pertain to corruption or human rights violations and, therefore, did not fall within the proviso to Section 24(1) of the said Act.

5. We agree with the view expressed by the learned Single Judge inasmuch as the information that was sought by the appellant/petitioner pertained to her service record which had nothing to do with any allegation of corruption or of human rights violations. Therefore, the CIC as well as the learned Single Judge were correct in holding that the information sought would not come within the purview of the Right to Information Act. It is another matter that the CIC had, as a matter of course, directed the DRDO to supply the information, which was ultimately supplied by the DRDO. The fact of the matter is that the DRDO could not have been compelled to supply the information under the said Act. That being the position, the provisions with regard to penalty under Section 20 of the said Act would also not apply.

6. Moreover, the learned counsel for the appellant/petitioner had candidly submitted that he had not prayed for imposition of penalty but for compensation, which, admittedly, is not provided for under the said Act. In any event, even if we construe the prayer for compensation as a prayer for imposing penalty under Section 20 of the said Act, the same cannot be granted in view of the fact that the information sought by the appellant/petitioner did not pertain to allegations of corruption or of human rights violations. That being the case, the Act itself does not apply to the DRDO, particularly, in the facts and circumstances of the present case.

7. Insofar as vindication of the stand of the appellant/petitioner is concerned, that aspect of the matter has already been recognized by the order dated 22.08.2013 passed by the CIC where it has been observed that as a matter of fact Shri Bundela had provided inaccurate and incorrect information to the appellant/petitioner.

8. Be that as it may, there is no merit in this appeal. The same is dismissed, however, there is no order as to costs.

BADAR DURREZ AHMED, ACJ

SIDDHARTH MRIDUL, J

MARCH 11, 2014
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 2177/2013

ALAM SINGH ..... Petitioner

Through Mr. Hameed S. Shaikh, Mr. Amar Pal, Mr. Pramod Kumar & Ms. Nisha Rawat, Advocates

versus

UNION OF INDIA AND ORS ..... Respondents

Through Mr. Akshay Makhija, Central Govt. Standing Counsel for the UOI with Mr. S.S. Sejwal, Law Officer, CRPF

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 01.09.2014

KAILASH GAMBHIR, J. (ORAL)

1. By this Writ Petition filed under Article 226 of the Constitution of India, the petitioner seeks issuance of a writ, order or direction in the nature of certiorari quashing the order dated 08.03.2013 passed by the Central Information Commission and to hold that the information sought by the petitioner is not exempted under Section 24 of the RTI Act; issuance of a writ, order or direction in the nature of mandamus directing respondent Nos.2 and 3 to place on record the information sought by the

petitioner through RTI from the respondents and issuance of a writ, order or direction in the nature of mandamus directing the respondents to place on record the policy under which the selection of candidates were made to the post of Assistant Sub Inspector (Stenographer) and Head Constable (Ministerial) as published in the employment newspaper dated 27.03.2010.

2. The petitioner who is serving in Border Security Force (in short 'BSF') as a Constable had applied for recruitment to the post of Head Constable (Ministerial) against a departmental quota vacancy. As per the laid down criteria, the selection process was divided into two phases: First phase comprised of Written Examination while the Second phase comprised of i) Physical Measurement; ii) Typing Speed Test; iii) Computer Knowledge Test; iv) Documentation and then Interview and Medication Examination.

3. As per the petitioner, he had qualified all the tests prescribed under the said two phases but he was not selected to the post of Head Constable (Ministerial). This petitioner had also filed a writ petition bearing W.P.(C) No.8558/2011 earlier but the same was dismissed as withdrawn vide order dated 08.12.2011. The petitioner also filed a RTI application

on 05.10.2011 to seek information with respect to the aforesaid result dated 01.03.2011 but respondent No.2- the Directorate General Border Security Force vide letter dated 14.10.2011 refused to give any information with regard to the said result. The petitioner once again approached the Ministry of Home Affairs through a RTI application on 03.05.2012 to seek complete information with regard to the selected and non-selected candidates and their respective marks etc. concerning the said recruitment to the post of Head Constable (Ministerial) based on the departmental quota test but no such information was made available to the petitioner. The petitioner had preferred an appeal under the RTI Act, and the Appellate Authority vide orders dated 22nd May, 2012 and 31st May, 2012 had rejected the appeal filed by the petitioner in view of the fact that the Border Security Force being a Security Organisation is an exempted Organisation, as listed under Scheduled II of the RTI Act and therefore is not amenable to any provision contained in the RTI Act by virtue of Section 24 of the RTI Act. Aggrieved by the orders dated 22.05.2012 and 31.05.2012 passed by the Appellate Authority, the petitioner preferred a Second Appeal before the Central Information Commission (in short 'CIC') and the said second appeal also got

dismissed by the CIC vide order dated 08.03.2013.

4. The contention raised by the petitioner in the instant petition is that he is legally entitled to know the complete details of each selected and non-selected candidate so as to be sure and satisfied that the respondents have not acted in an arbitrary or whimsical manner in finalising the list of selected candidates. The other contention raised by the petitioner is that the information which was sought by him under the RTI Act is not exempted under Section 24 of the RTI Act.

5. We have heard the counsel for the parties.

6. In the counter affidavit filed by the respondents, the stand taken is that after completing the recruitment process the final result of Head Constable (Ministerial) was published on the BSF website on 01.03.2011, wherein under the Departmental General Category, 118 departmental candidates (serving BSF Personnel) were declared to have passed. It is further stated that the petitioner could not be selected as he had secured only 156 marks while the last candidate selected under the Departmental General Category had secured 162 marks. Along with the counter affidavit, the respondents have also placed the said result on record. The

respondents have also given the break-up of marks wherein the petitioner had secured, 126 marks in the written test out of 200 marks and 30 marks in the interview out of 50 marks. Although this information was available with the petitioner, he still seeks to pursue this writ petition. There is no ground for doing so. He has not alleged any infraction or violation of any procedure laid down for recruitment of Head Constables in the Departmental Promotion Quota nor is there any allegation of bias or *mala fides* against any of the officers involved in the recruitment process. The writ petition is clearly without any merit. We find no reason to interfere with the recruitment process carried out by the respondents in selecting the candidates to the post of Head Constable (Ministerial) against the Departmental Quota.

