

**Equivalent Citation:** AIR2008Mad224, 2008(1)CTC838, (2008)2MLJ733

**IN THE HIGH COURT OF MADRAS**

W.P. No. 35490 of 2007 and M.P. Nos. 1 and 2 of 2007

Decided On: 24.01.2008

Appellants: **A.C. Sekar**

**Vs.**

Respondent: **The Deputy Registrar of Co-operative Societies, The Special Officer, H.H. 517 Vettavalam Primary Agricultural Co-op Bank and G. Azhagammal**

**Hon'ble Judges:**

K. Chandru, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: C. Prakasam, Adv.

For Respondents/Defendant: Bhavani Subbaroyan, AGP

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 8(1), 11(3), 18(3), 19 and 19(3); Right to Information (Regulation of Fees and Cost) Rules, 2005

**Cases Referred:**

Diamond Jubilee Higher Secondary School rep. by its Secretary and Correspondent, Erode District v. Union of India rep. by Secretary, Ministry of Law, Justice and Co. Affairs, New Delhi and Ors. (2007) 3 MLJ 77; V.V. Mineral, regd. Firm through its Managing Partner, Tisaiyanvilai, Tirunelveli District v. Director of Geology and Mining, Chennai and Ors. 2007 (4) M.L.J. 394

**Disposition:**

Petition dismissed

**ORDER**

**K. Chandru, J.**

1. Heard Mr. C. Prakasam, learned Counsel appearing for the petitioner and Mrs. Bhavani Subbaroyan, learned Additional Government Pleader representing the first respondent and perused the records.

2. The petitioner is a salesman in the second respondent Bank and has filed the present writ petition against the direction given by the Deputy Registrar (first respondent) to the second respondent to furnish the information sought for by the third respondent. According to the petitioner, the third respondent's son was a member of the Marxist Party and was sending petitions to the higher officials as the petitioner had denied mamool to be given to him frequently. The said person, by name, Thirumoorthy, had sought for certain information under the Right to Information Act [for short, 'RTI Act']. On the basis of the request made by him, the said person was directed to pay Rs. 25,405/- towards the cost of furnishing the said information in terms of the Right to Information (Regulation of Fees and Cost) Rules, 2005. The said Thirumoorthy did not pursue his request. But, on the contrary, set up his mother the third respondent for getting the information, which was earlier sought for by her son. She also claimed that she comes below the poverty line and produced a certificate from the Executive Officer of the Town Panchayat, Vettavalam. Her request was conceded by the first respondent and accordingly, the second respondent Special Officer was directed to furnish the said information without insisting any payment. But the petitioner, aggrieved by the said direction, has come forward to file the present writ petition challenging the said direction.

3. Mr. C. Prakasam, learned Counsel appearing for the petitioner submitted that the third respondent had committed a fraud in producing a certificate stating that she belongs to below poverty line category even though her sons are working and she owns some land in the village. Further, she has been set up by her son, who made an application seeking for the very same information and when he was asked to pay a sum of Rs. 25,405/-, he did not pay the said amount and, therefore, on these grounds, no information should be furnished to the third respondent. Further, if such information was furnished, the Society will become poorer as the cost of furnishing such information has been worked out nearly to Rs. 25,000/- earlier. The information was also sought for to blackmail the employees working in the second respondent Society and, therefore, the same should not be furnished.

4. The information that was sought for by the third respondent was the details regarding the 7 ration shops run by the second respondent Society and the Sales Register maintained by the petitioner during the relevant period as well as the daily sales details, Stock Register and leave details of the petitioner for the relevant period. First of all, the communication that has been attacked by the petitioner is only an inter-office communication between the respondents 1 and 2 and the petitioner has no locus standi to challenge the same.

5. Inasmuch as the petitioner has been working in a shop in which the commodities of the public distribution system are being dealt with, the petitioner cannot claim any right of privacy if those details are furnished to any citizen, who seeks such an information. It is not as if the third respondent is a stranger to the institution from which the information is sought for. But rather she is a beneficiary and a consumer of the products sold to the public on a State subsidy and, therefore, she, as a citizen as well as a beneficiary of the consumer from the said shop, is entitled to seek the said information.

6. Considering the scope of the RTI Act, this Court by a judgment in Diamond Jubilee Higher Secondary School rep. By its Secretary and Correspondent, Erode District v. Union of India rep. by Secretary, Ministry of Law, Justice and Company Affairs, New Delhi and Ors. (2007) 3 MLJ 77 after referring to certain academic papers presented by distinguished persons, set forth the objects behind the enactment of the Act. Paragraph No. 8, which is relevant, reads as follows:

8. In a lecture delivered by Dr. Justice A.R. Lakshmanan, the retired Judge of the Supreme Court on 19.8.2006 at Chennai, the learned Judge traced the History of Right to Information Act, 2005 in the following words:

This right traces its origin since 1948 March, when the United Nations convened a Conference in Geneva on the subject matter of freedom of information, that was attended by 54 countries which ultimately let the General Assembly of United Nations to declare the freedom of information a fundamental human right, and declaration was made on 10.12.1948. In 1960, the Economic and Social Council of the United Nations adopted a Declaration of Freedom of Information. Sweden became the first country in the world, to enact a provision for access to official information for its citizens. Many countries later adopted this principle and drafted legislations incorporating the same. Each individual shall have appropriate access to information concerning the decision making process. Effective access to judicial and administrative proceedings, including redress and remedy should be provided. The Right to Information Act, 2005 is a recognition of such Fundamental Rights making possible the participation of the people in the decision-making process in our democracy. Access to information on laws mandated Government services and Government expenses are fundamental for the people to hold Governments more accountable for their performance.

7. It must also be noted that no private information of the petitioner has been sought for and the information that is sought for is only relating to the public office held by the petitioner as sales person in the Society. This Court dealt with a similar claim made by a third party in relation to the direction given by the Officers under the RTI Act in the case relating to V.V. Mineral, regd. Firm through its Managing Partner, Tisaiyanvilai, Tirunelveli District v. Director of Geology and Mining, Chennai and Ors. 2007 (4) M.L.J. 394. Paragraphs 17 and 18 of the said order may be extracted below:

Para 17: Therefore, no total immunity can be claimed by any so-called third party. Further, if it is not a matter covered by Section 8(1)(d) of the Act, the question of any denial by the Information officer does not arise. Therefore, on appeal preferred by the petitioner, the first respondent held that it is not an issue covered by Section 8(1)(d) of the Act. If it is only covered by Section 8(1)(d) of the Act, the question of denial of information by the authority may arise.

Para 18: In any event, as contended by the learned Counsel for the petitioner that under Section 11(3) read with Section 19 of the RTI Act of the has not been given any notice as referred to above, a Second Appeal is provided under Section 19(3) to the State Information Commission. There is no whisper in the affidavit as to why the petitioner had not approached the State Commission as provided under the Act. In fact, the contention made in para 5 of the affidavit, is that there is no other efficacious remedy to the petitioner is contrary to the provisions of the Act. The Commission is a wider body and clothed with all the powers of a Civil Court under Section 8(3) of the RTI Act and therefore, it is misnomer to call it as a non-efficacious remedy.

8. As regards the motive attributed to the third respondent, it must be stated that such allegation has no relevance in furnishing of the information. In the very same V.V. Mineral's case (cited supra), this Court has noted in paragraph 19 as follows:

Para 19: If a person, who seeks for documents, is a business competitor and if any trade secret is sought for, then such document may be denied. But regarding a public document, if sought for by an individual whatever the motivation of such individual in seeking document has no

relevancy as the Central RTI Act had not made any distinction between a citizen and a so-called motivated citizen. Hence, the submission in this regard has to fail.

9. Therefore, the attempt of the petitioner to thwart the direction issued by the first respondent cannot be countenanced by this Court. In fact, in these days, when there is an increasing allegation of misfeasance and malfeasance committed in fair price shops are coming to the notice of the public, the RTI Act can be potent weapon to check such illegal and criminal activities of the staff employed in those shops. If ultimately by furnishing of such information, the affairs of the Society can be brought to the attention of the authorities, who are in charge of supply of essential commodities, it can stem the tide of further rot into the system.

10. In view of the above, the writ petition is misconceived and devoid of merits. Accordingly, the same will stand dismissed. However, there will be no order as to costs. Connected Miscellaneous Petitions are closed.

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**Equivalent Citation:** 2006(3)KLT696

**IN THE HIGH COURT OF KERALA**

W.P. (C) No. 14686 of 2006

Decided On: 06.07.2006

Appellants: **Abdu Razak**  
**Vs.**  
Respondent: **State of Kerala**

**Hon'bleJudges:**

K. Thankappan, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: P.V. Surendranath and V.A. Abdul Jaleel, Advs.

For Respondents/Defendant: T.R. Ramachandran Nair, V.G. Arun, M. Ajay, Advs. and Thomaskutty M.A., Government Pleader

**Subject: Civil**

**Acts/Rules/Orders:**

Kerala Co-operative Societies Act; Right to Information Act, 2005 - Sections 2, 3, 8 and 8(1); Constitution of India - Article 19

**Disposition:**

Appeal allowed

**JUDGMENT**

**K. Thankappan, J.**

1. Petitioner has approached this Court for a direction to respondents 3 and 4 to issue necessary information to the petitioner as prayed for in Exts.P1 and P7 applications. The petitioner is an A class member of the 5th respondent Service Cooperative Bank, which is a Co-operative Society registered under the Kerala Cooperative Societies Act. He submitted an application before the 3rd respondent Society for obtaining certain information by way of copies of documents. Since there was no positive response from the 3rd respondent, the petitioner submitted similar application before the 4th respondent. Thereafter, the petitioner was informed that the required copies of the documents will not be furnished without the consent of the department. Therefore, the petitioner submitted a representation before the Assistant Registrar of Co-operative Societies and the Assistant Registrar directed the 3rd respondent to take steps to issue copies of the documents to the petitioner. According to the petitioner, even after the

direction, there was no response from the 3rd respondent. Aggrieved by the inaction on the part of the 3rd respondent, the Writ Petition is filed.

2. The petitioner submits that as per the provisions of the Right to Information Act, 2005 (Act 22 of 2005), hereinafter referred to as 'the Act', he is entitled to obtain necessary information. The petitioner also submits that the inaction on the part of the 3rd respondent is a clear violation of petitioner's right under Section 3 of the Act and also the fundamental right guaranteed under Article 19 of the Constitution of India.

3. In the counter affidavit filed by the 4th respondent it is stated that item 3 related to the copies of minutes of various meetings of the Managing Committee and all the policy decisions relating to the administration of the Society were taken after discussion in the meetings of the committee and the Society was having business rivalry with other commercial banks. It is also stated that under Section 8 (1)(d) of the Act, there was no obligation to give any citizen information including commercial confidence, trade secrets, the disclosure of which would harm the competitive position of a third party. It is further stated that item 4 related to copy of reference file in respect of enquiry ordered and it was only available with the Assistant Registrar, Tirur. It is also stated that all details except items 3 and 4, could be issued on a proper application with prescribed fee.

4. Question to be decided in this Writ Petition is that, as per the provisions of the Act, the petitioner is entitled to obtain the information relates to items 3 and 4 or not.

5. By Ext.P7 the petitioner requested certain documents. Item No. 3 is the copies of minutes of various meetings of the Managing Committee held between 1-12-25 to 31-1-2006 and item No. 4 is the copy of reference file in respect of an enquiry ordered. The objection is that item 3 is the copies of minutes of various meetings of the Managing Committee and it is not conducive for the better interest of the bank to publicise the decisions taken in various meetings of the committee and under S.8(1)(d) of the Act there is no obligation to give any citizen information including commercial confidence, trade secrets, the disclosure of which would harm the competitive position of a third party and, therefore, the details cannot be issued as required for.

6. In order to ensure greater and more effective access to information, the Act was introduced for providing an effective frame work for effectuating the right of information recognized under Article 19 of the Constitution of India. The provisions ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosure by authorities. Democracy requires informed citizens and transparency of information. The Act provides for setting out Central Information Commission and State Information Commissions to promote transparency and accountability in the working of every public authority. Section 8 of the Act deals with exemption from disclosure of information. Section 8(1)(d) of the Act reads as follows:-

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.

Section 2(f) defines the term "information" which reads as "Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a

public authority under any other law for the time being in force." The information sought for under item No. 3 concerns the minutes of the Managing Committee meetings and it is not pertaining to the commercial confidence, trade secrets or intellectual property. Hence, the petitioner is entitled to obtain the information under item No. 3.

7. Item No. 4 is the copy of reference file in respect of an enquiry ordered by the Assistant Registrar of Co-operative Societies, Tirur. As per the counter affidavit filed by the 4th respondent, item No. 4 is available with the Assistant Registrar of Cooperative Societies, Tirur. For obtaining information under item No. 4, the petitioner has to make a request to the Assistant Registrar, Tirur.

8. In the above circumstances, the Writ Petition is allowed directing the 5th respondent bank to issue the information as prayed in Exts.P1 and P7, except item No. 4, to the petitioner on payment of the prescribed fee, as early as possible at any rate within 15 days from the date of receipt of copy of this judgment.

The Writ Petition is allowed as above.

**Equivalent Citation:** AIR2008Guj42

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

Special Civil Application No. 23305 of 2007

Decided On: 28.11.2007

Appellants: **Ahmedabad Education Society and Anr.**  
**Vs.**  
Respondent: **The Union of India (UOI) and 3 Ors.**

**Hon'bleJudges:**

D.N. Patel, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: D.V. Parikh, Adv.

For Respondents/Defendant: N.V. Anjaria, Adv. for Respondent Nos. 2 and 3

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 7, 7(7), 11, 11(1), 18, 18(3), 19 and 20; Civil Procedure Code (CPC), 1907 - Section 9

**Cases Referred:**

Reliance Industries Limited v. Gujarat State Information Commission and Ors. AIR 2007 Gujarat 203; Gokalbhai Nanbhai Patel v. Chief Information Commissioner and Ors. 2007(3) G.L.H. 352

**JUDGMENT**

**D.N. Patel, J.**

1. This writ petition has been preferred against the order dated 6th July,2007 passed by State Chief Information Commissioner in Complaint No. 1429 of 2006-07, whereby the petitioners who were not parties before the said authority, are directed to refund the fees under the Right to Information Act,2005 (hereinafter referred to as the Act,2005). Against this order, third party has preferred the present petition on the ground that the petitioners were not joined as parties in the proceedings before State Chief Information Commissioner and no opportunity of being heard was given and the direction has been given to the petitioners to refund fees to the original applicant i.e. to the present respondent No. 4, is de hors the provisions of the Act, 2005.



2. Learned Counsel for the petitioners submitted that State Chief Information Commissioner has not properly appreciated the provisions of the Act,2005 especially Section 11 read with Section 7(7) of the Act nor the authorities below have properly appreciated the judgement delivered by this Court in the case of Reliance Industries Limited v. Gujarat State Information Commission and Ors. now, reported in AIR 2007 Gujarat 203 as well as against the decision rendered by this Court in the case of Gokalbhai Nanbhai Patel v. Chief Information Commissioner and Ors. now reported in 2007(3) G.L.H. 352. It is also submitted by learned Counsel for the petitioners that there is no power, jurisdiction and authority with the State Chief Information Commissioner to pass an order of refund of fees especially when an application is preferred under Section 18 of the Act,2005. He has also narrated the scope of power, jurisdiction and authority under Section 18 and 19 of the Act,2005. At length, reliance has been placed upon the decisions rendered by this Court as stated hereinabove and pointed out that without giving an opportunity of being heard to the petitioners, State Chief Information Commissioner has passed an order in respect of third party i.e. present petitioners, which is totally in defiance of the provisions of the Act,2005, and, hence, the order passed by State Chief Information Commissioner deserves to be quashed and set aside. The question about refund is a civil dispute and, therefore, this right can be settled under Section 9 of Code of Civil Procedure, 1907 by competent Civil Court and not under the Right to Information Act,2005. This aspect of the matter has not been appreciated by the State Chief Information Commissioner.

3. Learned Counsel for respondent Nos. 2 and 3 submitted that it is a fact that the present petitioners are not heard. Nonetheless, looking to the resolution passed by Gujarat University dated 20th May,2006, the fees was ordered to be refunded as the per the impugned order and the petitioners are running the college and are bound by the resolution passed by Gujarat University.

4. Respondent No. 4 has refused to accept the notice.

5. Having heard the learned Counsel for both the sides and looking to the facts and circumstances of the case, the order dated 6th July,2007 passed by State Chief Information Commissioner in Complaint No. 1429/2006-07 (Annexure G to the memo of the petition) deserves to be quashed and set aside, for the following facts and reasons:

(i) It appears from the facts of the case that the present respondent No. 4 has preferred a Complaint under Section 18 of the Right to Information Act, 2005. As per Section 18, the complaint can be preferred before the State Information Commission and Chief Information Commissioner can initiate an inquiry and can impose penalty as per Section 20 of the Act,2005. While holding inquiry, as per Section 18(3) of the Act,2005, State Chief Information Commissioner has been clothed with powers of the Civil Court under the Code of Civil Procedure,1908, in respect of summoning and enforcing the attendance of persons and compel them to give oral and written evidence on oath; requiring the discovery and inspection of documents; receiving evidence on affidavit; requisitioning any public record or copies thereof from any court or office. But so far as refund of fees is concerned, it is a matter to be decided by the Civil Court of competent jurisdiction under Code of Civil Procedure,1907. State Chief Information Commissioner has no power, jurisdiction and authority under the Act,2005 to pass an order of refund of the fees and, therefore, the impugned order deserves to be quashed and set aside.

(ii) Looking to the impugned order passed by State Chief Information Commissioner, it appears that though the order has been passed against the petitioners, they have not been joined as

parties in the proceedings. No notice or summons were issued to the present petitioners. Thus, without giving an opportunity of being heard to the petitioners, the impugned order has been passed and, hence, the order deserves to be quashed and set aside.

(iii) It ought to be kept in mind by State Chief Information Commissioner that whenever any order has been passed against any person or institution, the same ought to be heard. This is a bare minimum requirement. In the facts of the present case, this bare minimum requirement of hearing, has not been complied with and a civil dispute has been decided by the State Chief Information Commissioner, as decided by this Court in the case of Gokalbhai Nanbhai Patel v. Chief Information Commissioner and Ors. now, reported in 2007(3) G.L.H. 352, especially in para 9(iv) and (v) as under:

(IV) Whenever any applicant is applying for getting any information about third party, such information shall be given by Public Information Officer under Section 7 of the Act,2005, only after following procedure prescribed under Section 11(1) of the Act,2005 and also keeping in mind Section 7(7) of the Act,2005. Here no such opportunity of hearing was given to the petitioner by Chief Information Commissioner.

(V) The concerned authorities have not properly appreciated that the present petitioner was never a party in the First Appeal as well as in the Second Appeal and the order has been passed against the petitioner. No notice was ever issued to the present petitioner and, therefore also, the impugned order deserves to be quashed and set aside. Chief Information Commissioner appears to be ignorant about aforesaid simple judicial process. Bare minimum requirement is, to follow principles of natural justice.

Similarly, it is held by this Court in the case of Reliance Industries Limited v. Gujarat State Information Commission and Ors. now, reported in AIR 2007 Gujarat 203, especially in para-12 thereof to the effect that whenever the State Information Commissioner is exercising power under Section 18 of the Act,2005, he has no authority and jurisdiction to pass an order for grant of information. In the facts of the present case, the petitioners are third party against whom the relief was sought for. No order has been passed by Public Information Officer nor by First Appellate Authority nor by Second Appellate Authority. Straightway an application has been preferred under Section 18 before the State Chief Information Commissioner. Looking to the provisions of Section 18 of the Act,2005, State Chief Information Commissioner can hold an inquiry and can impose penalty upon erring officer. No order can be passed against the third party otherwise right of first appeal as well as second appeal of third party will be taken away. Looking to the facts of the present case, it is clear that the State Chief Information Commissioner has exceeded his jurisdiction under the Act,2005.

(iv) Order passed without giving an opportunity of being heard, lead to arbitrariness. Arbitrariness and equality are sworn enemies of each other. Where arbitrariness is present, equality is always, absent and where equality is present, arbitrariness is absent. In the facts of this case, there is gross violation of principles of natural justice. Hence, the order is arbitrary and ,therefore, is violative of Article 14 of the Constitution of India.

6. In view of the aforesaid facts, reasons and judicial pronouncements, the impugned order dated 6th July,2007 passed by State Chief Information Commissioner in Complaint No. 1429 of 2006-07 is hereby quashed and set aside. Rule made absolute with no order as to costs.

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**IN THE HIGH COURT OF DELHI**

WP(C) No. 3464 /2007

Decided On: 03.09.2007

Appellants: **Ajay Kumar Goel**

**Vs.**

Respondent: **Central Information Commission and Ors.**

**Hon'bleJudges:**

S. Ravindra Bhat, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Ratika Mehrotra, Adv.

For Respondents/Defendant: K.K. Nigam, Adv. and Sanjeev Sabharwal, Adv. for MCD

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 4(1), 18 and 20

**Disposition:**

Petition dismissed

**JUDGMENT**

**S. Ravindra Bhat, J.**

1. The petitioner in these writ proceedings challenges the orders, including the order dated 6-11-2006 issued by the first respondent the Central Information Commission (hereafter called "CIC").

2. On 19-4-2004, this Court made in order in writ proceedings directing the Municipal Corporation of Delhi, to take steps to remove weekly bazaars held in residential areas. The petitioner wrote a letter to the Deputy Commissioner MCD of the concerned zone requesting the authorities to implement the orders of the Court and take steps to clear in such weekly markets in same residential colonies. He alleges that the MCD authorities never replied to this request. The petitioner therefore applied under the Right to Information Act, 2005 (hereafter called "the Act") on 17-11-2005 seeking information about action taken by the MCD authorities upon his letter on the subject. He elicited specific information regarding day-to-day movement of the files dealing with his letter

and the amounts collected by the MCD authorities from weekly bazaars. By letter dated 19-12-2005 the second respondent replied to the petitioners application providing information about amounts collected from weekly bazaars. It is alleged that however, information about status of his later of 24 April 2004, and date wise movement of the file was not provided. The MCD's position was that removal of weekly bazaars was a policy matter and could not be decided at the zonal level. Dissatisfied with the response obtained, the petitioner filed a complaint under Section 18 of the Act, with the CIC, alleging that the information given to him was in complete and misleading.

3. The CIC made an order on 23rd May 2006 directing the second respondent to supply the information sought by the petitioner and also to show cause why penalty under Section 20 of the Act should not be imposed on him, since the PIO was held to be in violation of the prescribed time-frame under Section 7. The second respondent did not show cause to the notice issued by the CIC; therefore the latter imposed a penalty of Rs. 250/- each day subject to a maximum of Rs. 25,000/-. It is alleged that these orders were disobeyed; the petitioner was constrained to prefer a review proceeding, before the CIC requesting it to define the time frame for compliance of its orders and also seeking initiation of disciplinary proceedings against the second respondent. This application was made on 26-6-2006. The CIC, on 9-8-2006 issued a direction to the third respondent Commissioner of MCD to appear in person before it on 18-8-2006 and to show cause why he should not be prosecuted for non-compliance with directions, under Section 20 of the Act.

4. Two hearings were held by the CIC, on 18-8-2006 and 26-8-2006. The petitioner's grievance here is that the proceedings were silent regarding the contempt committed by the Commissioner MCD. It is also alleged that the MCD officials failed to provide any reason why the CIC's order of 5-6-2006 was not complied with.

5. On 7-9-2006, the MCD replied to the petitioner that the information sought by him could not be provided as the files concerning the question were untraceable. It was also informed that the concerned official had retired and that records of that period had been seized by the Central Bureau of Investigation, [ hereafter "CBI"]. The relevant extract of that reply reads as follows:

Point No. 1 and 2

The impugned application of Shri Ajay Kumar Goel dated 27-4-2004 was received in the Office of the then Deputy Commissioner Shahdara (South) Zone Shri D.R. Tamta on 28-4-2004 and the same was sent to the concerned Licensing Inspector to the hierarchy of Assistant Commissioner, Administrative Officer and Zonal Superintendent. The then Licensing Inspector Shri. V.P. Scott has retired from the Municipal Service. From the available records In the Licensing branch, the whereabouts and the movements of the application dated 27-4-2004 is not traceable. It is however, informed by the present staff of the Licensing branch that certain records of that period had been seized by the CBI in connection with some inquiry. In the absence of non-availability of relevant record/file, it is not possible to indicate just what action has been taken on the letter in question received from the applicant and the movement thereof.

6. On 6-11-2006, the CIC made the impugned order closing the matter and rejecting the review petition. The order reads as follows:

## ORDER

The appellant has submitted that MCD has not supplied information relating to whereabouts of his letter and movement of the file. From the letter of MCD, it appears that the concerned inspector dealing with the matter has since retired and the movement of the application dated 27-4-2004 is not traceable. MCD has also stated that the CBI, in connection with an inquiry, has ceased certain records of that period. Double and finds that the information given is incomplete, and MCD on the other hand fields that they had given what they have. CIC naturally can neither enter into it judging the adequacy of the information supplied provided that all information available has indeed been so supplied, not cause an inquiry or devise and mechanism to trace what is claimed to be not traceable. We do, however, urge upon the public authority, in this case the MCD to maintain their data in such a manner so as to facilitate access to information to the citizen, which is mandated under Section 4(1) of the Act, but even such a direction can admittedly be prospective rather than retrospective.

In regard to the other matter about which the apple and has expressed his unhappiness is regarding applicability of a High Court order. MCD feels that the High Court order in question is applicable only within the residential precincts of Naraina Vihar. On the other hand the apple and feels that this order is applicable throughout Delhi. This Commission naturally cannot give an interpretation to an order of the Hon'ble High Court about its applicability.

Under these circumstances, the review petition is without merit and hence not maintainable....

7. Ms. Ratika Mehrotra, learned Counsel, besides reiterating the grounds urged in the petition, submitted that unavailability of records should not have been treated as a legitimate excuse for withholding information. The CIC should have directed MCD to fix responsibility and punish the guilty officers. The MCD could also have been directed MCD to reconstruct the file and provided it to the petitioner. The failure of CIC to issue such directions caused immense prejudice; besides it undermines the letter and spirit of the Act. It was submitted that instead of accepting the lame excuse of MCD, the CIC ought to have appreciated that the Explanationn pointed to deliberate destruction of the record to prevent the petitioner from accessing information, which amounted to an offence under the Act.

8. Ms. Mehrotra next submitted that the CIC failed in its duty to reasonably ensure that complete and full information was furnished to the petitioner. This duty, it was alleged was reinforced by Section 18 and Section 20. Counsel submitted that the adequacy, relevance and correctness of the information supplied by a public authority has to be ensured by the CIC, constituted as the highest body under the Act. Instead, the CIC accepted the excuse of the MCD and closed the matter. In doing so, it fell into grave error of law.

9. Counsel for MCD submitted that the main information sought by the petitioner concerned action taken on the letter for implementation of the High Court's decision. However the CIC proceeded on the assumption that information had not been supplied within the time, reckoning the date of submission of application by the petitioner has 17-11-2005. This date was in dispute since the Central Principal Information Officer had

shown receipt of documents indicating that the application was received in the office on 23-11-2005. On this, the CIC was satisfied that information had been supplied within the time. The order dated the 25-8-2006, it was submitted, recorded in some detail the various steps taken in the previous proceedings. Initially, notices issued to the MCD had not been made available to it; therefore it was unrepresented in the proceeding. On receiving the notice to show cause, a review petition was filed by the CPIO, which was dealt with on 25-8-2006. After satisfying itself that the MCD had not withheld information the CIC correctly closed the proceedings.

10. The above narrative would show that the main dispute is not as much about the content of information sought; it is about the response of the MCD in 2004, when the petitioner allegedly wrote a letter seeking information about implementation of an order of this Court. This aspect is of some relevance, because at that stage the Act had not been brought into force. Since there is some dispute about whether the petitioner had in fact made the application on the date he is urged to have made - as the MCD alleges that it was received sometime later in November 2005, the question of a delayed response is essentially one of fact. On this issue, it would be not appropriate for this Court, in writ jurisdiction, to examine the record and substitute the findings of the CIC, which is the competent tribunal invested with the authority to decide factual disputes.

11. The other issue is whether the CIC acted in error of law, in proceeding as it did, while accepting the Explanation of the MCD regarding the unavailability of the files. There cannot be any dispute that the MCD as a public authority, is under an undeniable duty to maintain its records to best facilitate access to those wishing it. Nevertheless the MCD explained why the day to day movement the files could not be indicated to the petitioner. Its Explanation was that the concerned official had retired and the files were missing. The other reason given was that the CBI had seized certain files. These facts are within the peculiar knowledge of the MCD. In the absence of any allegation of ill will or personal malice, it would be difficult to support the petitioner's submission that the MCD deliberately suppressed information from him. If one sees the fact that the main concern held out by him, i.e. implementation of court orders had been redressed, the grievance about why a letter written two years before the application had not been allegedly attended, is of not equal importance.

12. As regards the view expressed by the CIC, that its jurisdiction did not extend to interpreting court orders, in my considered view, no exception can be taken in that regard. The CIC cannot be asked to interpret such orders as they do not fall within its normal functioning. It is not charged with the duty of implementing such court orders. One could have understood the MCD proceeding and giving an interpretation - right or wrong - which could have been the subject matter of proceedings before this Court. However the limited mandate conferred upon the CIC is to ensure the provisions of the Act for supply of information to concerned applicants are dealt with and wherever required, implemented, according to law. If this perspective were kept in mind, as was properly done by the CIC in this case, there can be no score for grievance.

14. In view of the findings indicated above, there is no merit in this writ petition. It is, accordingly, dismissed without any order on costs.

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Government of India  
Ministry of Commerce & Industry  
Department of Commerce  
(RTI Cell)

\*\*\*\*\*

CONSTITUTION OF APPELLATE COMMITTEE UNDER RTI ACT, 2005,  
IN THE DEPARTMENT OF COMMERCE

- |       |  |   |                  |
|-------|--|---|------------------|
| (i)   | Mrs. Vijaylaxmi Joshi,<br>Joint Secretary,<br>Department of Commerce,<br>Room No.240, Udyog Bhawan,<br>Maulana Azad Road,<br>New Delhi 110107.<br>Phone No. 23061377 | - | Chairperson      |
| (ii)  | Shri Siddharth, Joint Secretary (RTI).   | - | Member           |
| (iii) | Additional Secretary/Joint Secretary.<br>(being Officer Senior to CPIO<br>whom the appeal pertains to)   | - | Member           |
| (iv)  | Smt. Kalpana Narain, Director (RTI).<br>(Coordinating CPIO)  | - | Member-Secretary |

(As on 14<sup>th</sup> January, 2011 )  
File No.R-16(1)/2010-RTI



**Equivalent Citation:** 146(2008)DLT385

**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. Sessa 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.

XXXXXXXXXXXXXX

(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.

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)(i) 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. 2 and 3.

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. 2 and 3. 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)(i) 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, [MANU/SC/0032/1975](#). 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 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 [MANU/SC/0578/2001](#) and V. Tulasamma v. Sesha Reddy [MANU/SC/0380/1977](#). 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 is 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\(1\)\(i\)](#) 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 assessee, 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.

**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.

XXXXXXXXXXXXXXXX

(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 justifies 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. 2 and 3.

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. 2 and 3. 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 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. Sessa 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 is 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 assessee, 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**

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.

XXXXXXXXXXXXXXXX

(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 justifies 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. 2 and 3.

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. 2 and 3. 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 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. Sessa 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 is 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 assessee, 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 BOMBAY

Writ Petition No. 1887 of 2010

Decided On: 11.10.2010

**The Board of Management of the Bombay Properties of the Indian Institute of Science through  
its Secretary  
Vs.  
The Central Information Commission, The Information Commissioner, Kayumars F. Mehta  
and The Union of India (UOI)**

**Hon'ble Judges:**

B.H. Marlapalle and A.A. Sayed, JJ.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Aspi Chinoy, Kevic Setalwad, Advs., i/b., Harish Joshi and Co.

For Respondents/Defendant: A.A. Kumbhakoni, Srikrishnan, Advs., i/b., Kanga & Co. for Respondent No. 3 and Poornima Awasthi, Adv. for Respondent No. 4 - Union of India

**Subject: Right to information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 2, 3, 6, 6(1), 6(2), 7, 8, 8(1) and 19(4); Charitable Endowments Act, 1890 - Sections 4, 5, 5(1), 5(2), 7 and 12; Constitution of India - Articles 226 and 227

### JUDGMENT

**B.H. Marlapalle, J.**

1. This petition filed under Articles 226 and 227 of the Constitution of India impugns the order dated 15th February, 2010 passed by the Central Information Commissioner (for short "the CIC") holding that the petitioner is a public authority as defined under Section 2(h)(d) of the Right to Information Act, 2005 (for short "the Act") and directing the petitioner to provide the complete information to the present respondent No. 3 before 5th March, 2010. This petition was filed on 4th March, 2010 and appeared before the Court for the first time on 17th March, 2010 and the Court had not granted stay to the impugned order.

2. The petitioner is the Board of Management of the Mumbai properties of the Indian Institute of Science at Bangalore (for short "the Institute") and the said Institute is an autonomous body under the Ministry of Human Resource Development, Government of India and is also a deemed University and financed by the Government of India. Late Shri Jamssetjee Nusserwanjee Tata had submitted a proposal to the Government of India for funding an Institute of Research in India and endowing such institute with immoveable properties in the City of Mumbai. Accordingly, on 27th May, 1909 the Secretary to the Government of India passed a Vesting Order under Sections 4 and 7 of the Charitable Endowments Act, 1890 (for short "the Endowments Act") and the properties as listed in Schedule "A" to the said Vesting Order came to be vested in the treasurer of the Charitable Endowments for the Territories subject to the Government of Mumbai. By a subsequent order dated 13th November, 1941 passed by the Government of India through the Finance Department all the properties vested in the Treasurer for Charitable Endowments for any Province came to be vested under Section 12 of the Endowments Act in the Treasurer of Charitable Endowments for India. By the subsequent Notification dated 22nd May, 1967 the Government of India through the Ministry of Education and upon the application of the Council of the Institute and its Board of Management and in exercise of the powers conferred under Section 5 of the Endowments Act and with the concurrence of the Council and the Board of Management and the joint consent of the Trustees of the Public Charities known as Sir Dorabji Tata Trust and the Sir Ratan Tata Trust and with the approval of the Visitor of the said Institute, declared a Scheme for the administration and management of the properties and funds of the said Institute and as set out in Schedule "H" to the Vesting Order dated 27th May, 1909 and thereby revised the Scheme as set forth in the Vesting Order dated 27th May, 1909. Thus, the management of the properties which were vested with the Treasurer for Endowments of the Central Government and covered by the Order dated 27th May, 1909 became a part of the Scheme dated 22nd May, 1967.

3. Respondent No. 3, by his application dated 24th September, 2007 addressed to the Public Information Officer of the Institute, sought the following informations in respect of 2 flats situated in Hamton Court and 1 flat in Jenkins House at Mumbai:

- a) The names of present tenants since there was a proposal to transfer the flats to the defence forces.
- b) Whether Edwart Investment was authorized by II Sc to negotiate on their behalf.
- c) Whether II Sc is a charitable trust and does it fall under charitable commissioner of UGC.
- d) Whether permission had been taken to allot flats to the defence forces.

- e) The total transaction since the market value of the flats were estimated to be around Rs. 5 crores.
- f) The benefits to II Sc in the transfer of the flats.
- g) Whether Edwart Investment control II Sc, Bangalore.
- h) Act or legislation under which Edwart Investment has control over II Sc Bangalore.
- I) The person responsible for the loss of revenue.
- j) Whether any bids/offers were invited to determine market value of the flats.
- k) All the correspondence regarding between II Sc and Edwart Investment.

The Public Information Officer by his reply dated 28th November, 2007 rejected the said application. Respondent No. 3 filed an appeal before the First Appellate Authority at the Institute which was rejected and therefore an appeal was preferred before the CIC (Respondent No. 2). By his order dated 18th December, 2008 the CIC disposed off the appeal and held that the petitioner Board is a public authority and is covered by the Act. The petitioner Board was directed to reply the application on merits. Thereafter, the Public Information Officer of the Institute vide his order dated 22nd December, 2008 forwarded the said RTI application submitted by respondent No. 3 to the petitioner Board. It was further stated that if the Board so wished, it could deny the information but it would give reasons for such denial as per the provisions of the Act. On 16th January, 2009 the Secretary of the petitioner informed respondent No. 3 that the Board was not given an opportunity before the CIC and that the Board was not a public authority and even if it is held to be a public authority, the information sought by respondent No. 3 was personal in nature and therefore its disclosure would cause unwarranted invasion of privacy. Respondent No. 3 filed appeals on 21st February, 2009 and 23rd March, 2009 with the Board. Both the appeals were rejected by the orders dated 19th March, 2009 and 9th April, 2009 by informing respondent No. 3 that the Board was not a public authority under Section 2(h) of the Act. Thus, respondent No. 3 approached respondent No. 2 in the second round by filing a Second Appeal which has been decided by the impugned order. On 12th January, 2010 respondent No. 2 passed the first order and held that the petitioner Board is the public authority within the meaning of Section 2(h)(d) of the Act and on 15th February, 2010 it passed the second Order directing the Board to furnish the information as sought by respondent No. 3.

4. Mr. Chinoy, the learned Senior Counsel appearing for the petitioner, at the first instance submitted that the management of the subject property covered by the Vesting Order dated 27th May, 1909 remained with the petitioner Board and continues to remain so though it was vested with the Treasurer. It was further contended that the Board created by the Vesting Order of 27th May, 1909 cannot be termed to be a public authority as defined under Section 2(h)(d) of the Act and the reasoning set out by the impugned order in that regard is patently erroneous. It was contended that the properties under the management of the petitioner Board are not the properties of the Institute and though the Institute may be a public authority as defined under the Act, the petitioner Board cannot be covered within the ambit of the said term. As per Mr. Chinoy, the notification issued by the Government of India on 22nd May, 1967 cannot replace the Scheme as formulated by the Vesting Order dated 27th May, 1909. It was also urged that the properties have been vested with the Treasurer of Endowments, they continue to be under the management of the Board and two or more government officers being the members of the Board does not, that by itself, bring it within realm of a public authority as defined under Section 2(h)(d) of the Act.