7. We also find no reason, illegality or perversity in the order dated 08.03.2013 passed by the CIC taking a view that the Border Security Force is an exempted Organisation, listed under the Scheduled II of the RTI Act and therefore, is not amenable to any provision contained in the RTI Act by virtue of the provision of Section 24 of the RTI Act. The CIC is also right in observing that the information sought by the petitioner does not pertain to any violation of Human Rights, or any allegation of

corruption and this is also the reason why the information sought by the petitioner cannot be made available to him under the proviso of Section 24 of the RTI Act. The learned counsel for the petitioner has not alleged any corruption against any officer of the recruitment process nor any flaw in it. We are of the view that the petition is misconceived, frivolous and is an abuse of the process of this Court. It deserves to be dismissed with costs of Rs.25,000/-.

8. The present writ petition is accordingly dismissed with a cost of Rs.25, 000/- which shall be deposited by the petitioner with DIG BSF Welfare Fund, FHQ (BSF Contributory Benevolent Fund, New Delhi) within a period of four weeks.

KAILASH GAMBHIR, J.

NAJMI WAZIRI, J.

SEPTEMBER 01, 2014
v

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 6030/2013 & CM APPL. 13275/2013

CBDT, M/O FINANCE,
REVENUE DEPARTMENT NORTH BLOCK ..... Petitioner
Through: Mr. Jaswinder Singh, Advocate.

versus

CENTRAL INFORMATION
COMMISSION & ANR. ..... Respondents
Through: None.

% Date of Decision: 26th February, 2016

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the orders dated 24th June, 2013 and 14th August, 2013 passed by respondent No.1-CIC on the ground that it failed to appreciate that petitioner was an exempted organisation under the Right to Information Act, 2005 and could not be compelled to disclose information sought for in the RTI application.

2. None is present for the respondent No.2. On the last date of hearing also, none was present for the respondent No.2.

3. Consequently, this Court has no other option, but to proceed ahead with the matter.

4. Section 24(1) of the Right to Information Act, 2005 reads as under:-

> *"**24. Act not to apply to certain organizations.**—(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government.*
>
> *Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:*
>
> *Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request."*

5. Learned counsel for petitioner has handed over a copy of the Notification dated 27th March, 2008 which reads as under:-

> *NOTIFICATION*
> *New Delhi, the 27th March, 2008*
>
> ***G.S.R. 235(E)**.—In exercise of the powers conferred by sub-section (2) of Section 24 of the Right to Information Act, 2005 (22 of 2005), the Central Government hereby makes the following further amendments in the Second Schedule to the said Act, namely:--*
>
> *In the Second Schedule to the Right to Information Act, 2005:--*
>
> *(i) for serial number 16 and the entries relating thereto, the following shall be substituted, namely:--*
>
> *"16. Directorate General of Income-tax (Investigation)".*

(ii) for serial number 17 and the entries relating thereto, the following shall be substituted, namely:-
"17. National Technical Research Organisation.";

(iii) for serial number 18 and the entries relating thereto, the following shall be substituted, namely:--
"18. Financial Intelligence Unit, India."; and

(iv) Serial number 22 and the entry relating thereto shall be omitted."

(emphasis supplied)

6. From the aforesaid Section and the Notification, it is apparent that the petitioner is an exempted organisation under the Right to Information Act. Even the information sought does not pertain to allegations of corruption and/or Human Rights Violation.

7. Consequently, the impugned orders dated 24th June, 2013 and 14th August, 2013 are set aside and the present writ petition and applciation are allowed.

MANMOHAN, J

FEBRUARY 26, 2016
js

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 17th May 2017
Judgment delivered on: 23rd August 2017

\+ W.P.(C) 5521/2016 & CM No.23078/2016 (stay)

CPIO, INTELLIGENCE BUREAU ..... Petitioner

versus

SANJIV CHATURVEDI ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. R.V. Sinha with Mr. R.N. Singh and Mr. A.S. Singh, Advocates.

For the Respondent : Respondent in person.

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. The Central Public Information Officer (hereinafter referred to as CPIO) of the Intelligence Bureau has filed this petition impugning order dated 21.04.2016, passed by the Central Information Commission under the Right to Information Act, 2005 (hereinafter referred to as the 'Act').

2. The Central Information Commission (hereinafter referred to as CIC), by the impugned order dated 21.04.2016, has held that the copy of the report of the Intelligence Bureau (hereinafter referred to as IB), concerning the respondent, is information pertaining to allegations of

corruption and human rights violation and is, thus, liable to be given to the respondent. The Commission has directed the Intelligence Bureau and the Ministry of Environment, Forests & Climate Change (hereinafter referred to as MoEF) to provide a certified copy of the IB report relating to the respondent, as sought for by him by an application dated 05.12.2015.

3. The directions have been issued by the CIC on arriving at the following conclusion

> *a) It is factually proved that appellant was put to extreme hardship by the corrupt political rulers and corrupt public servants In retaliation of his unstinted Implementation of rule of law.*
>
> *b) The gist of IB report as furnished by IB in response to the RTI request of appellant in this case shows that its disclosure could cause no harm to core activity of security or intelligence of IB.*
>
> *c) section 24 of RTI Act does not authorize the public authorities exempted under this section to block entire Information held by it or generated and given to other public authorities enbloc, but it exclusion from disclosure is limited to that which pertains to core functioning of 'security' and 'intelligence' aspect of exempted organization.*
>
> *d) The IB report sought by appellant is not the information excluded from purview of disclosure by RTI Act.*
>
> *e) The IB report is information as per Section 2(f) held by MoEF and also information pertaining to the allegation of corruption or human rights violation*

as per Section 24 second proviso and hence certified copy of the same shall be given to the appellant.

f) The public authorities exempted under S. 24 cannot use it to stonewall all RTI requests indiscriminately. The IB has a statutory duty to make all arrangements to provide the information other than that concerning 'security' and 'Intelligence' if it pertains to corruption or human rights violation, or useful to prevent corruption or human rights violation either under voluntary disclosure clauses or other provisions of RTI Act."