5. Section 5 of the Endowments Act states that where a property is held or is to be applied in trust for charitable purpose, the appropriate Government may on application made and subject to the provisions of the Act, order by notification published in the Official Gazette, that the property be vested in the treasurer of Charitable Endowments on such terms as to the application of the property. Sub-Section (4) of the said Section states that an order of Vesting property shall not require or be deemed to require the Treasurer to administer it or impose or deemed to impose upon him the duty of a trustee with respect to the administration of the property. As per Section 5 of the Endowments Act, the appropriate Government has the power, with the concurrence of the person or persons making the application to settle a scheme for the administration of the property which has been vested in the Treasurer of Charitable Endowments. As per sub-Section 2 of Section 5 of the Endowments Act such a scheme made under Section 5(1) can be modified or can be substituted by another Scheme and under sub-Section (3), the Scheme settled, modified or substituted shall come into operation on a day to be appointed by the appropriate Government in that behalf and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of Charitable Endowments or until it is modified.

It is clear that the first order dated 27th May, 1909 was passed under Section 4 thereby vesting the properties in the Treasurer of Charitable Endowments for Bombay Province and attached thereto was a scheme formulated for the administration of the property under Section 5(1) of the Endowments Act. The property was subsequently vested in the Treasurer of Charitable Endowments, Government of India by the order of 13th November, 1941 and finally the Scheme of 27th May, 1909 has been substituted by the Scheme notified by the Union of India on 22nd May, 1967. It is, therefore, necessary to consider the Scheme of 22nd May, 1967 and not the scheme of 27th May, 1909 for deciding the issue as to whether the petitioner Board is a public authority.

6. The preamble of the Act states that 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. 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 thereto the Act has been framed and brought into force.

The definitions of certain terms as defined under Section 2 of the Act are 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.

(h) "public authority" means any authority or body or institution of self-overnment established or constituted,-

(a) by or under the Constitution;

(b) by any other law made by Parliament;

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

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

(i) body owned, controlled or substantially financed;

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

(i) "record" includes-

(i) any document, manuscript and file;

(ii) any microfilm, microfiche and facsimile copy of a document;

(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(iv) any other material produced by a computer or any other device;

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

(i) inspection of work, documents, records;

(ii) taking notes, extracts, or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

7. As per Section 3 of the Act, subject to the provisions therein, all citizens shall have the right to information. Section 6(1) of the Act states that a person, who desires to obtain any information under the Act, shall make a request in writing or through electronic means specifying the particulars of the information sought by him/her. Sub-Section (2) of Section 6 of the Act states that an applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. It is thus clear that while entertaining an application for information made under the Act, the locus standi or the intention of the applicant cannot be questioned and is required to furnish all the information sought by him except what has been exempted under Section 8 therein.

8. The CIC has noted the arguments advanced by both the parties i.e. the petitioner and respondent No. 3 and has stated that the Vesting Order dated 27th May, 1909 has been replaced by a new scheme published by the Notification dated 22nd May, 1967 by the Union of India and the said notification stipulated that the revised scheme came into effect from 22nd May, 1967 under Section 5 of the Endowments Act. Respondent No. 2 further noted that in para 2.1 of the said Scheme, the Board of Management has been constituted and two out of the 4 members of the Board are Government Officers and one is nominated by the Government of India and thus 3 of the 4 members of the Board owe their position on the Board by the nomination of the Government of India. It also noted that the Scheme notified on 22nd May, 1967 has established the petitioner Board and therefore it is a public authority under Section 2(h)(d) of the Act i.e. the Board has been established/constituted by a Notification issued by the Government of India. In our opinion, this reasoning of the CIC cannot be faulted with having regard to the Scheme notified on 22nd May, 1967, which has substituted the original vesting order dated 27th May, 1909.

9. The arguments advanced by Mr. Chinoy that the said scheme being contrary to the earlier scheme framed when the Vesting Order dated 27th May, 1909 was passed is unsustainable. The Notification dated 22nd May, 1967 clearly states that the Settlor had consented. It was with the joint consent of the Trustees of the Public Charities known as Sir Dorabji Tata Trust and the Sir Ratan Tata Trust. Clause 12.1 of the said Scheme deals with the Board of Management and it consists of the following members, namely:

(a) Collector of Bombay for the time being or such other officer as the Government of India may appoint;

(b) One representative of the Trustees for the time being of the public charity created by the late Sir Dorabji Tata, known as the Sir Dorabji Tata Trust, and the Trustees for the time being of the public charity created by the late Sir Ratan Tata, known as the Sir Ratan Tata Trust;

(c) One resident of Bombay to be nominated by the Government of India;

(d) Director of the Indian Institute of Science, Bangalore (ex-officio) or his representative.

The powers of the Board of Management have been set out in Clause 12.2 of the Scheme. We, therefore, agree with the view taken by respondent No. 2 that the petitioner Board has been established/created by the Scheme framed under the Notification dated 22nd May, 1967 by the Government of India and it is a public authority, as defined under Section 2(h)(d) of the Act and thus the first part of the impugned order deserves to be confirmed.

10. So far as the directions given to provide the information sought by respondent No. 3, the CIC noted that the R11 application was filed by respondent No. 3 in the year 2007 and inspite of the lapse of over 2 years period the said information was not provided. It referred to the scheme of Section 7 of the Act which stipulates that the information has to be provided within 30 days on the receipt of the request. We have also noted the scheme of Section 6 of the Act. We do not find any error in the directions issued by the CIC to provide the information sought by respondent No. 3. More so, when the CIC noted that denial of information under the Act can only be based on the assumption provided under Section 8(1) of the Act and the onus to prove that onus would be justified has been left on the PRO as per Section 19(4) of the Act. The refusal to give the information by the petitioner was solely on the ground that it was not a public authority within the meaning of the Act. The CIC also applied its mind to the provisions of Section 8(1) of the Act and noted that none of the said exemptions are applicable in the instant case and therefore issued directions to provide the information sought for. Hence no fault could be found even on the second part of the impugned order as well.

11. In the premises, this petition fails at the threshold and the same is hereby rejected.

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**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

WA No. 2100 of 2007

Decided On: 20.09.2007

Appellants: **Canara Bank**

**Vs.**

Respondent: **The Central Information Commission and C.S. Shyam**

**Hon'bleJudges:**

H.L. Dattu, C.J. and K.T. Sankaran, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: O.V. Radhakrishnan, Sr. Adv.

For Respondents/Defendant: T. Sanjay, CGC

**Subject: Right to Information**

**Subject: Banking**

**Acts/Rules/Orders:**

Right to Information Act - Sections 4 and 8(1)

**JUDGMENT**

**H.L. Dattu, C.J.**

1. Canara Bank, which is a nationalized bank and a prestigious institution in the country, calls in question the orders passed by the Central Information Commission, New Delhi. The Commission, on the request made by the second respondent in the Writ Petition, has directed the Bank to furnish the information requested by the second respondent.

2. Before the learned single Judge, the Bank had raised three issues for consideration and decision. They are as under:

(i) Under the Right to Information Act ("the Act" for short) only those information mentioned in Section 4 of the Act alone need be furnished.

(ii) The information requested for by the 2nd respondent is exempted from disclosure by virtue of sub-sections (e) and (j) of Section 8(1) of the Right to Information Act, and

(iii) The information sought for by the 2nd respondent was so voluminous that it is physically impossible to furnish the same without employing considerable manpower and time.

**[Details from the 1<sup>st</sup> case 2.** The information requested for were the following:

(i) Posting/transfer of clerical staff of the Canara Bank to other branches for the period 1-1-2002 to 31-7-2006.

(ii) Officials promoted and posted to other branches in Ernakulam district.

(iii) Clerical staff transferred in Ernakulam district on temporary basis during the period 1-1-02 to 31-7-06.

(iv) Details of appointment/promotion of clerical staff other than mentioned in (i) and (ii) above during 1-1-02 to 31-7-06 in district Ernakulam.

(v) Furnish copies of transfer guidelines pertaining to clerical staff during 1-1-02 to 31-7-06. The applicant has sought the aforesaid information as per the pro forma drawn by the (sic) him.

***Canara Bank v The Central Information Commission, AIR2007Ker225***

3. Learned single Judge has rejected the Writ Petition by the judgment dated 11th July, 2007. Aggrieved by the same, the Bank is before us in this appeal. At the time of hearing of the appeal for admission, the learned senior counsel Sri. O.V. Radhakrishnan would submit that if the request of the second respondent has to be considered then the Bank would require tremendous manpower and also sufficient time to gather the information.

4. The learned single Judge at paragraph 9 of the judgment has made it clear that the request of the second respondent before the authorities under the Right to Information Act is for "information in respect of the clerical staff transferred to Ernakulam District of the Canara Bank for the period from 2002 to 2006. Keeping in view the request so made by the second respondent, the learned Judge has come to the conclusion that the stand of the Bank that they would require tremendous manpower and time to collect that information may not be justified. Therefore, the learned Judge has directed the Bank to furnish that information to the second respondent.

5. In the words of the learned Judge:

9. The last contention is that the information requested for by the 2nd respondent relates to a period of five years and it would require tremendous manpower and time to gather the same. I do not find much merit in this contention also. It is not as if every day the bank transfers clerical staff. At the most transfers would be only once in a year. In Ext.P1, which is the request made by the 2nd respondent for information, he has specifically stated that the information which he requires is in respect of clerical staff transferred to Ernakulam District of the Canara Bank for the period from 2002 to 2006. Such information for a period of five years cannot be said to be that voluminous requiring tremendous manpower and time. In any event, when the Act does not exempt

voluminous information from disclosure, the petitioner cannot deny such information on that ground. In the above circumstances, I do not find any merit in this contention also.

6. After going through the orders passed by the learned single Judge at paragraph 9 of the judgment, what we understand is that the second respondent when he approached the authorities under the provisions of the Right to Information Act, has only requested the Bank to provide him information in respect of the clerical staff transferred to the branches of the Bank in Ernakulam District. In our opinion, to provide that information would not require either tremendous manpower or time. Therefore, the contention canvassed by the learned senior counsel before us has no merit and the same requires to be rejected.

7. This is the only contention canvassed by the learned senior counsel.

8. In view of the above, we pass the following:

Order

(i). The Writ Appeal is disposed of.

(ii). We direct the Appellant-Bank to furnish information to the second respondent, regarding the transfers made by the Bank in respect of the clerical staff to Ernakulam District for the period from 2002 to 2006 within a month's time from today.

(iii). The Bank will also provide the guidelines for effecting transfer of the clerical staff, if such guidelines are available with them.

Ordered accordingly.

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**IN THE HIGH COURT OF ALLAHABAD**

Decided On: 05.09.2008

Appellants: **Committee of Management, Ismail Girls National Inter College**  
**Vs.**

Respondent: **State of U.P. and Ors.**

**Hon'ble Judges:**

Ashok Bhushan and A.P. Sahi, JJ.

**Subject: Right to Information**

**Disposition:**

Petition dismissed

**JUDGMENT**

**Ashok Bhushan and A.P. Sahi, JJ.**

1. Heard J.J. Munir, learned Counsel for the petitioner and learned standing counsel.

2. By this writ petition, the petitioner has prayed for a writ of certiorari quashing the impugned orders dated 12.12.2007, 4.1.2008, 11.1.2008 and 12.3.2008. The writ petition raises an important issue. The orders, which are sought to be challenged in the writ petition are the orders issued by the authorities under Right to Information Act, 2005, asking the management to provide certain information, as prayed for, in accordance with the procedure prescribed under Right to Information Act, 2005. The petitioner is a Committee of Management of an intermediate college, which is recognized under U.P. Intermediate Education Act, 1921. In para 16, it is also mentioned that the institution is receiving grant-in-aid from the State of U.P.

3. Sri J.J. Munir, learned Counsel for the petitioner, challenging the orders contended that the institution is not covered by the definition of public authority, as provided under Section 2(h) of Right to Information Act, 2005 (hereinafter referred to as the 'Act'). Elaborating his submission, the learned Counsel submits that the institution is a private institution run by a registered society and is providing education to the society. The institution has corpus, building and land, which are permanently owned by the institution and the mere fact that the institution is receiving grant-in-aid from the State Government by way of payment of salary to the teachers and staff, will not cover the institution under Section 2(h) of the Act since the institution is not substantially financed. In fact, the authorities under the Act have to find out in each and every case whether the institution is substantially financed or not and in the present case no inquiry having been conducted by the competent authority the orders directly issued asking the management to divulge the information cannot be sustained.

4. Learned standing counsel appearing for the respondents submitted that the institution, which is receiving grant-in-aid and covered by the provision of U.P. I-Jigh School and Intermediate Colleges (Payment of Salary to Teachers and other Employees) Act, 1971, is an institution,

which is receiving 100% salary grant for teachers and the staff. Apart from payment of salary, the institution also receives maintenance grant from time to time, e.g., grant for building, games, laboratory, library. The institution, which is receiving such kind of grants, has to be treated as substantially financed.

5. We have considered the submissions of learned Counsel for the parties and have perused the records.

6. The Right to Information Act, 2005 has been enacted with the object of setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. Section 2 of the Act is definition clause, which defines public authority. Section 2(h) of the Act is quoted as below:

2. Definition.- In this Act, unless the context otherwise requires,

(h) "Public authority" means any authority or body or institution of self-Government established or constituted

(a) by or under the Constitution;

(b) by any other law made by Parliament;

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

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

(i) body owned, controlled or substantially financed;

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

7. The petitioner, which is run by Committee of Management constituted by a Society, is a non-Government organisation, which can come within the definition of Section 2(h)(d)(ii) of the Act, as noticed above. The institution has been granted recognition under U.P. Intermediate Education Act, 1921, and is run by Committee of Management in accordance with the scheme of administration framed under Section 16A of the Act. The management and functioning of the institution is fully regulated by the provisions of U.P. Intermediate Education Act, 1921 and regulation framed therein, provisions of Act, 1971. The institution is engaged in providing education to the society. For appointment of teachers, the courses to be taught in the institution and all other affairs are fully covered by the statutory provisions. The institution is receiving grant-in-aid for payment of salary to the entire teaching staff, non-teaching staff and class IV employees. Apart from payment of salary, the institution also receives maintenance grant from time to time from the Government. The words used in Section 2(h)(d) of the Act, which are to be considered are "substantially financed". It is also relevant to note that the words "substantially financed" has further been clarified by two more words directly or indirectly by funds provided by the Government. The object of the Act was even to cover those institutions, which even indirectly receives funds from the Government. Present is the case where the institution is receiving funds directly from the Government for payment of salary and for maintenance. The word "substantially financed" clearly indicates that the institution has not to be 100% financed by

the State. The word "substantial" has been used only to indicate that even if the entire finance and expenditure of the institution is not borne by the Government still the institution will be covered by the definition of the public authority, as noticed above. The object of the Act is to secure access to information under the control of public authorities. The institution, which is being run in accordance with the statutory provisions and receiving finance by the State Government substantially is duty bound to divulge the information, as sought, in accordance with the provisions of the Right to Information Act, 2005. In case, the argument is accepted that merely because it has its building, land and property, which is corpus of the institution, it will go out of definition of Section 2(h) of the Act and the entire purpose of the Act 2005 shall be defeated.

8. In view of the foregoing submissions, we are of the considered opinion that the institution is fully covered by the definition of the "public authority" under Section 2(h)(d)(ii) of the Act.

9. It being substantially financed by the State Government, it was obligatory on the part of the institution to provide the information, as asked for, under the Act, 2005. None of the submissions of the petitioner can be accepted.

10. The writ petition lacks merit and is dismissed.

11. Learned standing Counsel is directed to furnish copy of this order to the Director, Secondary Education, who shall circulate to all the District Inspector of Schools throughout the State.

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

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**L.P.A. No. 543 of 2009**  
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The Commissioner (Appeal) of Central  
Excise and Service Tax, Ranchi ..... Appellant  
--Versus--  
Information Commissioner, Central  
Information Commission, New Delhi & Anr..... Respondents

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**CORAM : HON'BLE THE ACTING CHIEF JUSTICE  
HON'BLE MRS. JUSTICE JAYA ROY**

For the Appellant : Mr. Ratnesh Kumar, Advocate  
For the Respondents : Mr. K.P. Choudhury  
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**Order No.13**

**Dated 11<sup>th</sup> July, 2011**

Heard the counsel for the parties.

2. The grievance of the appellant is that in a proceeding under the Right To Information Act, the authorities could not have directed for re-constitution of the records and then give the information to the applicant.

3. It is not in dispute that the petitioner-appellant originally by moving the application under the Right To Information Act and Rules, sought information and in appeal it was ordered that record which according to appellant was not traceable be reconstituted and then information be given. It may be true that the record may have traveled from Kolkata to Patna and then to Jharkhand and it is also true that record is pertaining to the files of the year 1992. But, in a case where the information is sought from a department and the department is required to keep the record and was not entitled to weed-out that part of the record from which the information was sought, then the authority certainly can direct to give the information to the applicant, if he is otherwise found entitled to the relief under the Act and Rules referred

above and in that process if record is required to be reconstituted then, that is certainly within the jurisdiction of the authorities under the Right To Information Act to direct the office to reconstitute the record, which process is also a step taken in furnishing the information to the applicant. Otherwise also the appellant should not have raised any grievance against such direction because it was a duty of the appellant to immediately make effort for reconstitution of the record when they came to know that record is not lying with them and for that purpose, they could have taken help even from the applicant by obtaining certain information or also the requisite documents from the party to whom the original record was related to.

4. Be that as it may be, the direction to reconstitute the record is only a one step in furtherance of providing the information to the applicant under the Right To Information Act.

5. Therefore, the learned Single Judge was right in dismissing the writ petition preferred by the appellant. We do not find any illegality in the said order, and hence, we do not find any merit in this L.P.A., which is accordingly, dismissed.

6. It is made clear that the respondent should also co-operate with the department in getting the record reconstituted, and therefore, in that process, certainly some more time may be consumed , but it should be a reasonable time.

**(Prakash Tatia, A.C.J.)**

**(Jaya Roy, J.)**



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

**W.P.(C) 5945/2010 and CM APPL No. 11697/2010**

**COMMISSIONER**

**KENDRIYA VIDYALAYA SANGATHAN ..... Petitioner**

**Through Mr. B. Badrinath with Dr. Puran Chand, Advocate for Mr. S. Rajappa,  
Advocate**

**versus**

**SANTOSH KUMAR .....**

**Respondent**

**Through None.**

**CORAM: JUSTICE S. MURALIDHAR**

**ORDER**

**01.09.2010**

- 1. The challenge in this petition is to an order dated 6th April 2010 passed by the Central Information Commission (?CIC?) to the extent that it has levied a penalty of Rs. 25,000/- on the Petitioner for the delay in furnishing the necessary information to the Respondent.**
- 2. Learned counsel for the Petitioner sought to demonstrate that the information sought by the Respondent was provided to him in time. Secondly, it was submitted that the appeal itself ought not to have been entertained by the CIC without requiring the Respondent to first exhaust the remedy of a first appeal.**
- 3. In the considered view of this Court, no error has been committed by the CIC in the impugned order. It has been noted that although the RTI application was filed on 13th August 2009 the complete information was provided only on 6th March 2010. The delay was over 100 days. Nevertheless the penalty was restricted to a sum of Rs. 25,000/- calculated at the fixed statutory rate of Rs.250/- per day for 100 days delay. The non-exhaustion of the remedy of a first appeal by**

**the Respondent would not have made any difference to the fact that the complete information was provided to the Respondent only on 6th March 2010.**

**4. The petition and the pending application are dismissed.**

**S. MURALIDHAR, J  
SEPTEMBER 01, 2010**

जन सूचना अधिकारियों के नाम, पदनाम तथा अन्य विवरण  
Name (s) designation (s) and other particulars of Public Information Officer (s)

**क. केन्द्रीय लोक सूचना अधिकारी**

**A. Central Public Information Officers:**

क्र.सं S.No.	नाम, पदनाम तथा ई-मेल, Name, designation and e-mail, सर्व/श्री, S/Shri	सम्पर्क दूरभाष संख्या Contact tel. number	इकाई/कार्यालय क्षेत्र डाक पता Unit/Region, Mailing address
<b>कॉर्पोरेट कार्यालय /Corporate Office:</b>			
1.	विजय कुमार, कार्यपालक निदेशक (सी क्यू और सी सी जी) Vijay Kumar, Executive Director (CQ & CCG) <a href="mailto:vkk@bhel.in">vkk@bhel.in</a>	011- 66337014	बी एचईएल हाउस, सीरी फोर्ट, नई दिल्ली-110049 BHEL House, Siri Fort, New Delhi 110049
<b>क्षेत्रीय प्रचालन प्रभाग (ROD) /ट्रांसमिशन बिजनेस ग्रुप (TBG):</b>			
2.	रविन्द्र सिंह, वरिष्ठ प्रबंधक Ravinder Singh, Sr. Mgr (HR), <a href="mailto:rodravi@bhelindustry.com">rodravi@bhelindustry.com</a>	011- 41793154	बीएचईएल, क्षेत्रीय प्रचालन प्रभाग, लोदी रोड, नई दिल्ली-110003 BHEL Regional Operations Divn., Lodhi Road, New Delhi 110003
3.	महेश कुमार, अपर महाप्रबंधक Mahesh Kumar, AGM TBG- Industry Sector <a href="mailto:maheshkumar@bhelindustry.com">maheshkumar@bhelindustry.com</a>	011-41793225	बीएचईएल, ट्रांसमिशन बिजनेस ग्रुप, इन्डस्ट्री सेक्टर, लोदी रोड, नई दिल्ली-110003 BHEL, Integrated Office Complex, Lodhi Road, New Delhi-110003
<b>प्लांट्स/Manufacturing plants:</b>			
4.	ए एस समद, अपर महाप्रबंधक (मा. स -ईई,सिस,अरईसिटी एवं विधि) मानव संसाधन विभाग A S Samad AGM (HR-EE, Sys, Rect & Law) Human Resources Department <a href="mailto:cpio@bheltry.co.in">cpio@bheltry.co.in</a>	0431- 2577733	बीएचईएल, हाई प्रेसर बॉयलर प्लांट, तिरुचिरापल्ली-620014 BHEL, High Pressure Boiler Plant, Tiruchirappalli 620014
5.	निसार हैदर, उप महाप्रबंधक(विधि) Nisar Haidar DGM (Law) <a href="mailto:nhaidar@bhelbpl.co.in">nhaidar@bhelbpl.co.in</a>	0755- 2503670	बीएचईएल हेवी इलेक्ट्रिकल्स प्लांट, पिपलानी, भोपाल-462022 BHEL, Heavy Electricals Plant, Piplani, Bhopal 462022

6.	बी शंकरहिया अपर महाप्रबंधक ((मा.सं.) B Sankaraiah, AGM (HR) <a href="mailto:bksr@bhelhyd.co.in">bksr@bhelhyd.co.in</a>	040- 23182481	बीएचईएल, हेवी पावर इक्विपमेंट प्लांट, रामचन्द्रपुरम, हैदराबाद-502032 BHEL, Heavy Power Equipment Plant, Ramachandrapuram, Hyderabad 502032
7	के. के चौहान वरि प्रबंधक (मा. सं.) K.K. Chauhan Sr. Manager (HR) <a href="mailto:cpiohwr@bhelhwr.co.in">cpiohwr@bhelhwr.co.in</a>	01334- 285478	बीएचईएल, हेवी इलेक्ट्रिकल इक्विपमेंट प्लांट, हरिद्वार-249403 BHEL, Heavy Electrical Equipment Plant, Haridwar 249403
8.	के एस शिवप्रसाद अपर महाप्रबंधक (पी एंड डी) K.S. Shivaprasad, AGM (P&D), <a href="mailto:shivaprasadks@bheledn.co.in">shivaprasadks@bheledn.co.in</a>	080- 26989051	बीएचईएल, इलेक्ट्रॉनिक प्रभाग, पो. बाक्स न. 2606, मैसूर रोड, बेंगलूर-560026 BHEL, Electronics Divn., PO Box No. 2606, Mysore Road, Bangalore 560026
9.	मोहम्मद युसुफ, वरि उप महाप्रबंधक /मा.सं. -विधि Mohamed Yousuff, Sr Dy. GM/HR-Law <a href="mailto:mmy@bhelrpt.co.in">mmy@bhelrpt.co.in</a>	04172- 241118	बीएचईएल, बॉयलर ऑग्निलिएरी प्लांट, इंदिरा गांधी इंडस्ट्रियल कॉम्प्लेक्स, रानीपेट-632406 BHEL, Boiler Auxiliary Plant, Indira Gandhi Industrial Complex, Ranipet 632406
10.	अनुराग गुप्ता वरि प्रबंधक (सीएंडपीआर) Anurag Gupta Dy. GM (C&PR) <a href="mailto:anurag@bheljhs.co.in">anurag@bheljhs.co.in</a>	0510- 2412211	बीएचईएल, ट्रांसफॉर्मर प्लांट, पो- बी. बीएचईएल, झांसी-284129 BHEL, Tranformer Plant, PO BHEL, Jhansi 284129
11	ए नैडुचिजयन अपर महाप्रबंधक (मा.सं., मासंवि एवं सुरक्षा) A Nedunchazhian AGM(HR,HRD & Security) <a href="mailto:nedu@bhelepd.com">nedu@bhelepd.com</a>	080- 23441677	बीएचईएल, ईपीडी, प्रो.सीएनआर रोड सर्कल, इंडियन इंस्टीट्यूट ऑफ साइंस के सामने मल्लेश्वरम, बेंगलूर-560012 BHEL, EPD Prof CNR Road Circle Opp Indian Institute of Science Malleswaram Bangalore-560012

पावर क्षेत्र/ Power Sector			
12	मेलविन बेनेट रॉय, प्रबंधक (मा. सं.) Melvin Bennet Roy, Manager (HR) <a href="mailto:melvin@bhelpswr.co.in">melvin@bhelpswr.co.in</a>	0712- 3048650	बीएचईएल, पावर क्षेत्र- पश्चिम, श्री मोहिनी कॉम्प्लेक्स, 345, किंग्सवे, नागपुर-440001 BHEL, PS-WR, Shree Mohini Complex, 345, Kingsway, Nagpur- 440001
13	एन. के. गुप्ता, अपर महाप्रबंधक (एमएसएक्स) N K Gupta ,AGM (MSX) <a href="mailto:nkg@bhelpsnr.co.in">nkg@bhelpsnr.co.in</a>	0120- 2515480	बीएचईएल, पावर क्षेत्र-उत्तर, एचआरडीट एंड ईएसआई कॉम्प्लेक्स, प्लॉट न. 25, सेक्टर-16 ए, नोएडा-201301 BHEL, PS-NR, HRD & ESI Complex, Plot No. 25, Sector-16 A, NOIDA 201301
14	कार्तिक नस्कर वरिष्ठ प्रबंधक (पीआरएंडएचआर) Kartick Naskar Sr.Manager(PR&HR) <a href="mailto:knaskar@bhelpsr.co.in">knaskar@bhelpsr.co.in</a>	09433001483	बीएचईएल, पावर क्षेत्र-पूर्व, बीएचईएल भवन, प्लॉट न. डीजे-9/1, सेक्टर-2, साल्ट लेक सीटी, कोलकाता-91 BHEL, PS-ER, BHEL Bhawan, Plot No.DJ-9/1, Sector-II, Salt Lake City, Kolkata-91
15	जॉर्ज साइमन, अपर महाप्रबंधक (मा.सं.) George Simon, AGM (HR) <a href="mailto:george@bhelpsr.co.in">george@bhelpsr.co.in</a>	044- 24342052	बीएचईएल, पावर क्षेत्र-दक्षिण, नं. 690 (पुराना न. 474), अन्ना सलाई, नंदनम, चेन्नै-600035 BHEL, PS-SR, No. 690 (old No 474), Anna Salai, nandanam, Chennai 600035

**स्व केन्द्रीय सहायक लोक सूचना अधिकारी  
B. Central Asst Public Information Officer:**

क्र.सं SN	नाम, पदनाम तथा ई-मेल, Name, designation and e-mail, सर्व/श्री पता, S/Shri	दूरभाष संख्या Tel. number	पता Mailing address
1	एस सतीश राव अपर महाप्रबंधक S Satish Rao, AGM (HSE) <a href="mailto:ssatishrao@bhel.in">ssatishrao@bhel.in</a>	011- 66337515	बी एचईएल हाउस, सीरी फोर्ट, नई दिल्ली- 110049 BHEL House, Siri Fort, New Delhi 110049

**ग. अपील प्राधिकरण : समिति का गठन:**

**C. Appellate Authority : Committee comprising of:**

1. अध्यक्ष (कॉर्पोरेट चो. एवं वि.)  
Head (Corporate P & D) (सदस्य)  
(Member)
2. अध्यक्ष (पावर क्षेत्र-विपणन)  
Head (Power Sector-Marketing) (सदस्य)  
(Member)
3. अध्यक्ष (कॉर्पोरेट मा. सं.)  
Head (Corporate Human Resources) (सदस्य)  
(Member)
4. अध्यक्ष (कॉर्पोरेट वित्त)  
Head (Corporate Finance) (सदस्य)  
(Member)
5. सुश्री रश्मि वर्मा  
अध्यक्ष (कानून)  
Ms Rashmi Verma (सदस्य-सचिव)  
Head-Law (Member-Secretary)

टिप्पणी-1 वरिष्ठतम अधिकारी अपील समिति के अध्यक्ष होंगे।

Note-1: Senior most official shall be deemed as Chairman of the Appellate Committee.

टिप्पणी -2: समिति को अपील निम्न पते पर सदस्य सचिव को सम्बोधित होनी चाहिए:

Note-2: The appeal to the committee should be addressed to the Member Secretary, at following address:

पता: बीएचईएल हाउस, सीरी फोर्ट, नई दिल्ली 110049  
दूरभाष न. 011-66337000 (पीपी), फैक्स न. 01126493021  
BHEL, Hose, Siri Fort, New Delhi 110049  
Tel no. 011-66337000 (PP) Fax no 011 26493021

**Equivalent Citation:** AIR2009Kant1, ILR2008KAR4105, 2009(1)KarLJ641

**IN THE HIGH COURT OF KARNATAKA**

Writ Petition No. 16901/2006

Decided On: 30.06.2008

Appellants: **Dattaprasad Co-Operative Housing Society Ltd.**  
**Vs.**

Respondent: **Karnataka State Chief Information Commissioner and Anr.**

**Hon'ble Judges:**

K. Bhakthavatsala, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: S.G. Bhat and Jayshree Bhat, Advs.

For Respondents/Defendant: R.B. Satyanarayana Singh, HCGP for R1 and R2

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to information Act, 2005 - Section 2; Karnataka Co-operative Societies Act, 1959 - Section 127A; Karnataka Lokayukta Act, 1985 - Section 2(12); Kerala Co-operative Societies Act; Karnataka Lokayukta Act, 1984; Constitution of India - Articles 12 and 226

**Cases Referred:**

Zee Tele Films Ltd. and Anr. v. Union of India and Ors. AIR 2005 SC 2677; P. Bhaskaran and Ors. v. Additional Secretary, Agricultural (co-operation) Department and Ors. AIR 1988 Kerala 75

**Disposition:**

Petition allowed

**Case Note:**

**Right to Information Act, 2005 - Section 2(h)(d)--Public Authority--Definition of--Whether Co-Operative Housing Society is a Public Authority within the meaning of Section 2(h)(d) of the RTI Act--Held, As per Sub-clause (d) of Clause (h) of Section 2 of the RTI Act, the appropriate government can include an institution within the scope of Public Authority, provided it is owned, controlled or substantially financed, directly or indirectly funded by the appropriate Government.--Petitioner/society is neither owned nor funded nor controlled by the State.--So as to include a society within the definition of the term 'Public authority', it should fulfill the conditions stipulated in Sub-clause (d) of Clause (h) of Section 2 of the RTI Act. The petitioner-society does not fulfill the requisite conditions**

**laid down in Sub-clause (d) of Clause (h) of Section 2 of the Act. Therefore, the petitioner-society is not a 'public authority' under the provisions of the RTI Act, 2005.**

**Writ Petition is allowed.**

**ORDER**

**K. Bhakthavatsala, J.**

1. The petitioner-Dattaprasad Co-operative Housing Society Ltd., Malleswaram, Bangalore, is before this Court under Article [226](#) of the Constitution of India praying for the following reliefs:

(i) to declare that the petitioner-Society is not a public authority under the provisions of the Right to information Act, 2005 (in short 'the Act'), and the Government Notification dated 22.9.2005 at Annexure-'B' issued by respondent No. 2-Registrar of Co-operative Societies is not applicable to the petitioner-Society, and

(ii) to issue a writ of certiorari for quashing the directions issued by Respondent No. 2 in the letter dated 30.10.2006 bearing No. ADMN/MPH/97/2006-07 at Annexure-'D.

2. The brief facts of the case leading to the filing of the writ petition may be stated as under:

It is the case of the Society that in the month of February 1970, the society was registered under the Karnataka Co-operative Societies Act, 1959. The society is governed by bye-laws approved by the respondent No. 2. It is contended that the Society has not received any financial assistance from the State Government and therefore the Society cannot be a public authority within the scope of the Act. But the respondent No. 2/Registrar of Co-operative Societies has issued a Notification dated 22.9.2005 (Annexure-'B') to the effect that all Co-operative Societies in the State are public authorities. The petitioner-Society has not received the Notification or intimation. When certain members sought for information, the other members of the society opposed divulging information pertaining to them. Therefore, the Society rejected their request to furnish the information on both counts. When the appeal was preferred to the Chairman of the Society, he wrote a letter (annexure-C) to respondent No. 2 pointing out the provisions of the Act. The Respondent No-2 by his reply dated 30.10.2006 (Annexure-D) intimated the Chairman of the Society stating that under Section [2\(h\)\(d\)](#) of the Act all Co-operative Societies are public authorities. The respondent No. 1/Karnataka Information Commission, on the basis of the Notification dated 22.9.2005, by order dated 1.9.2006 (vide Annexure-E) directed the Registrar of Co-operative societies to seek information from the society and furnish the same to the applicant. The petitioner-Society is before this Court praying for the relief as mentioned above.

3. The respondent/State has filed statement of objections/additional objections denying the grounds urged in the writ petition and contending that as per the provisions of the Co-operative Societies Act, respondent No 2/the Registrar has supervision and control over the society. It is also contended that as per Section [127A](#) the Co-operative Societies Act every office bearer, Member and employee of Co-operative institutions is a 'public servant'. Further, as per Clause (e) of Sub-section 12 of Section [2](#) and explanation thereto in the Karnataka Lokayukta Act, 1985, the office bearers of Co-operative society are 'public servants' and there is no illegality or infirmity in the impugned Notification/communication.



4. Sri S.G. Bhat, Learned Counsel appearing for the petitioner submits that the petitioner-Society has not taken any financial assistance from the State Government. Further, the supervisory control by the Registrar of the society over the petitioner-Society cannot be a good ground to hold the petitioner/society, is a public authority within the definition of Section [2\(h\)\(d\)](#) of the Act, 2005. In support of his contention, learned Counsel for the petitioner has cited the following decisions:

1. [MANU/SC/0074/2005](#) (Zee Tele Films Ltd. and Anr. v. Union of India and Ors.) on the point that the Board of Control for Cricket in India is not financially, functionally or administratively dominated by the Govt.

2. [MANU/KE/0014/1988](#) (P. Bhaskaran and Ors. v. Additional Secretary, Agricultural (co-operation) Department and Ors.) on the point that the Co-operative Societies are not created by the Co-operative Societies Act and they are not statutory bodies. They are only functioning in accordance with the provisions of the Act. These institutions would have legal existence, even if the Co-operative Societies Act was not in force. Moreover, the Government have no shares in the Co-operative Societies. There is no deep and pervasive state control. The management of the societies does not vest in the Government or in the representatives of the Government Bank. The management is under the effective control of a committee elected by the members of the societies. The statutory regulation or restriction in the functioning of the societies is not "an imprint of State under Article [12](#)." Hence no writ will lie against a Co-operative society governed by the Kerala Co-operative Societies Act.

5. The object of the RTI Act is to secure access to information from the public authorities in order to promote transparency and accountability in the working of every public authority so as to curtail corruption and to hold the Government and their instrumentality are accountable.

6. It is useful to refer to Clause (h) of Section [2](#) of the RTI Act, which reads as under:

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 the 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;

7. As per Sub-clause (d) of Clause (h) of Section [2](#) of the RTI Act, the appropriate government can include an institution within the scope of public authority, provided it is owned, controlled or substantially financed, directly or indirectly funded by the appropriate Government. In the instant case petitioner/society is neither owned nor funded nor controlled by the State. It is not the case

of the State that the Notification dated 22.9.2005 (Annexure-B) has been issued under Section [2\(h\)\(d\)](#) of the RTI Act. Solely on the basis of supervision and control by the Registrar of societies; and the definition of 'public Servant' in the Co-operative societies and in the Karnataka Lokayukta Act, 1984 a society cannot be termed as 'Public authority'. So as to include a society within the definition of the term 'Public authority', it should fulfill the conditions stipulated in Sub-clause (d) of Clause (h) of Section [2](#) of the RTI Act. The decisions cited by the learned Counsel for the petitioner/society fully support the case of the petitioner. The petitioner-society does not fulfill the requisite conditions laid down in Sub-clause (d) of Clause (h) of Section [2](#) of the Act. Therefore, the petitioner society is not a 'public authority' under the provisions of the RTI Act, 2005. Hence, the directions issued by the Registrar to the petitioner/society, by his communication dated 30.10.2006 by the respondent No. 2 at Annexure 'D' are not binding on the petitioner/society.

8. For the reasons stated supra, the petition is allowed holding that the petitioner-Society is not a public authority under the provisions of the RTI Act, 2005. Further, the directions issued by respondent No. 2 by communication dated 30.10.2006 at Annexure-D is quashed.

No costs.