4. The respondent on 05.12.2015 had filed an application seeking information under the Act. The applicant sought the following information:-

"i. Kindly provide me certified copy of all the file noting/documents,correspondences/all type of reports between Ministry of Environment, Forest &Climate Change. Department of Personnel &Training, Cabinet Secretariat and Appointment Committee of Cabinet, regarding interstate Cadre Transfer of Mr. Sanjiv Chaturvedi, IFS, Deputy Secretary AIIMS, New Delhi from Haryana to Uttrakhand (excluding my own representations).

ii. Kindly provide me certified copy of all the file noting/documents/correspondences/all type of reports between Ministry of Environment, Forest & Climate Change, Ministry of Health & Family Welfare, Department of Personnel &Training, Cabinet Secretariat and Appointment Committee of Cabinet, regarding Interstate Cadre Deputation of Mr. Sanjiv Chaturvedi, IFS, Deputy Secretary, AIIMS, New Delhi, to GNCT, Delhi (excluding my own representations)."

5. The CPIO, MoEF, by its response dated 07.01.2016, to the above application, provided copies of all the correspondences and notesheet other than the representations of the respondent.

6. On 18.01.2016, after receipt of the above documents, the respondent requested for supply of the IB report. The request was made on the ground that a mention had been made in the file noting/correspondences of an IB report about the respondent. The gist of the said report has been reproduced in the file noting.

7. Copy of the report was sought by the respondent contending that the information contained in the IB report pertained only to the respondent and was not about anyone else and further had no connection with the national securities or relation with foreign countries.

8. The CPIO, MoEF declined supply of copy of the IB report on the ground that the same was exempted from disclosure in terms of Section 24 of the Act.

9. Consequent to the denial of supply of copy of the IB report, the respondent filed an application under Section 24 of the Act with the Central Information Commission.

10. The petitioner as well as the CPIO, MoEF opposed the application, filed by the respondent under Section 24 of the Act, on the ground that the information was exempted from disclosure as the

report was an intelligence report of the Intelligence Bureau, which is one of the organizations mentioned in the Schedule of the Act and exempted in terms of Section 24 of the Act.

11. The CPIO also relied on the judgment of the Coordinate Bench dated 09.10.2013 in WP(C) 7453/2011 titled ***UNION OF INDIA & ORS. VS. ADARSH SHARMA*** to contend that the exception carved out from the exemption would be applicable in case the allegation of corruption and the human right violation was with regard to the intelligence Bureau.

12. The CIC allowed the application of the respondent under Section 24 of the Act and passed the impugned order dated 21.04.2016.

13. Aggrieved by the said decision, the petitioner i.e. the CPIO, Intelligence Bureau has filed the present petition contending that the directions issued by the CIC, are contrary to Section 8(1)(j) of the Act and the impugned order is without jurisdiction in view of Second Schedule of Section 24 of the Act, wherein, not only the Intelligence Bureau has been exempted but also the information provided by the Intelligence Bureau to the Government has been specifically exempted. It is contended by the petitioner that the information sought does not fall within the exception carved out by the proviso to Section 24 of the Act inasmuch as neither it pertains to any allegation of corruption nor of human rights violation within the intelligence

bureau. It is contended that the issue raised by the respondent is an ordinary service matter.

14. It is contended on behalf of the petitioner that the exception carved out by the proviso to Section 24, which, specifies *"information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-Section"* would apply only if the allegation of corruption or human rights violations were within the Intelligence Bureau or pertaining to an Officer of the Intelligence Bureau. It is contended that only in case the allegations of corruption or human rights violation were relatable specifically to the officers of the Intelligence Bureau would the exceptions carved out by the proviso apply. It is further contended that the exception would have no application in case the allegations of corruption or human rights violation pertain to organization other than the Intelligence Bureau, in respect of which the report was submitted.

15. It is further contended that no allegations were made with regard to corruption or human rights violation by the officers of the Intelligence Bureau and the allegations were with regard to the Department where the respondent was serving. Since the IB report, submitted by the petitioner, had been with regard to the organization where the respondent was serving, the same did not come within the purview of the exceptions carved out by the proviso to Section 24 of the Act.

16. Reliance is placed by the learned counsel for the petitioner on the decision in the case of ***ADARSH SHARMA*** (*supra*). Further, reliance is placed on the decision of the Supreme Court in the case of ***S. SUNDARAM PILLAI & ORS. VS. V.R. PATTABIRAMAN & ORS.***: 1985 SCC 591 to contend that a proviso cannot be interpreted as a general rule that has been provided for nor can it be interpreted in a manner that would nullify the enactment or to take away in entirety a right that has been conferred. Further, that a Court has no power to add or subtract even a single interpretation to legislation. Reference is also drawn to a judgment of the Supreme Court in ***ROHITASH KUMAR VS. OM PRAKASH SHARMA***: (2013) 11 SCC 451.

17. The respondent, in his response, has contended that the respondent, who is an officer belonging to 2002 batch of Indian Forrest Service, was earlier allocated Haryana Cadre, which was subsequently changed to Uttrakhand in August 2015, on account of extreme hardships. It is contended that the gist of the Intelligence Bureau report, copy of which had been sought by the respondent, as disclosed to the respondent states that *"there appears to be truth in the contention of Sh. Sanjiv Chaturvedi regarding alleged harassment meted out to him by Haryana Government. His request for change of cadre from Haryana to Uttarakhand merits consideration."* It is contended that the gist of the report clearly evidences that the case involves issue of corruption and human rights violation and, hence, is covered by the exceptions created by the proviso to Section 24 of the Act.

18. It is further contended that the Intelligence Bureau is not exempted from disclosure of information, if the information is related to allegations of corruption and human rights violation. It is contended that the respondent has been fighting against corruption and has been raising the issues of corruption. Because of the issues of corruption, raised by the respondent, several orders were passed by the State Government against the respondent. Four presidential orders were issued in favour of the respondent quashing various orders passed by the State Government.

19. It is contended that the respondent has been appreciated and rewarded for his performance and integrity. The respondent, during his tenure in the Haryana cadre, is alleged to have exposed corruption in multi-crore plantation scam in Jhajjar and Hisar district, corruption in construction of a Herbal Park at private land with Government money, illicit felling and poaching in Saraswati Wildlife Sanctuary, corruption in granting license to plywood units etc.

20. It is contended that the respondent was harassed through suspension, major penalty, departmental chargesheet, police and vigilance cases and 12 transfers in just five years.

21. It is contended that the respondent applied for change of cadre from Haryana to Uttrakhand in October 2012 on the ground of major hardships and threat to life. To assess the threat to life of the respondent, the then Secretary, MoEF sought for a report from the

Intelligence Bureau in August 2014. The intelligence Bureau confirmed extreme hardships and harassment of the respondent.