9. Learned Govt. Pleader is granted three weeks time to file his memo of appearance for respondent No. 2.

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**Equivalent Citation:** 2009(2)ALT500

**IN THE HIGH COURT OF ANDHRA PRADESH**

Writ Petition No. 20182 of 2008

Decided On: 27.01.2009

Appellants: **Divakar S. Natarajan**

**Vs.**

Respondent: **State Information Commissioner, A.P. State Information Commission and Ors.**

**Hon'ble Judges:**

L. Narasimha Reddy, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Party-in-Person

For Respondents/Defendant: Government Pleader for GAD

**Subject: Constitution**

**Subject: Right to Information**

**Acts/Rules/Orders:**

Freedom of Information Act, 2002; Right to Information Act, 2005 - Sections 2, 4, 5, 6, 6(1), 6(2), 7, 8 and 19; Right to Information Rules; Andhra Pradesh Land Grabbing Act

**Disposition:**

Petition dismissed

**JUDGMENT**

**L. Narasimha Reddy, J.**

1. Transparent functioning of the agencies of a State would go a very long way in providing not only peace and tranquility to its citizens, but also would enable them to lead respectable and meaningful life. Many a time, the citizens feel aggrieved, on account of their not being able to have access to the information, in relation to the matters of their immediate concern. More and more the information is withheld, a citizen would tend to gain an impression, that he is denied what is legitimately due to him, in an arbitrary and capricious manner.

2. Howsoever desirable it may be, to ensure complete openness in state activity, by its very nature, governance requires certain amount of confidentiality, at least in some of its facets. A decent balance needs to be maintained between the two conflicting phenomena. An enlightened citizenry and a responsible Government, with their collective effort, can certainly bring about an ideal situation. It is a continuous process and one cannot expect instant and immediate results.

The Domestic Laws and International Conventions emphasize upon the freedom of an individual to hold an opinion for himself, and at the same time, espouse his right to seek furnishing information on any aspect, of his choice.

For instance, Article 19 of the Universal Declaration of Human Rights, 1948, reads as under:

Article-19: 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.

3. The provisions of various domestic enactments and international conventions are almost similar, with semantic changes and with slight difference as to emphasis. Difficulty in enacting provisions, that can maintain equilibrium between these two conflicting ideas, has been felt, and it is too early to say that any perfection, in this regard, has been achieved.

4. The Parliament enacted the Freedom of Information Act in the year 2002. This was repealed by the Right to Information Act, 2005 (for short 'the Act'). The Act confers upon the citizens, the right to information, subject to other provisions thereof. Section 4 creates an obligation on every public authority to maintain various records and information mentioned therein. Section 5 places every public authority under obligation to designate a Public Information Officer (PIO). Section 6, which is very important in the entire scheme of the Act, stipulates the procedure for submission of application to seek information and Section 7 deals with the manner in which disposal is to be given to the applications. The nature of information that can be withheld when requested for, is itemized in Section 8. Remedy of appeal is provided for under Section 19 of the Act.

5. The petitioner had produced a documentary in Urdu with title "Hyderabad, August 1948" depicting the life of one Mr. Shoaib Khan, particularly the circumstances, leading to his martyrdom. It appears that, the film was appreciated by many and proposal was mooted to confer the status or title of "film maker of acknowledged eminence" upon him. It is stated that eminent personalities, Ex-Chief Minister, Ex-Union Home Minister and some prominent persons, who are holding positions at present, have recommended the conferment of such status on the petitioner. However, that did not take final shape.

6. The petitioner states that he had sent e-mails to the Chief Secretary, Government of A.P., the second respondent herein, on 25th, 26th, 29th and 31st July 2005 and 3rd August 2005, in relation to the subject matter. Complaining that he did not receive any response to the e-mails, the petitioner submitted an application to the concerned PIO, the third respondent herein. Correspondence ensued in this regard and the third respondent wanted the petitioner to be specific about the information required by him. The petitioner filed an appeal on 18.07.2007 before the appellate authority under the Act. Through this, he wanted the information to be given on ten items. A reply was given on 02.11.2007 complying with the information on point No. 3 of the appeal and observing that rest of the items do not come under the definition of information. The petitioner approached the State Information Commissioner, the first respondent herein, by way of appeal. The appeal was dismissed through order, dated 09.01.2007.

7. The petitioner made further representations on several dates to the third respondent with a request to furnish the information. Through a letter, dated 04.12.2007, the third respondent informed the petitioner that the available information has already been furnished to the petitioner

and that no further correspondence would be entertained in this regard. The petitioner feels aggrieved by these proceedings.

8. On behalf of respondents, a detailed counter-affidavit is filed. It is stated that in spite of repeated requests, the petitioner did not divulge the particulars of information sought for by him and that a perusal of the correspondence at the subsequent stage discloses that what is prayed for by the petitioner cannot be treated as information.

9. The petitioner appeared and argued in person. He contends that the stand taken by the respondents on the applications or appeal submitted by him is contrary to the provisions of the Act and the Rules made there under. He submits that the application made by him was self-explanatory, and there was absolutely no justification for the respondents, in insisting that the petitioner shall furnish the copies of e-mails and to specify the nature of information. According to him, a person, who makes an application under Section 6 of the Act, cannot be required to be specific, much less to disclose the purpose for which he needs the information. He has elaborated the grounds pleaded by him in the affidavit.

10. Learned Government Pleader for General Administration Department submits that unless and until the application specifies the nature of information to be furnished, the PIO would not be in a position to accede to the request. He submits that a distinction needs to be maintained, as to the information that can be furnished, on the one hand, and the reasons for existence or non-existence of a particular state of affairs, on the other hand.

11. The petitioner is said to have presented a complaint to the PIO on 23.01.2006. Alleging that the PIO refused to receive the same, the petitioner approached the first respondent on 23.10.2006. The same was treated as an appeal and notice was issued to the third respondent. The copy of the application, dated 23.01.2006, said to have been made by the petitioner is not made part of record of this writ petition. The first respondent rejected the appeal on 09.01.2007.

12. After dismissal of the appeal on 09.01.2007, the petitioner submitted afresh application on 18.07.2007 to the third respondent, which reads as under:

Kindly provide me with all information, including files and notings, regarding action taken on the matters petitioned vide my emails to then Chief Secretary dtd. 25, 26, 29, 31st July 2005, and 3rd August 2005 and CD with supporting evidence presented to the PS to then CS during my meetings.

On receipt of this, the second respondent requested the petitioner to furnish the copies of e-mails. The petitioner felt aggrieved by such communication and he preferred appeal on 15.10.2007. It is in this appeal that he mentioned the details of information dividing them into ten points. The text of the appeal reads as under:

1. Whether the Government of Andhra Pradesh considers the applicant to be antagonistic, inimical and posing a threat to the Constitution of India, the Government of India and Andhra Pradesh and the general health and well being of Indian society, because of the various allegations he has leveled in his petitions or for any other reason ?

2. Whether the Government of Andhra Pradesh considers the applicant's no excuses, ultra-peaceful, non-disruptive, non-partisan, sathyagraha now in its seventeenth year - against "the patronage paradigm - the paradigm of irresponsibility, shoddiness, cronyism and corruption that

is crushing the spirit of our grand nation and making pygmies of us all" and for the idea of the rule of law, to be deserving of appreciation, consideration and exemplary indulgence?

3. Whether the Government of Andhra Pradesh will be pleased to immediately make available to the applicant a copy of rules framed for the implementation of RTI Act 2005 as mandated by the Act, Rules on filing and preservation of information and any other such rules and procedures as the Government considers fit and relevant in the present case?

4. Whether the Government of Andhra Pradesh is satisfied that it has in this case, obeyed the letter and observed the spirit of the RTI Act 2005?

5. Whether the Government of Andhra Pradesh will unambiguously admit Letter (5) along with (7) constitute a clear admission of gross negligence on the part of the former CS and the current administration?

6. Whether the Government of Andhra Pradesh is satisfied that it does not possess now, nor does it expect to possess in the near foreseeable future, any information regarding the matters mentioned in the applicant's emails and attachments therein, addressed to the former Chief Secretary on dates 25, 26, 29, 31 July 2005 and 3rd August 2005, including copies of letters addressed by former Chief Minister to various Ministers of Information and Broadcasting, Government of India, which after initial denial you have found in your possession?

7. Whether the Government of Andhra Pradesh is concerned about such a complete disappearance of vital documents and whether it will immediately and without any further delay identify the officials responsible, and take such disciplinary action as prescribed by the Rules, including the registering of FIRs and simultaneously report the same to the applicant with copies of FIRs?

8. Whether the Government of Andhra Pradesh will immediately make available to the applicant a list of specimen signatures and initials, along with corresponding names and designations of all officers represented in (7)?

9. Whether the Government of Andhra Pradesh will immediately take suitable action to correct its internal brief regarding the applicant's case appearing in page 9 of note file since such brief is clearly counterfactual, omits mention of most significant facts, is derogatory, misleading and "uncharitable"?

10. Given the tacit admission of gross negligence at the highest administrative level vide its letters (5) and (7) whether the Government of Andhra Pradesh, in keeping with well established precedents, immediately utilize the information given by the applicant to further the cause of justice and make amends?

13. The third respondent issued a reply to this on 02.11.2007. Copy of the rules framed under the Act was furnished and as regards other items, it was observed that they do not fall within the definition of information. Therefore, it needs to be seen as to whether there was any lapse on the part of the respondents in acceding to the request of the petitioner. To appreciate the contention advanced on behalf of the petitioner, it is necessary to extract Section 6 of the Act.

Section 6: Request for obtaining information.

1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her: Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

3) Where an application is made to a public authority requesting for an information,

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the function 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.

14. An individual, who wants to secure information from a public authority, has to make an application in the prescribed form. The Act is an improvement over the Freedom of Information Act 2002, in that, it ensures that the applicant cannot be required to give the reasons for requesting the information. The same is evident from Sub-section (2) of Section 6 of the Act.

15. The word "information" is defined under Clause (f) of Section 2 of the Act, which reads as under:

Section 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.

16. Before undertaking further discussion, as to the legality or otherwise of the orders passed by the respondents, the distinction between 'information' on the one hand and the 'reasons' for existence or non-existence of a particular state of affairs on the other hand, needs to be noticed. The Act has comprehensively defined the word 'information'. It takes in its fold, large variety of sources of information, including documents, e-mails, opinions, press releases, models and data material etc. The common feature of various categories, mentioned in the definition is that

they exist in one form or the other and the PIO has only to furnish the same, by way of a copy or description. In contrast, the reason or basis as to why a particular state of affairs exists or does not exist cannot be treated as a source, or item of information.

17. For instance, whether or not, any orders have been passed, on an application for grant of a licence can be sought as an information. In case any order has been passed, the PIO would be under obligation to furnish the copy of the order. On the other hand, if no order was passed on the application, information can be furnished to the same effect. However, he cannot be required to furnish the reasons as to why the licence was granted or not granted. It is only the authorities conferred with the power under the relevant statutes, to take a decision on the application, that can throw light on it. Further, the basis for the decision of such an authority, can be culled out from the order passed by him and he cannot be compelled to state as to why he passed the order in a particular manner through an application under the Act. It is only by instituting proceedings such as appeal, revision or writ petition that the authority who passed the order can be required to justify it.

18. Obviously, on account of the fact that the whole concept of Right to Information is of recent origin, instances are occurring where the citizens are insisting on furnishing of reasons in relation to a decision taken by one authority are sought from another, by filing application under the Act. Recently, in one application, a citizen asked the Registrar of the Special Court, established under the A.P. Land Grabbing Act, to state as to why the Court has passed an order in a particular way.

19. Reverting to the facts of the case, the petitioner has made reference only to the e-mails in the application. The respondents herein asked the

petitioner at least to furnish the copies of e-mails, so that, they can verify whether anything can be done at their level, in the context of furnishing of information. The petitioner firmly refused to accede to that request and insisted that he is not under obligation to reveal the same. In fact, he claimed confidentiality, in relation to the e-mails.

20. During the course of hearing of the appeal before him, the first respondent made frantic efforts to persuade the petitioner to mention the nature of information, which he wants. However, the petitioner stuck to his gun. The following observation made by the petitioner makes this aspect, clear:

On 04-01-2007, the case came up for hearing again. The appellant and the respondent were present. Once again, the appellant invoked the plea of confidentiality and expressed his inability to provide copies of the E-mails referred to or even share with the Court the broad details made in his representation to the Chief Secretary.

This Commission having carefully gone through the material papers available with it and the request of the appellant is of the considered view that the appellant has not followed the provisions of Section 6(1)(b) of the RTI Act, 2005, which mandates that the request for obtaining information shall "specify" the particulars of the information sought.

As already mentioned above, it is clear that the mandatory provision of Section 6(1)(b) of the RTI Act, 2005, have not been followed and in view of the fact that the appellant is not prepared to take the Court into confidence and provide it with specific particulars of the information sought, thus, under such circumstances, this Commission has no material evidence before it to



arrive at a value judgment on the culpability or not of the Government. In view of the foregoing, the appeal is dismissed.

21. In his affidavit filed before this Court, the petitioner branded the efforts made by the respondents to get the particulars as under:

It is submitted that the State Information Commission/Court utterly disregarded and flouted the provisions of RTI Act 2005 and the decision of the 1st respondent is whimsical and capricious, illegal in the extreme and liable to be set aside.

It is submitted that the State Information Commission fabricated a blatantly specious ruse by claiming falsely that the applicant's petition did not specify the particulars sought.

On the strength of this ruse, and ignoring my repeated protests, it has attempted to intimidate and browbeat me into submitting to its draconian diktat that I divulge copies of my e-mail correspondence with the Chief Secretary. It has unfairly punished me for protecting my right under the Act (Section 6.1 & 6.2) to not be required to give reason for requesting the information or any other personal details except those that may be necessary for purposes of contacting.

22. Even before this Court, the petitioner refused to divulge the nature of information, which he wants, nor did he furnish the copies of e-mails. The curious part of the matter is that, on the one hand, the petitioner stated that his work was highly appreciated by the then Chief Minister, and on the other hand, he complained that he suffered punishment in the hands of the same incumbent. To be specific, the following excerpts are reproduced:

It is further submitted that the former Chief Minister Sri N. Chandrababu Naidu addressed repeated representations to the Union Minister for Information and Broadcasting to commission me as "a film maker of acknowledged eminence" to make films to celebrate the 50th anniversary of our Independence. The former CM's representations on my behalf were among the most popular and well supported actions of his tenure. Mysteriously, they were completely ineffective.

At another place, he said,

My proposal contained three points that would provide me some immediate relief from the public humiliation, grievous professional embarrassment:

a) The Hon'ble Chief Minister may accept responsibility for the cruel and perverse punishment I had endured at the hands of his predecessor and offer me an sincere and authentic public apology.

b) The Hon'ble Chief Minister would forward a complete report to the Hon'ble Prime Minister detailing the cruelty I had endured and renewing the request that I be commissioned as a "filmmaker of acknowledged eminence" to produce films to commemorate the 50th anniversary of our Independence.

c) That the Hon'ble Chief Minister would offer an immediately interim financial relief of Rs. Twenty five lakhs.

23. A comparison of these two paragraphs, discloses that the actual grievance of the petitioner was much more than mere collection of 'information', as defined under the Act.

24. It has already been observed that a distinction needs to be maintained between information on the one hand and the reasons in support of an administrative action or inaction on the other hand. The effort of the petitioner appears to have been directed mostly in relation to the latter, that too, without specifying the actual grievance, much less, the authority, who was supposed to take a decision. It is well nigh impossible for any one to accede to the request of the petitioner within the scope of the Act and Rules.

25. Of late, a typical tendency is growing, viz to be conscious, more and more about rights, and not the corresponding obligation. If every citizen feels that he is endowed with the right to question, but is not under obligation to answer, a stage may reach where the comparatively small number of persons, who are being questioned, may join the team of those who choose, just to question. If that happens, the society may face a situation, where it would become difficult to expect answers.

26. The Act is an effective device; which, if utilized judiciously and properly, would help the citizens to become more informed. It no doubt relieves an applicant from the obligation to disclose the reason as to why he wants the information. However, indiscriminate efforts to secure information just for the sake of it, and without there being any useful purpose to serve, would only put enormous pressure on the limited human resources, that are available. Diversion of such resources, for this task would obviously, be, at the cost of ordinary functioning. Beyond a point, it may even become harassment, for the concerned agencies. Much needs to be done in this direction to impart a sense of responsibility on those, who want to derive benefit under the Act; to be more practical and realistic.

27. This Court does not find any legal or factual infirmity in the orders passed by the respondents and the writ petition is accordingly dismissed. There shall be no order as to costs.

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**Equivalent Citation:** AIR2008Bom120, (2008)110BOMLR1238, 2008(4)MhLj822

**IN THE HIGH COURT OF BOMBAY AT GOA**

Writ Petition No. 419 of 2007

Decided On: 03.04.2008

Appellants: **Dr. Celsa Pinto, Ex-Officio Joint Secretary (School Education), Public Information Officer (Under R.T.I. Act), Directorate of Education**  
**Vs.**

Respondent: **The Goa State Information Commission Through the State Chief Information Commissioner And the State Information Commissioner and Ms. Milan G. Natekar**

**Hon'ble Judges:**

S.A. Bobde, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: J.A. Lobo, Adv.

For Respondents/Defendant: D.P. Bhise U/LAS, Adv. for respondent No. 2 and Sapna Mordekar, Adv. for respondent No. 1

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Section 2

**Case Note:**

**Dr. Celsa Pinto, Ex-Officio Joint Secretary (School Education), Goa v. The Goa State Information Commission through the State Chief Information Commissioner and the State Information Commissioner, Goa and Milan G. Natekar, Sadashiva Bhuvan, Goa**  
**Right to Information - False Information - Section 2(f) of Right to Information Act, 2005 - Respondent No. 2 sought some information from the Petitioner under the Right to Information Act - Petitioner furnished the information as not available - Respondent No 2 filed a complaint with the Respondent No. 1 against the Petitioner - Respondent No. 1 held the Petitioner guilty of furnishing incomplete, misleading and false information and imposed penalty which will be deducted from the salary - Hence, present appeal - Whether imposition of penalty is justified when a information was not available or not to the knowledge of a public information Authority - Held, the conclusion of the Respondent No. 1 would be valid conclusion if some party would have produced a copy of the seniority list and proved that it was with the Petitioner - Definition of information cannot include within its fold answers to the question "why" which would be the same thing as asking the reason for a justification for a particular thing - Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about**

**information - Justifications are matter within the domain of Adjudicating Authorities and cannot properly be classified as information - Petition allowed**

**Ratio**

**Decidendi:**

***"Right to Information does not include justification for a particular thing."***

## **JUDGMENT**

**S.A. Bobde, J.**

Page 1239

1. Rule returnable forthwith.

2. Heard by consent.

3. The petitioner is Public Information Officer appointed as such under the Right to Information Act, 2005. She has challenged the order dated 27.7.2007 passed by the Goa Information Commission holding her Page 1240 responsible for furnishing incorrect, incomplete or misleading information to the respondent No. 2 and also for providing false information.

4. The respondent No. 2 had sought the following information from the P.I.O. under the Right to Information Act, 2005 (hereinafter referred to as the Act).

	Information sought by the Complainant	Information provided by the Opponent
III	186/c letter from GPSC No. COM/1 /1/15/1705/754 dated 03/11/2006	N.A.
XIV	146/c letter No. COM/11/11/15(1)05 dated 12/06/2006 regarding filling up the post of Curator clarify	N.A.
XV	117/c letter from GPSC to communicate seniority list of Librarian may be sent if not then kindly clarify under what provision of Rule the department to fill up the post by promotion.	N.A.
1	Copy of the Seniority list of the Common Cadre of the Librarian post from the Directorate of Education, Technical Education and Higher Education.	N.A.
2.	Why the post of curator was not filled	N.A.