22. It is contended by the respondent that proviso to Section 24 covers all cases of corruption and human rights violation and is not restricted to issues of corruption and human rights violation within the organizations referred to in the Schedule.

23. It is further contended that, in terms of the Preamble of the Act, which lays down that the Act is made to promote transparency and accountability in the working of every public authority and to contain corruption and to hold Governments and their instrumentalities accountable to the governed, the information relating to corruption, if withheld, would negate and defeat the very preamble of the Act.

24. It is contended that several Ministries and Organizations of the Central Government have disclosed information supplied to them by the Intelligence Bureau in cases of corruption without claiming exemptions under Section 24 of the Act.

25. The question that arises for consideration is whether the exception carved out by the proviso to Section 24 would apply only if the allegation of corruption or human rights violations were with regard to the Intelligence Bureau itself or pertaining to an Officer of the Intelligence Bureau?

26. Section 24 (1) of the Act reads as under:-

"24. Act not to apply to certain organizations.—

> *(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.*
>
> *(2)* ****** ******

27. Section 24 (1) *inter alia* make the Act inapplicable to intelligence and security organizations, established by the Central Government, specified in the Second Schedule and further excludes any information furnished by such organisations to the Central Government from being liable to be disclosed. However, an exception is carved out to the exclusion clause with respect to information covered by the proviso. The proviso stipulates that if the information pertains to allegations of corruption and human rights violations, it shall not be excluded under this sub-section.

28. A distinction is drawn by the proviso between intelligence and security organizations and the information furnished by such organisation to the Central Government. The exception carved out by the proviso to the exclusion clause is only with regard to the

information and not with regard to the intelligence and security organizations.

29. The plain reading of the proviso shows that the exclusion is applicable with regard to any information. The term "any information" would include within its ambit all kinds of information. The proviso becomes applicable if the information pertains to allegations of corruption and human rights violation. The proviso is not qualified and conditional on the information being related to the exempt intelligence and security organizations. If the information sought, furnished by the exempt intelligence and security organizations, pertains to allegations of corruption and human rights violation, it would be exempt from the exclusion clause.

30. The proviso "*Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section"* has to be read in the light of the preceding phrase "*or any information furnished by such organisations to that Government".*

31. When read together, the only conclusion that can be drawn is that, if the information sought pertains to allegation of corruption and human right violation, it would be exempt from the exclusion clause, irrespective of the fact that the information pertains to the exempt intelligence and security organizations or not or pertains to an Officer of the Intelligence Bureau or not.

32. The Judgments in the case of ***SUNDARAM PILLAI*** (Supra) and ***ROHITASH KUMAR*** (supra) are clearly not applicable in the facts of the present case. The interpretation as rendered above, does not nullify the enactment or take away a right in entirety. In fact, the right to obtain information, conferred by the Act, is taken away by the exclusion in Section 24 of the Act. The proviso carves out an exception to the exclusion clause and further brings the information within the ambit of the Act. The proviso is in line with the very object of the Act.

33. A Division Bench of the Madras High Court in ***SUPERINTENDENT OF POLICE, CENTRAL RANGE, OFFICE OF THE DIRECTORATE OF VIGILANCE AND ANTI-CORRUPTION V. R. KARTHIKEYAN,*** AIR 2012 Mad 84 has very aptly culled out the necessity and the object for enactment of the Act in the following manner:

> *"8. India has adopted a democratic form of Government and no democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only when the people know how the Government is functioning, they can fulfill the role which democracy assigned to them and make democracy a really effective participatory democracy. Right to information is basic to any democracy. A vibrant citizenry is a pre-requisite for survival of democratic society and governance. The quality of life in a civilized society depends upon the quality of exchange of information about the governance and related aspects. It is now widely recognised that*

openness and accessibility of people to information about the Government's functioning is a vital component of democracy. Disclosure of allowable information would lead to better system and it would be in the public interest that a Public Authority should throw open the process of public scrutiny, which would result in evolving a better system. Disclosure of information would compromise the integrity and efficiency of the functioning of the Public Authority. In an increasingly knowledge-based society, information and access to information holds the key to resources, benefits and distribution of power. Information, more than any other element, is of critical importance in a participatory democracy.

9. The Right to Information Act is a rights based enactment more akin to any other enactments safeguarding fundamental rights. As the statement of the object of the Act goes, democracy requires an informed citizenry and transparency of information. The Act encompasses basically two things, firstly, the right of a citizen to seek for information to which he is entitled under the provisions of the Act and the corresponding duty of the Information Officers to furnish such information and secondly, it leads to transparency in the Government functioning.

10. The use of the Right to Information Act needs no elaborate reference as the very fact that such a right to get information has been recognised as a fundamental right. To put it precisely, the information supplied under the Act brings about transparency and accountability, both of which hold to reduce corruption and increased efficiency in governance and it also encourages participation of the people in a democracy. The need for right to information ensures people's participation, ensures principle of accountability, transparency, limiting the discretion powers given to officials, protects

the civil liberties, effective and proper implementation of schemes of Government and makes media more effective.

11. Though the Indian Constitution has no express provision guaranteeing the right to information, it has been recognized by the Courts in a plethora of cases as implicit in Article 19(1)(a), which guarantees to all citizens the right to free speech and expression, and Article 21 of the Constitution which guarantees the right to life in accordance with due process to all citizens. The background of the enactment will not be complete if the contribution of the Hon'ble Apex Court for the legislation is not mentioned. The Apex Court in the decision in State of U.P. v. Raj Narain, AIR 1975 SC 865, interpreted Article 19(1)(a) of the Constitution of India so widely so as to include so many rights within its sweeping shadow. One such right is the right to information. It is observed in the said judgment that "the right to know which is derived from the concept of freedom of speech, though not absolute is a factor which should make wary, when secrecy is claimed for transactions which can at any rate have no repercussion on public security." The Apex Court further observed that "the people of this country have the 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 its bearing." 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), as observed by the Apex Court in S.P. Gupta v. Union of India, AIR 1982 SC 149.

12. In the Secretary, Ministry of Information and Broadcasting, Government of India v. The Cricket Association of Bengal, 1995 (2) SCC 179, the Apex Court, while considering the freedom of speech and expression in the light of the right to information, has

observed that "freedom of speech and expression is basic to and indivisible from a democratic polity. It includes the right to impart and receive information." The Apex Court has also observed that "for ensuring the free speech right of the citizens of the country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues and a successful democracy posits an 'aware' citizenry."