Item 1,2 & 3 are relevant for a decision of this case.

5. Initially the petitioner wrote the words N.A. against all the 3 requisitions i.e. not available. Thereafter, the second respondent sought clarification as to what the petitioner made clear by the abbreviation Not Available. The petitioner clarified that it means Not Available. As to other two questions the petitioner clarified by stating I don't know. The respondent No. 2 took the matter to the Goa Information Commission.

6. The Goa Information Commission has held the petitioner guilty of furnishing incomplete, misleading and false information and has imposed the penalty of Rs. 5,000/-which is liable to be deducted from the petitioner's salary from the month of August 2007. This order is under challenge. Mr. Lobo, the learned Counsel for the petitioner submitted that the Goa Information Commission (hereinafter referred as Commission) has wrongly held that the petitioner provided incomplete and misleading information on the 3 points.

7. The Commission has with reference to question No. 1 held that the petitioner has provided incomplete and misleading information by giving the clarification above. As regards the point No. 1 it has also come to the conclusion that the petitioner has provided false information in stating that the seniority list is not available. It is not possible to comprehend how the Commission has come to this conclusion. This conclusion could have been a valid conclusion if some party would have produced a copy of the seniority list and proved that it was in the file to which the petitioner Page 1241 Information Officer had access and yet she said Not Available. In such circumstances it would have been possible to uphold the observation of the Commission that the petitioner provided false information in stating initially that the seniority list is not available.

8. As regards the requisition Nos. 2 & 3 by which the petitioner was called upon to give information as to why the post of Curator was not filled up by promotion and why the Librarian from the Engineering College was not considered for promotion, the petitioner had initially answered by stating that the information was N.A.(Not Available). Thereafter, she had clarified by stating that it means I don't know. The Commission has initially observed in para. No. 13 that it does not see anything wrong in the petitioner's reply that she does not know the information because P.I.O. cannot manufacture the information. However, in para. No. 14, the Commission has observed that the petitioner has not supplied a correct information because she corrected information on points No. 2 & 3. It can be recalled that the petitioner corrected the information by explaining that Not Available meant she does not know. It is not possible to accept the reasoning of the Commission. There is no substance in the observation that merely because the petitioner initially said Not Available and later on corrected her statement and said she does not know and the petitioner provided incomplete and incorrect information. In the first place, the Commission ought to have noticed that the Act confers on the citizen the right to information. Information has been defined by Section [2\(f\)](#) as follows.

Section [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;

The definition cannot include within its fold answers to the question why which would be the same thing as asking the reason for a justification for a particular thing. The Public Information Authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of a justification because the citizen makes a requisition about

information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information.

9. In this view of the matter, the order of the Commission appears to suffer from a serious error of law apparent on record and results in the miscarriage of justice. In the result, the impugned order is hereby set aside.

10. Rule is made absolute.

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***[CHRI's comments: It is respectfully submitted that any affected person has the right to seek reasons behind an administrative or quasi-judicial decision of any public authority under sec. 4(1)(d) of the RTI Act. In fact these reasons must be disclosed to affected persons in a proactive manner. So when reasons are sought, that does not amount seeking the opinion of the PIO but that of the public authority. If such reasons are on file they may be given if no exemption is attracted. However every public functionary is duty-bound to record his reasons for all administrative and quasi-judicial decisions. This is a requirement under administrative law. This has become more of a statutory duty in light of sec. 4(1)(d) of the RTI Act]***

**IN THE HIGH COURT OF DELHI**

W.P. (C) No. 11434/2006

Decided On: 19.07.2006

Appellants: **Electronics and Computer Software Export Promotion Council**

**Vs.**

Respondent: **Central Information Commission and Ors.**

**Hon'bleJudges:**

Anil Kumar, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Sudhansu Batra, Adv.

For Respondents/Defendant: S.K. Dubey, Adv.

**Subject: Civil**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Section 2

**Disposition:**

Petition allowed

**Case Note:**

**Civil — Right to Information — Section 2(h) of the Right to Information Act, 2005 — Respondent No. 2 sought all documents and records of Sexual Harassment Complaint Committee against two officials — Petitioner contended that it was not liable to furnish such information — Information refused on the ground that the petitioner being a non-governmental organization and non-funded by the Government, the Right to Information Act was not applicable — Proceedings were initiated by respondent No. 2 before Central Information Commission, in which it was held that the petitioner was a public authority under the definition of the Act —there was substantial government funding by the department — Facts of case proved that there were government nominees in the working list of the petitioner — Character of the petitioner discharging public functions and being a public authority could not be denied — Petitioner was liable to render information**

## JUDGMENT

Anil Kumar, J.

Page 2770

1. Respondent No. 2, Mrs. Navneet Kaur, sought all documents and records of Sexual Harassment Complaint Committee against two officials. On her application a clarification was sought from the Department of Personnel whether a copy of the report of the Committee could be furnished to respondent No. 2 before the disposal of the same by the Disciplinary Authority. On the advice of the Department, the matter was referred to the Department of Women and Child Development. By a communication dated 9th January, 2006, it was communicated that the petitioner being a non-Governmental organization and non-funded by the Government, the Right to Information Act was not applicable.

2. However, on appeal by respondent No. 2 to Central Information Commission against the said decision holding that Right to Information Act, 2005 was not applicable to the petitioner, it was held that in terms of Section 2(h) of the Right to Information Act, 2005, the petitioner is an organization under the administrative control of Department of Information Technology. Out of Rs. 11.8 crore income for the year 2004-2005, the Grant-in-Aid from the Department of Commerce and Information Technology was about Rs. 6.8 crore and consequently it was inferred that the petitioner is substantially financed by the Government. It was thus held that the Right to Information Page 2771 Act, 2005 is applicable to the petitioner and petitioner was directed to furnish respondent No. 2 a copy of inquiry report and also copies of minutes of the Working Committee relating only to the Inquiry Report and action taken thereon.

3. Despite the order of Central Information Commission, the information which was directed to be given to respondent No. 2 was not given entailing filing of another proceeding by respondent No. 2 which was disposed of by order dated 18th May, 2006. During the hearing, respondent No. 2 had sought additional information which was, however, declined to the petitioner holding that scope of the decision dated 22nd March, 2006 could not be enlarged, however, the Commission reiterated that petitioner is under the administrative control of Department of Information Technology as CAG audits the accounts of petitioner; annual report is laid in the Parliament through Department of Information Technology; name of petitioner appears in the annual report of Department of Information Technology and Department of Information Technology assign programs and activities which are undertaken by the petitioner which were programs and activities were communicated in the annual reports of the petitioner for 2004-2005. In view of the administrative control of Department of Information Technology on petitioner and substantial funding by the government, it was thus held that the petitioner is a public authority under the definition of Right to Information Act, 2005.

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. Page 2772 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 be 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. thereforee 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.

9. In the circumstances, the orders impugned by the petitioner do not have any jurisdictional error nor suffer from any material illegality. thereforee for the reasons stated hereinabove, it is held that the petitioner is a public authority as contemplated under the Right to Information Act, 2005 and is liable to render information as has been directed by the orders impugned in this petition.

10. The writ petition is, thereforee, without any merit and it is dismissed.



BEFORE THE APPELLATE COMMITTEE, BHEL  
(Under provisions of Section 19 of the Right to Information Act' 2005)

In the matter of

Appeal received on 21/5/08 from Shri D. K. Sardana, B-165, Pocket B Mayur Vihar Phase-II Delhi – 110091 against CPIO –ROD decision dated 9/5/08 on application dated 4<sup>th</sup> April 2008

Shri D.K. Sardana sought in his application from CPIO- BHEL, ROD information about copy of the investigation report along with information on Grauity, PP, Profit Sharing Bonus etc.

CPIO, BHEL, ROD had replied stating that copy of the report can be had by paying the requisite fees under the relevant provisions of RTI Act, whereas, rest of the information on Grauity, PP, Profit Sharing Bonus etc. were already provided to him in compliance with CIC's order dated 04.02.2008.

In his appeal, Shri D.K. Sardana has raised all irrelevant issues which have no relevance whatsoever with the information sought. Further the tone and tenor of the appeal appears to be one of intimidation and veiled with threats to CPIO-ROD which are bad in taste and hence objectionable. It would be significant to note that CIC in its decision in case of Faqir Chand Vs North Western Raliways, Jaipur No CIC/OK/A/00297&00314 has held, that the provisions of the Act are meant for genuine information seekers in order to fulfill the objectives set out in the preamble, and not to settle scores either with other individuals or with the Department where the appellant has worked.

The Appellate Committee takes a serious view of the reprehensible conduct of the appellant and advises him to desist from making such malicious statements against CPIO-ROD or any other official for that matter.

The Appellate Committee subsequently has examined the appeal on merits of the case. It is observed that CPIO-ROD has already provided him with the information sought, further the appellant was also invited to visit BHEL office and inspect the documents. For inexplicable reason, the appellant however chose not to avail of the opportunity to inspect the documents for the reasons best known to him. From this, it is abundantly clear that the appellant is bent upon creating a vexatious atmosphere in the Public Authority rather than seek any genuine information, which goes contrary to the very essence of the Act.

The Appellate Committee consequently strongly expresses its displeasure at the conduct of the appellant and reiterates that he should confine himself in seeking information within the purview of the Act instead of launching a vilification campaign against the officials of Public Authority.

The Appellate Committee upholds the decision of CPIO-ROD

The appeal is disposed off accordingly on

Head (HR) & Chairman  
Appellate Committee

Head (PS-Mktg & Member  
Appellate Committee

Head (P&D) & Member  
Appellate Committee

Head (Finance) & Member  
Appellate Committee

Company Secretary & Member Secretary  
Appellate Committee

**Equivalent Citation:** 2009(2)KarLJ465

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE  
DIVISION BENCH**

Contempt of Court Case No. 525 of 2008

Decided On: 27.01.2009

Appellants: **G. Basavaraju**  
**Vs.**

Respondent: **Smt. Arundathi and Anr.**

**Hon'ble Judges:**

S.R. Bannurmath and A.N. Venugopala Gowda, JJ.

**Counsels:**

For Appellant/Petitioner/Plaintiff: H.K. Kenchegowa, Adv.

For Respondents/Defendant: N. Ramachandra, Adv. for Accused-1 and 2

**Subject: Contempt of Court**

**Acts/Rules/Orders:**

Contempt of Courts Act, 1971 - Sections 2, 11 and 12; Right to Information Act, 2005 - Sections 5(1), 5(2), 7(1), 18, 18(1), 19, 19(1) 20, 20(1) and 20(2); Karnataka Co-operative Societies Act, 1959 - Section 109(13); Service Rules

**Cases Referred:**

K. Jagdish Ponraj and Ors. v. A. Muniraju and Ors. 2009 (2) Kar. L.J. 391; Sakiri Vasu v. State of Uttar Pradesh and Ors. AIR 2008 SC 907 : 2008 AIR SCW 309 : (2008)2 SCC 409; T. Srinivasa v. J.J. Prakash 2009(2) Kar. L.J. 444

**ORDER**

1. This contempt petition has been filed under Sections 11 and 12 of the Contempt of Courts Act, 1971 ('the Act' for short), to initiate contempt proceedings against the accused for non-implementation of an order dated 5-12-2007 passed by Karnataka Information Commission ('Commission' for short) in case No. KIC/2860/Com/2007 and to direct the accused, to implement the said order.

2. To appreciate the grievance raised in this petition, few relevant facts may be noted:

Complainant was a member of Ananda Co-operative Bank Limited, Basaveshwaranagar, Havanur Circle, Bangalore-79. Accused are the President and Secretary of the said Bank. Complainant had filed an application dated 17-7-2007 to the second accused under Sections 5(1), 5(2) and 19(1) of the Right to Information Act, 2005 CRTI Act' for short) requesting to

furnish, a copy of the letter dated 23-12-2006 addressed to the Bangalore Water Supply and Sanitary Board and copies of documents such as, T.A., D.A. and log book extract and payments made to the first accused. Subsequently, he filed a complaint before the Commission against the second accused under Section 18(1) of the RTI Act, for a direction to furnish copies of the aforementioned records. The Commission after inquiry in respect thereof, has passed an order dated 5-12-2007 directing the respondent (accused 2 herein) to furnish the relevant information on item 1 and the information available on the record in respect of item 2 to the complainant, free of cost, within 15 days. Complainant submitted a copy of the said order to the accused, along with his representation dated 20-12-2007, seeking compliance. In response thereto, the second accused sent a communication dated 20-12-2007 to the effect that, it has been decided to present appeal before the Appellate Authority. Complainant submitted a further representation dated 3-1-2008 seeking compliance, which having not been done, alleging wilful disobedience of the order dated 5-12-2007 passed by the Commission and contending that, to protect the status, dignity, prestige and majesty of the Court, this petition has been filed.

3. We have heard Sri H.K Kenchegowda, learned Counsel for the complainant, who contended that, the Commission stands on the same footing as that of a Subordinate Court, the disobedience complained of, falls within the definition of the Section 2(b) of the Act and therefore this Court has the power to take cognizance of the complaint alleged against the accused and committed by them. He contended that, the provisions of Section 20 of the RTI Act is not efficacious in the matter of enforcement of the Commission order dated 5-12-2007 and the delay would defeat the very object of the Commission in passing the order and hence the accused should be punished for the act of committing contempt, with a further direction to implement the order without any delay.

4. Per contra, Sri N. Ramachandra, learned Counsel for the accused contended that, the Managing Committee of the Bank has decided to seek remedy against the said order of the Commission and necessary steps in that regard have also been taken. He further submitted that, there is no wilful disobedience, in view of the communication dated 20-12-2007 sent to the complainant. Relying upon an order passed by this Bench in T. Srinivasa v J.J. Prakash 2009(2) Kar. L.J. 444 (DB), learned Counsel contended that, the contempt petition is not maintainable.

5. Considering the rival contentions, the following points, arise for decision:

(i) Whether, for disobedience of the order passed by the Karnataka Information Commission, in exercise of the powers and functions under Sections 18 and 19 of the RTI Act, 2005, the contempt petition under the Contempt of Courts Act, is maintainable?

(ii) Whether, the complainant has made out a prima facie case to frame charge against the accused?

6. Indisputably, the complaint of the complainant filed before the Commission was allowed and a direction was issued on 5-12-2007 to provide the relevant information. Accused have informed the complainant that, a decision has been taken to file an appeal against the said order. Grievance of the complainant is that, the said order has been wilfully disobeyed by the accused, who should be directed to give effect to the same and punish them for non-compliance.

7. We have carefully perused the record and given anxious consideration to the rival contentions. For the reasons recorded infra, the contempt petition is not maintainable.

8. Section 20(1) of the RTI Act enables the Commission to impose on the respondent before it, a penalty of two hundred and fifty rupees each day, till the information is furnished, subject to a total amount of twenty-five thousand rupees. Prior to the imposition of such fine amount, it is mandatory that reasonable opportunity of hearing must be provided to the Public Information Officer-respondent. In addition, Sub-section (2) thereof, enables the Commission that, if the concerned Public Information Officer, without any reasonable cause and persistently, has not furnished the information within the time specified under Sub-section (1) of Section 7, to recommend for disciplinary action against the concerned Information Officer, under the Service Rules applicable to him. The provisions contained in Section 20 of the RTI Act shows that, the Commission has been conferred with the jurisdiction to penalise the defaulting officer by levy of penalty upto a total amount of Rs. 25,000/- and also recommend for disciplinary action under the Service Rules applicable to the defaulting officer. Thus, it is clear that, the RTI Act itself provides the procedure and remedy.

9. Section 20 of the RTI Act provides for penalties. It confers powers on the Commission on the basis of which it can enforce its order. The Act having provided for constitution of the Commission and the power to impose the penalties by way of levy of fine and also the statutory right to recommend to the Government for disciplinary action against the State Information Officer, itself has the necessary powers/provisions, in the form of the provisions of Contempt of Courts Act. It is cardinal principle of interpretation of statute, well-settled by catena of decisions of the Apex Court, that, Courts or Tribunals, must be held to possess power to execute its own order. Further, the RTI Act, which is a self-contained code, even if it has not been specifically spelt out, must be deemed to have been conferred upon the Commission the power in order to make its order effective, by having recourse to Section 20.

10. In the case of Sakiri Vasu v State of Uttar Pradesh and Ors. AIR 2008 SC 907 : 2008 AIR SCW 309 : (2008)2 SCC 409, it has been held as follows.--

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his Statutory Construction (3rd Edition, Page 267):

If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission.

20. *In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.*

(emphasis supplied)

The powers of the Commission to entertain and decide the complaints, necessarily shows that, the Commission has the necessary power to adjudicate the grievances and decide the matters brought before it, in terms of the provisions contained in the RTI Act. The legislative will, incorporating Section 20 in the RTI Act, conferring power on the Commission to impose the penalties, by necessary implication is to enable the Commission to do everything which is indispensable for the purpose of carrying out the purposes in view contemplated under the Act. In our considered view, provisions of Section 20 can be exercised by the Commission also to enforce its order. The underlying object in empowering the Commission to impose the penalty and/or to resort to other mode provided therein, cannot and should not be construed only to the incidents/events prior to the passing of an order by the Commission, but are also in aid of the order passed by the Commission and its enforcement/execution, as otherwise, the legislative will behind the enactment gets defeated.

11. In the case of T. Srinivasa, the grievance put forth was that, an award passed by Departmental Arbitrator under the Karnataka Co-operative Societies Act, 1959, was not complied with and that there is wilful disobedience by the accused, against whom the contempt petition was filed. Considering the question of maintainability of the contempt petition, in view of the availability of the remedy under Section 109(13) of the said Act and also taking into consideration an order passed by this Court in the case of K. Jagdish Ponraj and Ors. v. A. Muniraju and Ors. [MANU/KA/0566/2008](#), it was held as follows.--

9. The provision under Order 39, Rule 2-A(1) relates to the consequence of disobedience for breach of injunction. *The remedy available in case of disobedience or breach of injunction is provided therein itself, which in our view, has been made to provide a speedy inexpensive and effective forum and to avoid multiplicity of litigation before different forums. The legislative policies and intendment should necessarily weigh with us in giving meaningful interpretation to the provision. We do not find any extraordinary case having been made out by the complainants, who are insisting for initiation and prosecution of the proceedings under the Act, than by availing the remedy provided under the Code. From the said perspective, taking into consideration the remedy provided under the Code, the complaint filed under the Act, for taking action for breach or disobedience of an order of temporary injunction made or granted by the Subordinate Court, is not permissible. In our view, when the Subordinate Court itself has been sufficiently empowered to deal with the situation, where there is disobedience or breach of the injunction order granted by it, the same forum should be approached for relief and to see that its orders are honoured and given effect to rather than seeking punishment under Section 12 of the Act.*

(emphasis supplied)

12. In view of the powers conferred upon the Commission under Section 20 of the RTI Act, the complainant has to seek relief thereunder and consequently, this contempt petition is not maintainable. Point No. (i) is answered accordingly.