13. The pride for enactment of the Right to Information Act would certainly go to the judiciary as could be seen from certain observations of the Hon'ble Apex Court in some of the judgments. The judgment in Union of India v. Association for Democractic Reforms, AIR 2002 SC 2112 is again a forerunner for recognising the right to information as a fundamental right and the said judgment laid the foundation over which the superstructure of the Right to Information Act, 2005 was built. In Peoples' Union for Civil Liberties v. Union of India, 2004 (1) CTC 241 (SC) : 2004 (2) SCC 476, it was observed 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. Right of information, thus, indisputably is a fundamental right."*

In another case in Union of India v. Assn. for Democratic Reforms, 2002 (5) SCC 294, it was observed that "the right to get information in a democracy is recognized all throughout and it is a natural right flowing from the concept of democracy".

14. The Apex Court in India Jaising v. Registrar General, Supreme Court of India, 2003 (5) SCC 494, also took the same view and held —

> *"It is no doubt true that in a democratic framework free flow of information to the citizens is necessary for proper functioning particularly in matters which form part of a public record. The decisions relied upon by the learned Counsel of the Petitioner do not also say that right to information is absolute. There are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002, to which also reference has been made, does not say in absolute terms that information gathered at any level in any manner for any purpose shall be disclosed to the public."*

34. CIC has found that the Respondent was put to extreme hardship by the corrupt political rulers and corrupt public servants in retaliation of his unstinted Implementation of rule of law. CIC has further found that the gist of IB report as furnished by IB in response to the RTI request of appellant shows that its disclosure could cause no harm to core activity of security or intelligence of IB. The IB report is information as per Section 2(f) held by MoEF and the information pertains to allegation of corruption and human rights violation.

35. Clearly, the information sought by the respondent falls in the category of being exempt from the exclusion clause and is liable to be supplied.

36. The judgment in the case of ***ADARSH SHARMA*** (*supra*) relied upon by learned counsel for the petitioner has no applicability in the facts of the present case. The Court in that case was dealing with

information sought, concerning one doctor from the Ministry of Home Affairs. The information sought was about the date of last departure of the doctor from India, the destination, airlines and the passport number. The application was transferred by the CPIO, Ministry of Home Affairs to the Intelligence Bureau. The Intelligence Bureau claimed exemption under Section 24 of the Act. The information sought for, pertained to the Immigration Department of the Intelligence Bureau. Since the information was not related to the allegations of corruption or human rights violation, learned Single Judge held that the said information did not come within the purview of the exceptions carved out by the proviso to Section 24 of the Act. It is, in these circumstances, that the directions of the CIC, directing supply of information, were quashed.

37. In view of the above, looked at from any angle, there is no infirmity with the view taken by the CIC by the impugned order dated 21.04.2016. There is no merit in the petition. The same is accordingly dismissed. No orders as to costs.

SANJEEV SACHDEVA, J

August 23 , 2017
St/HJ

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 19.02.2018

\+ **W.P.(C) 5547/2017 & CM No. 23333/2017**

CENTRAL BOARD OF DIRECT TAXES ..... Petitioner

versus

SATYA NARAIN SHUKLA ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Ruchir Bhatia, Senior Standing Counsel with Mr Gurpreet Shah Singh, Dy. CIT (O&D), CBDT.

For the Respondent : Respondent in person.

CORAM:-
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereafter 'CBDT') impugns an order dated 29.05.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC') in a second appeal preferred by the respondent under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act').

2. By the impugned order, the CIC has, *inter alia*, directed disclosure of the information sought by the respondent and photocopies of responses received from Director Generals of Income Tax (DGs) to CBDT's letter dated 11.08.2015. According to CBDT, the said information is excluded from the scope of the Act as it emanates from the Directorate General of Income Tax (Investigation). The said office is placed in the Second

Schedule of the Act and, thus, any information received from the said office is excluded from the purview of the Act by virtue of Section 24(1) of the Act. CBDT also claims that the said information is exempt from disclosure under the provisions of Section 8(1)(h) of the Act.

3. Briefly stated, the relevant facts necessary to consider the aforesaid controversy are as under:-

4. The respondent filed an application dated 16.11.2015 seeking the following information under the Act:-

> "(1) Photocopies of the letters no. F. No. 282/4/2012-IT(Inv) dated 1.10.2013 and No. 282/04/2012-IT(Inv. V)/140 dated 9.7.2015.
>
> (2) Photocopies of the responses received from the DGs to the letter No. 282/4/012-IV (Inv. V)/192 dated 11.08.2015 from Shri Rajat Mittal, Under Secretary (Inv. V) CBDT."

5. The Central Public Information Officer (CPIO) of CBDT responded to the petitioner's application by a letter dated 28.12.2015. He did not provide the photocopies of the letters as sought for at point no.1 but briefly indicated the contents of those letters. Insofar as the information sought at point no.2 is concerned, the CPIO responded as under:-

> "Since, the matter is under investigation, hence under the provisions of Section 8(h) of RTI Act, 2005 (Information which would impede the process of investigation or apprehension or prosecution of offenders) information cannot be provided at this stage."

6. Aggrieved by the response of the CPIO, the respondent preferred an appeal under Section 19(1) of the Act before the First Appellate Authority

(hereafter 'the FAA'). The said appeal was disposed of by an order dated 11.02.2016, whereby the FAA directed the CPIO to provide photocopies of the relevant letters as requested by the respondent as per point no.1 of his application. In respect of the respondent's request for responses received from the DGs to the letter dated 11.08.2015 is concerned, the FAA upheld the CPIO's decision that the said information was exempt under the provisions of Section 8(1)(h) of the Act and, therefore, could not be provided at that stage. However, the FAA directed the CPIO to convey the outcome of the investigations once the same are concluded.

7. Aggrieved by the decision of the FAA rejecting the request for furnishing the responses received from the DGs, the respondent preferred a second appeal before the CIC. The said appeal was allowed by the impugned order and the CPIO was directed to supply the information sought for by the respondent.

8. The controversy relates to the verification of the affidavits filed by the Members of Parliament (MPs) and Members of Legislative Assembly (MLAs) disclosing their assets to the Election Commission. The respondent had submitted a list of MPs and MLAs whose assets have allegedly increased more than fivefold after the previous election (that is, during the term of their office as elected representatives after the previous election).

9. The said list of MPs and MLAs were forwarded to the DGs for verification. By a letter dated 11.08.2015, the following instructions were issued to the DGs with regard to the list of MPs and MLAs provided by the respondent:-

> "The undersigned is directed to convey that any such case, featuring in the list that is yet to be verified, should be got verified urgently. A comprehensive report of the verifications done as per guidelines fixed by the Board may also be provided, if not done earlier. The report may be submitted *within a month from the date* of this letter in the annexed proforma. It is requested that the "Brief outcome" column must sufficiently record the outcome and the suggested course of action."

10. The learned counsel appearing for CBDT submitted that CBDT could not be compelled to provide the photocopies of responses received from the DGs because: (i) the information sought for is exempted from disclosure by virtue of Section 8(1)(h) of the Act; and (ii) that any information from Directorate General of Income Tax (Investigation) is excluded from the purview of the Act by virtue of Section 24(1) of the Act.

11. Section 8(1)(h) of the Act reads 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
>
> (h) information which would impede the process of investigation or apprehension or prosecution of offenders."

12. It is clear from the above that only such information which would (i) impede the process of investigation; (ii) impede the apprehension or prosecution of offenders, is exempted from disclosure by virtue of Section 8(1)(h) of the Act. In the present case, there is no material to indicate that any investigation is being conducted, which would be impeded by disclosure

of the information sought for by the respondent. It is stated by CBDT that the Election Commission of India forwards the affidavits submitted by MPs and MLAs disclosing their assets for verification to CBDT. Such affidavits are forwarded by CBDT to the Directorate General of Income Tax (Investigation) for verification and the outcome of such verification is shared directly by the Directorate General of Income Tax (Investigation) with the Election Commission of India.

13. The petitioner further states that the verification exercise carried out by the Directorate General of Income Tax (Investigation) is only indicative in nature and any further action proposed under the Income Tax Act, 1961 has to be followed up by an assessment order, which is passed by the concerned assessing officers. The verification affidavits filed by the candidates cannot be equated with an investigation as referred to in Section 8(1)(h) of the Act. The process of investigation as contemplated under Section 8(1)(h) of the Act is one in the nature of a probe and an inquiry. Clearly, verification from records cannot be termed as an "investigation".

14. Even if, it is assumed that the verification being conducted by the Directorate General of Income Tax (Investigation) is in the nature of an investigation, the same is no ground for denial of information. Only such information which impedes the process of investigation can be denied. Thus, it would be necessary for the CPIO to specify the CIC that: (a) the investigation was conducted or was proposed; and (b) the information sought would impede the process of investigation. It is apparent that in the present case, these conditions are not met. First of all, there is no assertion that any process of investigation is under way; and secondly, there is no

material to indicate that disclosure of the information as sought would impede any such investigation.

15. The suggestion that the expression "process of investigation" includes within its ambit an assessment proceedings resulting in the assessment order is plainly unmerited. The assessment proceedings merely relate to scrutiny of the Income Tax Returns and an assessment income on tax payable by an assessee. Plainly, such proceedings do not take the colour of investigation.

16. The next question to be addressed is whether the information sought for by the respondent is excluded from the purview of the Act.

17. Section 24(1) of the Act reads as under:-

> "**24. Act not to apply to certain organizations.**– (1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:
>
> Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:
>
> Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request."

18. A plain reading of Section 24(1) of the Act indicates that the provisions of the Act would not be applicable to Intelligence and Security

Organizations as specified in the Second Schedule. Further, any information received from such organizations falls under the exclusionary clause of Section 24(1) of the Act. CBDT is not one of the offices, public organizations which are specified under the Second Schedule; but, the Directorate General of Income Tax (Investigation) is. Thus, any information received from the Directorate General of Income Tax (Investigation) by any Public Authority would also fall within the exclusionary provisions of Section 24(1) of the Act. Indisputably, the information sought for by the respondent emanates from the Directorate General of Income Tax (Investigations) (various DGs who have called upon to submit a comprehensive report of verification). Thus, CBDT would be justified in denying such information to the respondent.

19. It was also contended by the respondent that since the information sought for by him related to allegations of corruption, the same falls within the exception to the exclusionary clause of Section 24(1) of the Act. The respondent is correct that by virtue of the first proviso to Section 24(1) of the Act, all information pertaining to allegations of corruption and human rights violations falls within the exception to Section 24(1) of the Act. In other words, notwithstanding that such information emanates from any of the organizations as specified under the Second Schedule of the Act, it is not excluded from the purview of the Act.

20. However, in the present case, it is difficult to accept that the information sought by the respondent pertains to allegations of corruption, as no such allegations have been made at any stage. The respondent had merely highlighted that the net wealth of certain MLAs and MPs had

increased fivefold and the respondent had sought verification of the same in order to bring about a higher level of transparency. No specific or general allegations of corruption were advanced by the respondent.

21. Thus, it is not possible to accept that the information as sought for by the respondent falls within the purview of the Act even though it emanates from the organization which is placed in the Second Schedule.

22. In view of the above, the order passed by the CIC cannot be sustained and is, accordingly, set aside. However, it is clarified that in the event any citizen was to make an allegation of corruption, the information as sought by the respondent would not be excluded from the scope of the Act.

23. The petition and the pending application are disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

FEBRUARY 19, 2018
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8393/2016 & CM No. 34715/2016

PRESIDENT'S SECRETARIAT ..... Petitioner

Through: Mr Jasmeet Singh, Advocate.

versus

SUBHASH CHANDRA AGARWAL ..... Respondent

Through: Mr Amit Khemka and Ms Nidhi Bhuwania, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 31.01.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia,* impugning an order dated 11.05.2016 (hereafter 'the impugned order') passed by the Central Information Commissioner (hereafter 'the CIC') allowing the respondent's second appeal under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act'). The controversy involved in the present petition relates to two queries raised by the respondent in his application dated 16.04.2014 filed under the Act. The said queries are reproduced below:-

> "(4) Did President's Secretariat and/or others raise security and/or others concerned on allowing

residential complex at the mentioned plot in Diplomatic Enclave (New Delhi) as also referred in enclosed new-reports and letters of Dr. Subramanian swamy?

(5) Complete information on President's Secretariat and/or others raising security and/or other concerns as referred in query above, enclosing also copies of all correspondence/file notings/documents in this regard."