In view of the above finding, point No. (ii), does not survive for consideration.

In the result, we hold that, the complaint is not maintainable and is dismissed accordingly, without prejudice to the right of the complainant, to approach Karnataka Information Commission, under Section 20 of the RTI Act, for relief. No costs.

**Equivalent Citation:** AIR2008Guj2, (2008)1GLR560

**IN THE HIGH COURT OF GUJARAT**

Spl. Civ. Appln. No. 16770 of 2007

Decided On: 31.08.2007

Appellants: **Gokalbhai Nanabhai Patel**

**Vs.**

Respondent: **Chief Information Commissioner and Ors.**

**Hon'ble Judges:**

D.N. Patel, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Murali N. Devnani, Adv.

For Respondents/Defendant: N.V. Anjaria, H.S. Munshaw and D.C. Dave, Advs.

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 4(1), 6, 7, 7(7), 11(1), 18, 18(1), 18(2), 19, 19(2), 19(3), 19(4) and 20; Civil Procedure Code (CPC), 1908

**ORDER**

**D.N. Patel, J.**

1. Leave to delete respondent Nos. 3 and 4 is granted.

Rule. Learned Counsel for the respective parties waive service of notice of Rule on behalf of the respondents.

2. The present petition has been preferred to ventilate the grievances about misuse of powers vested in Chief Information Commissioner, who is Second Appellate Authority under the Right to Information Act, 2005 (hereinafter referred to as "the Act, 2005").

3. The present writ petition has been preferred against the order dated 14th June, 2007 passed by Chief Information Commissioner while hearing Second Appeal No. 730 of 2006-07, in which, order of demolition has been passed by Chief Information Commissioner.

4. Learned Counsel for the petitioner " submitted that respondent No. 5 had applied for getting information under the Act, 2005 to Public Information Officer i.e. Talati-cum-Mantri, Village: Kheroli, Taluka: Virpur, District: Kheda i.e. respondent No. 4. His application under Section 6 of the Act, 2005 was dated 4th October, 2006. Public Information Officer replied on 3rd November, 2006 to the original applicant (present respondent No. 5). Being aggrieved by the reply/order of Public Information Officer, First Appeal was preferred before Taluka Development Officer on 15th November, 2006. This Taluka Development Officer has not given any number to this First Appeal and has replied on 11th December, 2006 that Officers are busy with elections work. Being aggrieved by this, original applicant i.e. respondent No. 5 had preferred



Second Appeal No. 730 of 2006-07 under Section 19(3) of the Act, 2005 before Chief Information Commissioner. Chief Information Commissioner passed an order on 14th June, 2007 for removal of the encroachment and without giving an opportunity of being heard to the petitioner. No hearing has taken place before Chief Information Commissioner. No other authority has arrived at a conclusion that the construction of the petitioner is an encroachment. Absolutely arbitrary is the decision of the Chief Information Commissioner. Whimsical is the approach of the Chief Information Commissioner. He has not kept in mind, bare principle of natural justice. Chief Information Commissioner has not properly exercised his power, jurisdiction and authority under the Act, 2005. At the most, information may be given or it may be denied under the Act, 2005 but the order of demolition cannot be passed by Chief Information Commissioner under the Act, 2005.

5. Learned Counsel for the petitioner further submitted that when an authority under the Act, 2005 is deciding anything about third party, then third party ought to be heard. The construction of the present petitioner is ordered to be demolished. No hearing was given to the petitioner by any of the authorities, neither by Public Information Officer nor by First Appellate Authority nor by Second Appellate Authority and, therefore also, the order dated 14th June, 2007 passed by Chief Information Commissioner in Second Appeal No. 730 of 2006-07 deserved to be quashed and set aside. Whether there is any encroachment by the petitioner, was never the subject matter under the Act, 2005. Nobody has argued before Chief Information Commissioner that the fact as to encroachment is already established and it should be removed. Whimsically and capriciously, Chief Information Commissioner has acted in the matter. Powers ought to be exercised in accordance with the Act, 2005. Chief Information Commissioner has exceeded his jurisdiction. The present respondent No. 5 has asked for some information about the petitioner. In fact, no such information could have been given by Public Information Officer, without following due procedure prescribed under Section 11(1) of the Act, 2005. By the impugned order, right of third party i.e. petitioner of preferring First Appeal and Second Appeal has also been taken away and, therefore, the impugned order deserves to be quashed and set aside.

6. Learned Counsel for respondent No. 5 submitted that respondent No. 5 is the original applicant under Section 6 of the Act, 2005, who has also submitted that an application was given to get information and not for demolition under the Act, 2005. The impugned order is not in accordance with the provisions of the Act, 2005. It is further submitted that while quashing the impugned order, rights may be reserved with the respondent No. 5 to point out to the concerned authorities that the construction of the petitioner is an encroachment under the relevant laws.

7. Learned Counsel for respondent No. 1 submitted that on the basis of arguments canvassed by respondent No. 5, the impugned order has been passed. It is an appeal before respondent No. 1 and if this Court directs to furnish information as prayed for by respondent No. 5, the same will be complied with by respondent No. 1.

8. Having heard the learned Counsel for both the sides and looking to the facts and circumstances of the case, the order dated 14th June, 2007 passed by Chief Information Commissioner in Second Appeal No. 730 of 2006-07 deserves to be quashed and set aside, for the following facts and reasons:

(I) The impugned order is passed without any power, jurisdiction and authority vested in Chief Information Commissioner under the Act, 2005. Looking to the provisions of the Act, 2005, following are the main powers of the State Information Commissioner under Sections 18, 19 and 20 of the Act, 2005.

Main Powers of State Information Commission:

19. Appeal.

(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 charges 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.

=> State Information Commission has power to hold inquiry against erring Officer (under Section 18(2))

=> State Information Commission has power to impose penalty (under Section 20)

=> State Information Commission while holding inquiry under Section 18(1), shall have the same powers as are vested in a Civil Court, while trying a Suit under 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.

(II) It appears that the original applicant-respondent No. 5 preferred an application to get information under Section 6 of the Act, 2005 to Public Information Officer. Being dissatisfied with the answer of Public Information Officer dated 3rd November, 2006, First Appeal was preferred under Section 19(2) of the Act, 2005 before Taluka Development Officer on 15th November, 2006 and has also given such a reply on 11th December, 2006 that has promoted respondent No. 5 to prefer Second Appeal No. 730 of 2006-07 under Section 19(3) of the Act, 2005 on 20th January, 2007. Looking to the provisions of the Act, 2005, the order of removal of ,encroachment passed by Chief Information Commissioner is absolutely illegal

and dehors the provisions of the Act, 2005. At the most, information may be supplied or may be denied, but, further order of removal of encroachment cannot be passed by Chief Information Commissioner.

(III) Whether there is encroachment or not, is a civil dispute. It cannot be decided by Chief Information Commissioner.

(IV) Whenever any applicant is applying for getting any information about third party, such information shall be given by Public Information Officer under Section 7 of the Act, 2005, only after following procedure prescribed under Section 11(1) of the Act, 2005 and also keeping in mind Section 7(7) of the Act, 2005. Here no such opportunity of hearing was given to the petitioner by Chief Information Commissioner.

(V) The concerned authorities have not properly appreciated that the present petitioner was never a party in the First Appeal as well as in the Second Appeal and the order has been passed against the petitioner. No notice was ever issued to the present petitioner and, therefore also, the impugned order deserves to be quashed and set aside. Chief Information Commissioner appears to be ignorant about aforesaid simple judicial process. Bare minimum requirement is, to follow principles of natural justice.

(VI) The Chief Information Commissioner has not given any opportunity of being heard to the petitioner. Before passing an order against any person, bare minimum requirement ought to be kept in mind that principle of natural justice ought to be followed. Opportunity of being heard ought to be given to the petitioner. There is a right vested in third party under Section 19(4) that he must get an opportunity of being heard. It appears that Chief Information Commissioner has lost sight of this explicitly clear and unambiguous provision of Section 19(4). This aspect of the matter has not been properly appreciated by the Chief Information Commissioner and, therefore also, the impugned order deserves to be quashed and set aside.

(VII) Under the Right to Information Act, 2005, the authority has a basic function to be performed either to give the information or to deny to furnish the information. Additional prayers like demolition, etc. cannot be granted by the authority under the Act 2005, which take away substantive rights of the party. Sometime third party is not joined as a party and therefore, more care should be taken by the authority. Whenever additional prayers are made, then to get information, may not be granted by the authority, without following due procedure of law. To pass an order of demolition of completely out of jurisdiction of Chief Information Commissioner. This authority must act within the jurisdiction, conferred by the Act, 2005.

(VIII) Chief Information Commissioner has passed an order of demolition, against third party (petitioner)

(a) though third party (i.e. petitioner) was not a party in Second Appeal before him;

(b) without giving an opportunity of being heard to third party (i.e. petitioner);

(c) which also takes right of third party to prefer first appeal and second appeal.

Total whimsical and capricious is the order passed by the Chief Information Commissioner.

9. As a cumulative effect of the aforesaid facts and reasons, the impugned order dated 14th June, 2007 passed by the Chief Information Commissioner in Second Appeal No. 730/2006-07 is hereby quashed and set aside. This Court is not entering into the question as to whether there is encroachment by the petitioner or not. This question is kept open. Rule made absolute to the aforesaid extent.

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MANU/KA/0265/2008

**Equivalent Citation:** ILR2008KAR3646

**IN THE HIGH COURT OF KARNATAKA**

Writ Petition No. 10663 of 2006

Decided On: 01.07.2008

Appellants: **H.E. Rajashekarappa**

**Vs.**

Respondent: **State Public Information Officer and Ors.**

**Hon'ble Judges:**

K. Bhakthavatsala, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: M.S. Prathima and S.V. Narasimhan, Advs.

For Respondents/Defendant: M.T. Jagan Mohan, Adv. for R-3 and R.B. Sathyanarayana Singh, HCGP for R-1 and 2

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 2, 3 and 19(8)

**Disposition:**

Petition allowed

**Case Note:**

**Right to Information Act, 2005 - Object and scope of--Section 2(f)--Information--Section 2(h)--Public Authority--Section 2(j)--Right to information--Information sought by the third respondent--Regarding statement of assets and liabilities of the petitioner for the relevant periods--Whether the information sought is covered within the meaning of "Information" as defined Under Section 2(f) of the Act--Held, The object of the Act is to provide 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. In view of the above provisions excerpted, it cannot be said that Section 2(f) of the Act encompasses the personal information of the officials of the public authority. The intention of the legislation is to provide right to information to a citizen pertaining to public affairs of the public authority--Therefore, the respondent No. 3 had no right under the Act to seek personal information of the petitioner--Further Held, As the respondent's application is vexatious and it is an attempt made to settle scores with the petitioner, it is a fit case to impose heavy costs in favour of the petitioner and against the respondent No. 3.--Impugned Order is quashed.**

**Writ Petition is allowed with costs of Rs. 10,000.**

**ORDER**

**K. Bhakthavatsala, J.**

1. The petitioner is before this Court praying for quashing the order dated 30.06.2006 at Annexure 'G'.

2. The brief facts of the case leading to the filing of the writ petition may be stated as under:

3. The Respondent No. 3 who is a retired Statistical Inspector made an application dated 17.03.2006 (Annexure-B) to the 1st Respondent to furnish copy of Assets and Liabilities statement of the petitioner for the period 2002-03, 2003-04 and 2004-05. The petitioner filed his objections to the application. The Respondent No. 1, considering the statement of objections filed by the petitioner, rejected the application by an order at Annexure 'E'. Feeling aggrieved by the order of the Respondent No. 1, the Respondent No. 3 filed an appeal under Section 19(8) of the Right to Information Act, 2005 before the Respondent No. 2/Appellate Authority. The respondent No. 2/Appellate Authority allowed the appeal and set aside the order of the Respondent No. 1 and directed the petitioner to furnish the details sought for by the Respondent No. 3. Therefore, the petitioner is before this Court praying for quashing the impugned order at Annexure 'G' on the file of Respondent No. 2.

4. Learned Counsel for the petitioner submits that the Respondent No. 3 had no locus-standi to seek the details of petitioner's Assets and Liabilities statement and the personal information of the petitioner sought for is not pertaining to public affair of the public authority. But, the Respondent No. 2/Appellate Authority erred in setting aside the order made by Respondent No. 1 and directing the petitioner to furnish the information as sought for by the Respondent No. 3.

5. It is necessary to refer and expert Section 2(f), (h), (j) and Section 3 of the Right to Information Act, 2005 (in short, 'the Act').

2(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advice, 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;

(g) ...

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

(a) by or under the Constitution;

(b) by any other law made by Parliament;

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

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

(i) body owned, controlled or substantially financed;

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

(i) ...

(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 materials;

(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.

6. The object of the Act is to provide 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. In view of the above provisions excerpted, it cannot be said that Section 2(f) of the Act encompasses the personal information of the officials of the public authority. The intention of the legislation is to provide right to information to a citizen pertaining to public affairs of the public authority. Therefore, the respondent No. 3 had no right under the Act to seek personal information of the petitioner. The respondent No. 2/appellant authority has erred in directing the petitioner to furnish the information as sought for by the respondent No. 3. As the respondent's application is vexatious and it is an attempt made to settle scores with the petitioner, it is a fit case to impose heavy costs in favour of the petitioner and against the respondent No. 3.

7. For the foregoing reasons, the Writ Petition is allowed with costs of Rs. 10,000/- in favour of the petitioner and against respondent No. 3. The impugned order dated 30.6.2006 at Annexure-G is quashed. The respondent No. 3 is directed to deposit costs of Rs. 5,000/- in this Court within three months from today.

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***[CHRI's comments: It is respectfully submitted that the Court has not explored the fullest extent of the exemption provided under section 8(1)(j). Assets and liabilities declarations have a direct relationship with a public activity and public interest. They are required to be submitted under the applicable civil service rules- hence they have a direct relationship with a public activity. They are required to be submitted by law in order to demonstrate and ascertain probity in the personal life of a public official. There is a genuine public interest in every person knowing whether an official is living within his known sources of income. So there is public interest connection with this information. It is respectfully submitted that the court***

*ought to have looked into this matter being a higher judicial authority. There is no requirement in the RTI Act for the petitioner to show cause for seeking any information. In the absence of any such information placed before the court it is respectfully submitted that the court has assumed the role of accuser, judge and jury and imposed costs on the petitioner. This amounts to punishing the petitioner for seeking information under the Act. It is respectfully submitted that the Court has violated the audi alteram partem principle of natural justice and abused its power of imposing sanctions on any party.]*

#### Hedging or-penalty imposed by CIC:

According to section 21 of the Act, no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made there under. (*Explanation: 'Good faith' may be described in terms of honesty of intention along with due care and attention. In other words, 'good faith' precludes pretence, deceit or lack of fairness and uprightness as also wanton or willful negligence*).

Where the decision taken by CPIO (or by any other officer deemed CPIO) on request has been found reasonable and upheld by the appellate committee, such decision shall deem to have been taken by him in the interest and on behalf of the company. If any penalty is awarded by CIC to CPIO, pursuant to section 20, in such cases, then CPIO shall not be personally liable to bear any such penalty. The company shall provide reasonable protection against any risk of administrative/financial penalty arising when an employee is discharging his duty, in the interest of company, to cater to requirement of the RTI Act' 2005. Concerned CPIO shall put-up the case to the appellate committee, through proper channel. Each of such cases shall be reviewed/decided upon by the appellate committee and shall come in to force upon ratification by Director (HR). Any appeal in a Court of Law, against a decision of the CIC, shall be initiated by the concerned administrative unit, after the due deliberations prescribed elsewhere in this guideline



# **Non-Government Organisations Recognised as ‘Public Authorities’ under the *Right to Information Act, 2005***

## **A Compilation of Judgements of various High Courts**

(October 2006 – September 2013)

- Venkatesh Nayak, *Access to Information Programme*  
*Commonwealth Human Rights Initiative, New Delhi*

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### **Background**

India is poised to enter the ninth year of implementing *The Right to Information Act, 2005* (RTI Act) which established a regime of transparency across the country. Not only government departments and other State agencies are covered by this law, but all non-Government organisations financed substantially, either directly or indirectly, by funds provided by the Central or State Government, also become public authorities under the RTI Act, automatically. They too have an obligation to disclose several categories of information proactively under Section 4 of the RTI Act, receive information requests from people directly and make a decision whether or not to disclose the requested information. However political parties being non-Government organisations have seriously objected to being brought under the regime of transparency after the June 2013 order of the Central Information Commission (CIC) declaring six national political parties as public authorities under the RTI Act. Upon an examination of the facts and figures provided by the appellants in that case the CIC ruled that those six political parties were substantially financed by the Central Government and therefore become public authorities under Section 2(h) of the RTI Act. In a bid to undo the effect of this order and also declare all political parties registered with the Election Commission of India as entities that will be excluded from the RTI Act, the Central Government tabled a Bill to amend the RTI Act in the Lok Sabha in August. This Right to Information (Amendment) Bill, 2013 has since been referred to the Department-related Standing Committee on Personnel, Public Grievances, Law and Justice for detailed consideration, thanks to public pressure which made politicians realise that this was increasingly becoming an unpopular move.

Political parties have publicly expressed several arguments as to why they do not come within the ambit RTI Act. One of their objections to being covered by the RTI Act is that they are no public authorities like other bodies that are in the government sector. They have said, if they are brought under the RTI Act then all other agencies and organisations that received substantial financing from Government should also be declared public authorities. It is obvious that politicians who have made such demands publicly have been busy protecting the country's interests (apart for their own) in Parliament and have not paid adequate attention to the

developing jurisprudence on this very subject. Many Information Commissions at the Central and State level have held several non-Government organisations to be public authorities under the RTI Act because they are financed substantially by some government or the other. Many such organisations challenged these decisions in various High Courts demanding a reversal of the orders but did not always achieve success. A compilation of the judgements of High Courts declaring non-Government organisations as public authorities is given below<sup>1</sup>. The purpose of the compilation is to show that many categories of non-Government organisations have been declared to be public authorities under the RTI Act and political parties need not feel discriminated against by the CIC's order. Apart from the cause titles and citations we have also provided the extracts of the rationale used by the High Courts for upholding the decisions of various Information Commissions declaring hundreds of non-Government organisations as public authorities under the RTI Act.

Although the judgement extracts listed below are from about 20+ cases only, the ratio laid down by the High Courts automatically brings all non-Government organizations belonging to the same category under the RTI Act. For example, a Division Bench (3 Judges) of the Kerala High Court recognised all Cooperative Societies as public authorities under the RTI Act while adjudicating on the petitions of just a handful of aggrieved cooperative societies. So does a judgement of the Madras High Court relating to the Hindu temples. This compilation is categorised on the basis of the following types of non-Government organisations recognised as public authorities under the RTI Act<sup>2</sup>:

- I. Societies, Trusts and Charitable Institutions;**
- II. Cooperative Societies, Cooperative Banks and Cooperative Sugar Mills;**
- III. Privatised Organisations and Special Purpose Vehicles (Private Public Partnerships);**
- IV. Autonomous Institutions;**

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<sup>1</sup> These judgements have been sourced from Manupatra.com due to its excellent key-word search facility. Unfortunately such a facility is not available on the websites of many High Courts where a search for judgements is possible only by using cause title, case number or name of the judge as search words. These judgements have been compiled after cross-checking them with the original version published on the various High Court websites. However the author does not claim that this list comprises of the entire universe of judgements available on the subject till date. On occasion we have come across judgements circulated by RTI activists through email discussion groups which are not listed on Manupatra.com. So this compilation is essentially restricted to these two sources of information only.