2. The Public Information Officer ('PIO') of the petitioner declined to provide any information as to the aforesaid queries and responded that "*the requested information cannot be shared as organizations under Section 24(1) of the RTI Act, 2005 are involved*".

3. Aggrieved by the aforesaid response, the respondent preferred an appeal before the First Appellate Authority (hereafter 'the FAA'), under Section 19 of the Act. The said appeal was also rejected by an order dated 03.06.2014, whereby the FAA held that "*with regard to query nos.4 & 5, the appellant is informed that his contention regarding Section 24(1) of the RTI Act, 2005 cannot be applicable in this case and the reply of CPIO, President's Secretariat is found to be in order*."

4. Aggrieved by the same, the respondent preferred a Second Appeal under Section 19(3) of the Act, which was allowed by the impugned order.

5. Before proceeding further, it is necessary to refer to the context in which the respondent had sought the information under the Act. A

newspaper report captioned *"Row heightens as Swamy seeks probe into high-rise plan near Rashtrapati Bhavan*" was published in a national newspaper – The Hindu – on 05.03.2014.

6. The said report indicates that there were allegations that the private company owned by M/s DLF had acquired a plot of land measuring approximately 23 acres near the Rashtrapati Bhavan and was proposing to build luxury apartments on the said plot. It was reported that the said property had been sold for an amount, which was allegedly less than the market price. It is further reported that there were allegations that the promoters of the private company were keen on increasing the current height of construction from the permitted four storeys (30 metres to eight storeys), despite the concerns of a possible security breach of the Rashtrapati Bhavan.

7. It was stated that initially permission to construct apartments on the said plot had been denied but the matter was subsequently agitated before a Division Bench of this Court and it was reported that this Court had held that the master plan permits residential use of the land and there were many other residential premises in the vicinity.

8. Mr Khemka, the learned counsel appearing for the respondent contended that a plain reading of the newspaper report indicated that the issues sought to be raised were related to allegations of corruption and therefore the information sought by the respondent fell outside the scope of Section 24(1) of the Act.

9. Mr Singh, the learned counsel for the petitioner contended that it was an admitted case that President Secretariat had raised security

concerns. However, the said concerns could not be shared with the respondent as it involved information received from the Intelligence Bureau (IB), which was an organization listed in the Second Schedule to the Act. He contended that in terms of Section 24(1) of the Act, any information received from an organization listed in the Second Schedule was outside the purview of the Act.

10. Mr Singh further contended that the allegation of corruption as discernable from the newspaper report in question, only pertained to sale of land below the market rate and did not relate to any security concerns.

11. I have heard the learned counsel for the parties.

12. A plain reading of the response of the PIO of the petitioner indicates that he had even declined to provide the information (which now Mr Singh states is admitted) that the President Secretariat had raised concerns regarding allowing of residential complex as mentioned in the newspaper report. Concededly, there was no plausible reason for the PIO of the petitioner to have declined providing this information in response to the information sought in query no.4 (quoted above).

13. The next question that arises is whether further information regarding the concerns raised by the petitioner could be shared with the respondent.

14. It is seen that the exclusionary clause of Section 24(1) of the Act has limited application insofar as the petition is concerned. In terms of Section 24(1) of the Act, information submitted by certain

intelligence and security organizations to the Government is exempt from disclosure. Therefore, the petitioner could claim exemption only with regard to information that it had received from a security organization - in this case the IB - and not in respect of any other information including the concerns raised by the President's Secretariat.

15. It is also relevant to state that even the information, which a Public Authority has received from security agencies is required to be disclosed to an information seeker if it pertains to allegations of corruption or violations of human rights.

16. In view of the above, the question that follows is whether the information sought by the respondent pertains to allegations of corruption.

17. It is seen that the impugned order does not reflect that this aspect was considered by the CIC. The impugned order is bereft of any reasoning as it merely states that the information is not exempt under Section 24(1) of the Act.

18. It does not appear that the petitioner had advanced any contention that the information regarding the security concerns did not pertain to the allegations of corruption and perhaps this is the reason why this issue has not been considered by the CIC.

19. In this view, the impugned order is set aside. The present petition and the pending application are disposed of with the following directions:-

a) The petitioner shall disclose the relevant information in response to the query nos.4 & 5 as submitted by the respondent except to the extent that such information has been received from security/intelligence agencies as included in the second schedule to the Act;

b) The CIC shall examine whether the information received by the petitioner from security agencies pertains to allegations of corruption as is contended by the respondent; and

c) The CIC shall pass a reasoned order as expeditiously as possible and preferably within a period of six months from today.

20. The parties are left to bear their own costs.

VIBHU BAKHRU, J

JANUARY 31, 2018
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 11092/2017 & CM Nos.45346/2017, 45348/2017 & 2610/2018**

THE CENTRAL PUBLIC INFORMATION OFFICER, CENTRAL BUREAU OF INVESTIGATION, NEW DELHI ..... Petitioner

Through: Mr Rahul Sharma and Mr C. K. Bhatt, Advocates.

versus

CENTRAL INFORMATION COMMISSION AND ANR. ..... Respondents

Through: Mr Anurag Pandey, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 02.02.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 09.06.2017 (hereafter 'the impugned order') passed by the Central Information Commission (hereafter 'the CIC') allowing the second appeal (Appeal No.CIC/SB/A/2016/001171/MP) preferred by respondent no.2 under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the Act').

2. By the impugned order, the CIC rejected the petitioner's contention that the Central Bureau of Investigation (hereafter 'the CBI') was outside the purview of Section 24 of the Act and was therefore not obliged to disclose

the information as sought for by respondent no.2. Accordingly, the petitioner was directed to disclose the information as sought for by respondent no.2.

3. Briefly stated, the relevant facts necessary to address the controversy are as under:-

3.1 Respondent no.2 is an Officer with the CBI and is currently posted in STF, CBI (H.O.), New Delhi. Respondent no.2 was transferred from Imphal to Delhi on 12.09.2013. The CBI initiated departmental proceedings against respondent no.2 under Rule 14 of the CCA (CCS) Rules, 1965. The petitioner further claims that the allegations made against respondent no. 2 are grave as well as sensitive in nature.

3.2 Respondent no.2 filed an application dated 01.02.2016 under the Act seeking certain information relating to the disciplinary proceedings - Regular Departmental Action (RDA) for major penalty - initiated against him. The petitioner declined to disclose the information sought on the ground that the CBI was placed in the Second Schedule to the Act and thus was outside the purview of the Act.

3.3 Respondent no.2 filed an appeal under Section 19 of the Act before the First Appellate Authority which was also rejected by an order dated 17.03.2016.

3.4 Aggrieved by the same, the respondent no.2 preferred a second appeal (CIC/SB/A/2016/000656/MP) before the CIC which was also rejected by an order dated 16.03.2017.

3.5 Respondent no.2, thereafter, once again filed an application dated 29.04.2016 under the Act seeking certain information relating to the RDA for major penalty initiated against respondent no.2.

3.6 Respondent no.2's request for information was denied for the same reason as it was denied earlier; that is, the CBI was outside the purview of the Act by virtue of Section 24 of the Act. Respondent no.2's first appeal against the denial of information did not meet with any success and was rejected by the First Appellate Authority by an order dated 24.05.2016.

3.7 Respondent no.2 preferred the second appeal under Section 19(3) of the Act, which was allowed by the impugned order.

4. It is apparent from the plain reading of the impugned order that the CIC was of the view that the exclusionary clause of section 24(1) of the Act was not available in respect of information sought by its own officials regarding their service matters. The CIC held that since the matter involved the case of the CBI's official (respondent no.2), he had the right to know information regarding his case. The CIC further held that the petitioner had to prove that the information sought for by respondent no.2 was of the nature as specified under Section 24 of the Act. The relevant extract of the impugned order is set out below:-

> "6. However, the mater at present involves the case of CBI's own official and the appellant has a right to know about his own case and a public authority which seeks to claim the exemption u/s 24 of the Act from disclosure of information, available with it and pertaining to its own employee/official, has to show/prove that the information sought is of the nature specified in Section24 of the Act, to the satisfaction of the

Commission. The CPIO has, without applying his mind and keeping in view the very object of the RTI Act, 2005 r/w Section 24, denied information to the appellant on no legal grounds. The decision of the Hon'ble Delhi High Court, in the case of B.S. Mathur vs. PIO, is relevant in this regard:

"19. The scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non-disclosure the exception"

7. The Commission, therefore, directs the CPIO to revisit the appellant's RTI application and reply to him, point wise, keeping in view the provisions of the RTI Act, 2005. The appeal is disposed of.

5. Before proceeding further, it would be relevant to refer to Section 24(1) of the Act, which is set out below:

"**24. Act not to apply in certain organizations.**—(*1)* Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be

provided within forty-five days from the date of the receipt of request."

6. A plain reading of Section 24(1) of the Act clearly indicates that it is an exclusionary clause and all intelligence and security organisations specified in the Second Schedule of the Act are excluded from the purview of the Act. The only exemption carved out is by the First Proviso to Section 24(1) of the Act. In terms of the said proviso, all information pertaining to the allegations of corruption and human rights violations are not within the exclusionary clause. Thus, notwithstanding, that CBI is excluded from the purview of the Act by virtue of Section 24(1) of the Act, it is nonetheless obliged to disclose the information pertaining to the allegations of corruption and human rights violation. Obviously, this is subject to the other provisions of the Act including Section 8(1) of the Act.

7. Mr Anurag Pandey, the learned counsel appearing for respondent no.2 contended that the information sought for by respondent no.2 pertains to the disciplinary proceedings, which had commenced in 2011 but were not being proceeded with. And, in the meanwhile, respondent no.2's promotion had been withheld solely due to pendency of the said proceedings. He earnestly contended that this was causing respondent no.2's immense distress and the same fell within the scope of the expression "human rights violations" as used in the first proviso to Section 24(1) of the Act.

8. The contention advanced on behalf of respondent no.2 is unmerited. The information sought for by respondent no.2 pertains to a service matter and the same cannot by any stretch be termed as "violation of human rights".

9. The expression 'Human Rights' denotes certain inalienable rights which every individual has by virtue of being a member of the Human Family. In December, 1948, the U.N. General Assembly adopted the Universal Declaration of Human Rights. In December, 1965 the UN General Assembly adopted two covenants for observance of Human Rights: (i) The International Covenant on Civil and Political Rights; and (ii) Covenants on Economic, Social and Cultural Rights. India is a party to the said covenants.

10. India has also enacted The Protection of Human Rights Act, 1993 to provide for better protection of human rights and matters connected therewith or incidental thereto. The expression 'Human Rights' is defined under Section 2(1)(d) of the said Act to mean "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India".

11. The expression 'Human Rights Violation' as used in proviso to Section 24(1) of the Act cannot be read to extend all matters where a person alleges violation of fundamental rights. Plainly, the said expression cannot be extended to include controversies relating to service matters. The grievances that the petitioner has in respect of the disciplinary proceedings in question do not fall under the ambit of human rights violations.

12. ***In Director General and Anr vs Harender: WP(C) 5959 of 2013 decided on 16.09.2013***, a co-ordinate bench of this Court had held that *"No violation of human rights is involved in service matters, such as promotion, disciplinary actions, pay increments, retiral benefits, pension, gratuity, etc."*

13. In view of the above, the impugned order directing the petitioner to

disclose the information sought for by respondent no.2 cannot be sustained.

14. It is also relevant to state that the CIC in the earlier round had rejected respondent no.2's second appeal against denial of information. The relevant extract of the order dated 16.03.2017 passed by CIC in Appeal No. CIC/SB/A/2016/000656/MP reads as under:-

> "5. On hearing both the parties and going through the available record, the Commission finds that the appellant had not substantiated allegation regarding corruption and human right violations. Therefore, the respondent authority has appropriately claimed exemption. The Commission further notes that while there was no delay on the part of the CPIO, almost a month had been taken for placing the RTI application before the CPIO. The Commission, therefore, recommends to the competent authority to streamline the office processes relating to handling of RTI applications. The appeal is disposed of."

15. Concededly, the nature of information sought, the denial of which was subject matter of the said appeal (Appeal No. CIC/SB/A/2016/000656/MP), is the same as the subject matter of respondent no.2's application dated 29.04.2016. Thus, clearly, the CIC fell in error in not referring to and following its earlier decision.

16. In view of the above, the petition is allowed and the impugned order is set aside. The pending applications are also disposed of with the aforesaid observations. The parties are left to bear their own costs.

VIBHU BAKHRU, J

FEBRUARY 02, 2018/pkv