<sup>2</sup> It is quite possible that some of these judgements may have been appealed against before a larger bench of the concerned High Court or before the Supreme Court by way of a Special Leave Petition. It is very difficult to identify such cases especially when they are pending before those courts. So the author does not claim that all the decisions compiled here have attained finality.

V. Educational Institutions; and

VI. Religious Institutions

### Summary of Findings:

A quick summary of the findings based on this compilation is given below:

- **The High Court-wise break up of judgements on this issue is as follows:**

- (i) **Punjab and Haryana** – 5 judgements (2 Division Bench orders)
- (ii) **Kerala** – 5 judgements (2 Division Bench orders)
- (iii) **Allahabad** - 5 judgements (2 Division Bench orders)
- (iv) **Delhi** – 5 judgements (1 Division Bench order)
- (v) **Bombay, Jharkhand, Karnataka** – 1 judgement each.

Neither the Supreme Court nor other High Courts have pronounced their views on this issue till date although cases of a similar nature may be pending before them.

- **Notable private bodies declared public authorities:**

- **Bangalore International Airport Authority Ltd.** (Karnataka HC);
- **Delhi Multi Model Transit System Ltd.** (Delhi HC)
- **Electronics and Computer Software Export Promotion Council** (Delhi HC – Single Judge and Division Bench)
- **Management bodies of Hindu temples** (Madras HC)
- **Cricket and Lawn Tennis Associations** (Punjab and Haryana HC)
- **KRIBHCO, NAFED, NCCF** (Delhi High Court)
- **Tamil Nadu Road Development Co. Ltd.** (Madras HC)

- **Rationale for holding non-Government bodies as public authorities:**

- Investment by a Government in a company (50% or lesser equity participation);
- Public funds or grants-in-aid provided to private bodies;
- Public funds provided for constructing buildings or infrastructure facilities;
- Lease of public land for use at concessional rates of rent;
- Permitting use of public buildings or infrastructure free of charge over long periods; and
- Exemption from payment of taxes.

**Excluding Political Parties from the RTI Act may violate Article 14 of the Constitution:**

The CIC's June 2013 order held six political parties to be non-Government organizations that are substantially financed by the Central Government. The RTI (Amendment) Bill, 2013 seeks to exclude not only those six parties but all other political parties registered with the Election Commission from the RTI Act. This amounts to treating political parties as a special category of non-Government organizations that receive substantial financing from the Government and yet will not be covered by the RTI Act. This in our opinion may violate Article 14 which guarantees equality before the law and equal protection of the law for all persons (natural person such as individuals and artificial juridical persons such as non-Government organisations).

**The compilation of High Court judgements with extracts of their expressed rationale is given on pages 5-26.**

#	Case law declaring non-Government organisations as public authorities under Section 2(h) of the <i>Right to Information Act, 2005</i>	High Court and judgement date
<b>I</b>	<b>Societies, Trusts and other Charitable Institutions</b>	
1.	<p><b>PRADAN</b> a non-Government organization was held to be substantially financed as all its activities are supported by grants-in-aid provided by the Jharkhand Government.</p> <p><i>(Professional Assistant for Development Action (PRADAN) vs Respondent: The Jharkhand State Information Commission and Ors., Manu/JH/0187/2010)</i></p>	<p><b>Jharkhand High Court</b> Single Judge Bench 10/03/2010</p>
2.	<p><b>Karanthai Tamil Sangam</b> a registered society was held to be substantially financed by the Tamil Nadu Government as it received funds for constructing a building and other facilities for the orphanage it runs, another building for preserving ancient manuscripts and displaying antiquities at its museum.</p> <p><b>The Court observed:</b></p> <p><i>“22. Perusal of G. O. Ms. No. 20, Tamil Development Culture (S1) Department, dated 25-1-1995 shows that the Petitioner Sangam was found by a Tamil Scholar Tha. Ve. Umamaheswaram Pillai for the upliftment of Tamilians and that it is also running an orphanage for which there was no building of its own and there was no dining hall for the students hostel run by the Petitioner Sangam. Considering the poor financial position of the Petitioner Sangam and the service rendered by it for the development of Tamil Language the Government have accorded sanction of Rs. 45 lakhs so as to enable the Sangam to fulfill the following tasks:</i></p> <p><i>(i) To construct a building for the orphanage being run by the Sangam</i></p> <p><i>(ii) To construct a dining hall for the students and</i></p> <p><i>(iii) Additional library building to preserve and procure the ancient Tamil scripts</i></p> <p><i>23. In addition to the above, the Government have also sanctioned a sum of Rs. 30 lakhs for the</i></p>	<p><b>Madras High Court</b> Single Judge Bench 06/07/2010</p>

	<p><i>purpose of 57 copper plates, two seals of Rajendra Chola-I from the Karandai Tamil Sangam for being displayed in Government Museum, Madras in memory of the 8th World Tamil conference. The expenditure has been directed to be maintained in two different accounts. Thus, it could be seen that there is a substantial finance from the Government for certain specific activities like construction of buildings, construction of dining hall, laboratory building and additional building and also for the acquisition of historic pieces namely 57 copper plates, two seals of Rajendra Chola-I for being displayed in Government Museum, Madras. The Commissioner of Museum has been directed to be the Estimating Reconciling and Controlling Authority for the above said heads of account. Though the word "substantial assistance" has not been specifically defined in the Act, the said amount of Rs. 75 lakhs cannot be said to be trivial, particularly when the Commissioner of Museum, State of Tamil Nadu has been directed to be the Estimating Reconciling and Controlling Authority for the above said head of account. When the funds provided by the appropriate Government is regulated and controlled by an authority constituted for the specific purpose with concurrence of the appropriate Government, a Non Governmental Organisation which receives allocation or provision of fund has to be treated as a public authority amenable to the jurisdiction of the competent authority under, the Right to Information Act, 2005 and the State Laws. Though the learned Counsel for the Petitioner has contended that it is open to a citizen under the Right to Information Act to seek for any information as regards the grant and the activities directed to be undertaken by the Government and not for any other activity carried on by the Sangam or the affairs of the Sangam, this Court is not inclined to accept the said contention for the reason that once the Petitioner Sangam is substantially financed directly by the appropriate Government namely, the State Government, then there cannot be any distinction with reference to the matters pertaining to the funds sanctioned by the Government and other activities of the Non Governmental Organisation. The Petitioner Sangam cannot be said to be a public authority only for a limited purpose."</i></p> <p><i>[Karanthai Tamil Sangam vs R. Sivaprakasham and Anr., W.P. (MD) No. 5729 of 2008]</i></p>	
3.	<p><b>Punjab Cricket Association (PCA), Jullundur Gymkhana, Chandigarh Lawn Tennis Association (CLTA) and Sutlej Club</b> were held to be substantially financed by the Punjab Government.</p>	<p><b>Punjab and Haryana High Court</b> Single Judge Bench</p>

<p><b>The Court observed:</b></p> <p><i>“68. Now advertng to the case of petitioner-PCA (at Sr. No. 12), it is admitted position that it is enjoying tax exemption from entertainment tax, which is a direct financial aid by the State to it. Although the SIC has negatived the plea of the complainant-information seeker, but to my mind, the SIC has slipped into deep legal error in this regard, because the PCA is saving heavy amount from exemption of entertainment tax, which naturally is an incidence of financial aid by the Government. ... In addition to it, the PCA is substantially financed directly or indirectly by the appropriate Government in the following manner as held by the SIC :</i></p> <p><i>“(i) 13.56 acres of land in Sector 63, SAS Nagar Mohali has been leased out by the Government of Punjab to the Punjab Cricket Association at a token rental of Rs. 100 per acre, per annum.” (for 99 years)</i></p> <p><i>(ii)... it has up to 31st March, 1997, received grants to the tune of Rs. 1107 lacs from PUDA (Rs. 1015 lacs). Punjab Sports Council (Rs. 15 lacs) and Punjab Small Saving (Rs. 77 lacs). ...</i></p> <p><i>(iv) As per letter dated 15th January, 2008 written by PUDA (erstwhile PHDB) to the PIO, GMADA, Mohali, the PUDA/ PHDB (both wholly owned Punjab Government institutions) have given financial aid to Punjab Cricket Association to the tune of Rs. 1015.00 lacs through Sports Department.”...</i></p> <p><i>70. ...216344 Sq. ft. of land contiguous to Residence Commissioner, Jalandhar Division was leased out by the Government of Punjab to this Club” (Jullundur Gymkhana Club) “at a token rental of Rs. 889 per annum. According to the affidavit of Commissioner dated 9th July, 2009, as per revenue record, this land is in the name of Commissioner, Jalandhar Division, belong to provincial Government and Punjab PWD (B&amp;R) Department is in-charge of such Government land. The club has covered area of approximate 47000 sq. ft. over the government land. The net income of the club for the financial year ending 31st March, 2008 was Rs. 1,02,84,468.84. The various balance/income sheets and expenditure accounts placed on the record show that huge amounts of money have been generated/earned by the club through contribution/receipts from members, interest earned on various fixed deposits and income from premises/facilities and financial aid. The SIC had held that the factum of their milions in the kitty of the Jullundur Gymkhana is directly</i></p>	<p>09/05/2011</p>
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*attributable to the land and subsequently development of infrastructure provided on a paltry sum of Rs. 889 per annum by the State of Punjab.*

*71. As regards the petitioner-CLTA (at Sr. No. 14) is concerned, the Chandigarh Administration is owner of the stadium in Sector 10, Chandigarh comprising of a building and Tennis Courts, adjoining the stadium along with other facilities on lease to CLTA for a period of 20 years. The CLTA is running its affairs. It is arranging the national tournaments. UT Administration has leased out the entire premises valued at crores of rupees and meagre rent payable by it is only Rs. 100 per annum. The Administration he also contributed to the CLTA financial aid of Rs. 1 lac in financial year 2008-09. ... In this respect. SIC has observed as under :*

*“Needless to say the cost of these properties would run into crores of rupees at the prevailing market rate. It is common ground that if CLTA were to hire these facilities in the open market, it would be required to pay a huge rental compared to the one being paid to CLTA. Besides, concededly, Chandigarh Administration has contributed about Rs. 1 lac to the coffers of CLTA in the Financial Year 2008-09. It is to be noted that Chandigarh Administration is an "appropriate Government" and it has placed huge infrastructure at the disposal of CLTA for a notional rental of Rs. 100 per annum. In this view of the matter, it would appear that CLTA has been indirectly financed by the Chandigarh Administration.”*

*72. Now adverting to the financial help of petitioner-Sutlej Club, Ludhiana (at Sr. No. 15) is concerned, the SIC mentioned that as per revenue record, the land owned by the Provincial Government is given to the Club, which amounts to substantial financial assistance by the State Government. The fact that the valuable land, upon which, the Club was constructed, belongs to the Government and no rent/lease is paid by it to the Government shows that there is a substantial financial assistance by the State to the Club. The cost of prime land provided to the club would be much more than its normal revenue expenditure. Apart from land provided for construction of the club building, the Government has also incurred a part of expenditure on its construction. ...*

*76. Taken in the context of public larger interest, the funds which the Government deal with, are public funds. They belong to the people. In that eventuality, wherever public funds are provided, the word "substantially financed" cannot possibly be interpreted in narrow and limited terms of*



	<p><i>mathematical, calculation and percentage (%). Wherever the public funds are provided, the word "substantial" has to be construed in contradistinction to the word "trivial" and where the funding is not trivial to be ignored as pittance, then to me, the same would amount to substantial funding coming from the public funds. Therefore, whatever benefit flows to the petitioner-institutions in the form of share capital contribution or subsidy, land or any other direct or indirect funding from different fiscal provisions for fee, duty, tax etc. as depicted hereinabove would amount to substantial finance by the funds provides directly or indirectly by the appropriate Government for the purpose of RTI Act in this behalf."</i></p> <p><i>[The Hindu Urban Cooperative Bank Ltd. vs The State Information Commission and Others, (2011) ILR 2 Punjab and Haryana 64]</i></p>	
<p><b>4.</b></p>	<p><b>Shikshan Prasarak Mandali</b> a charitable trust which runs several schools, colleges and other educational institutions was held to be substantially financed by the Maharashtra Government.</p> <p><b>The Court observed:</b></p> <p><i>"10. The Educational Institutions in this case receive grants in aid from the State. These institutions are run, admittedly, by the petitioners. The petitioner No. 1 Trust, manages and administers their affairs and dealings. The Information in relation to these institutions and particularly their finances, management and administration is held by or under the control of the petitioners before me and that is not disputed. If these are the authorities in charge of the Educational Institutions, then, to see them, de hors the Trust or as distinct entities from the Trust would not be proper. In any event, inherent and implicit in this admission is that these educational institutions are bodies controlled or substantially financed by the appropriate Government and, therefore, covered by the definition. However, then to say that in relation to them any information is sought, it must be sought directly from them and not from the Trust would make it impossible for the citizens to have access to information in relation to these bodies. ... The petitioner Trust, Shikshan Prasarak Mandali, is a Public Trust registered under the Bombay Public Trust Act, 1950 and which is managing these educational institutions, to which the State funds or grant in aid is admissible, although, it may be received in the name of educational institution. ... Therefore, to view a school and college or a educational institution in isolation and a separate legal entity and only deal with or approach them would mean that the</i></p>	<p><b>Bombay High Court</b> Single Judge Bench 18/10/2012</p>

	<p><i>citizens' right which is paramount and predominant in this case will be rendered nugatory and cannot be exercised and enforced by them. A citizen is not expected to indulge in futile litigation and endless chase in overcoming technical hurdles and obstacles for seeking information. Public authorities are not obliging him by giving him information because the rule of the day is transparency, accountability in public dealings and public affairs and in relation to public funds. In cases of present nature, the information can be sought by approaching both the educational institutions and the parent entity controlling them or either. However, the duty and obligation to provide information as long as the right to seek it is enforceable by the RTI Act, must be discharged by the Public Authority. In this case, it is the petitioner Trust.</i></p> <p><i>11. ... Even otherwise, on facts the conclusion of the second appellate authority in the impugned order is based on the materials produced before it. The second appellate authority has scrutinised them very meticulously and properly. It has referred extensively to the Annual Report for the year 2006-07 and the balance sheets. The funds of the petitioners comprise of and consist of examination fees, other educational income, Government Grants. ... The word "aid" means to support, help or assist. Aid connotes active support and assistance. Thus, Aid is a terminology of wide amplitude. "Grant" is but part of it. Succor, anything helpful, to give support to, is aiding. If aid is something more than finance and it can come in all forms, such as making provision for infrastructure and not just assistance by financial means, then, the Legislature in this case did not restrict itself when it uses the term "control". Therefore, the control or substantial finance, directly or indirectly by funds provided by Government together with the ownership of a body make it a public authority for the purpose of the RTI Act."</i></p> <p><i>[The Appellate Authority &amp; Chairman Shikshan Prasarak Mandali etc. vs The State Information Commissioner, Maharashtra State Information Commission and Ors., Writ Petition No. 26 of 2011]</i></p>	
<b>II</b>	<b>Cooperative Societies, Cooperative Banks and Sugar mills</b>	
<b>5.</b>	<p><b>All Cooperative Banks and cooperative societies</b> registered under the <i>Kerala Cooperative Societies Act, 1969</i> (KCS Act) were held to be substantially financed by the Kerala Government.</p> <p><b>The Court observed:</b></p>	<p><b>Kerala High Court</b> 1) Single Judge Bench 03/04/2009</p>

<p><i>“30. A survey of the different Government Orders, Policy Documents etc. would show that apart from the share capital contribution to the District Co-operative Banks, to the Primary Agricultural Credit Co-operatives, to the Kerala State Co-operative Bank and capital involvement in Urban Co-operative Banks etc., there is contribution by way of subsidies in different sectors. Different other types of funding like outright grant and selected funding are also made available to different sectors. None of the writ Petitioners has a case that it does not enjoy any of these facilities. The Petitioners cannot sustain a case that they are not substantially financed by the Government. Predominantly, the presumption has necessarily to be in favour of holding that all the societies are substantially financed by funds provided by the State Government. Such finance may trickle by any mode without even any contribution by the Government, from out of its own funds, over which it has title. The Government is the machinery through which the finance reaches the societies, either by way of credits, subsidies, exemptions, other privileges including writing off of bad debts, which would otherwise have to be paid back into public funds. Having regard to the object sought to be achieved by the RTI Act, it is impermissible to presume to the contrary, particularly when transparency is a matter to be ensured even in the co-operative sector. It needs to be remembered that the promotion of societies by the State, including by its legislative support, is with a view to provide for the orderly development of the co-operative sector by organising the co-operative societies as self governing democratic institutions to achieve the objects of equality, social justice and economic development, as envisaged in the Directive Principles of State Policy of the Constitution of India. The RTI Act has become operational propounding the need of a democracy to have an informed citizenry. Containing corruption is absolutely essential for a vibrant democracy. Transparency and accountability in societies have necessarily to be provided for. The legislative provision in hand, therefore, requires a purposive construction in the above manner.</i></p> <p><i>31. For the aforesaid reasons, it is held that co-operative societies registered under the KCS Act are public authorities for the purpose of the RTI Act and are bound to act in conformity with the obligations in Chapter II of that Act.”</i></p> <p><i>[Thalappalam Service Co-operative Bank Ltd. vs Union of India (UOI) and Ors., W.P. (C) No. 18175 of 2006]</i></p>	<p>2) Division Bench (3 Judges) 10/04/2012</p>
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	<p><b>Later while deciding an appeal on this matter the Court observed:</b></p> <p><i>"2. ... In fact Chapter VI of the KCS Act provides for Government funding of cooperative societies. We are of the view that the control exercised by the Government and the statutory authorities bring the societies within the inclusive Clause (i) of the definition clause of "public authority" under Section 2(h) of the RTI Act."</i></p> <p><i>[Mulloor Rural Cooperative Society Ltd. vs. State of Kerala and Ors., ILR 2012(2) Kerala 576]</i></p>	
6.	<p><b>Krishak Bharti Cooperative Ltd. (KRIBHCO), National Agricultural Cooperative Federation of India Ltd. (NAFED) and National Cooperative Consumer Federation of India (NCCF)-</b> all multi-State cooperative societies were held to be substantially financed by the Central Government apart from being amenable to its control.</p> <p><b>The Court observed:</b></p> <p><b>KRIBHCO:</b></p> <p><i>"44. ... Even if KRIBHCO has repatriated a substantial investment in its share capital by the Government of India, the latter still holds 48.38% of the total paid-up share capital of KRIBHCO. It would therefore not cease to be a "public authority" as this extent of shareholding is sufficient for government to „control" KRIBHCO. Financing through investment in share capital which is of a "substantial" kind cannot be ignored in this context. ..."</i></p> <p><b>NCCF:</b></p> <p><i>"48. As far as the Board of Directors are concerned, in terms of Bye law 24, there is one nominee each of National Cooperative Union of India, National Cooperation Development Corporation and NAFED on reciprocal basis. The membership of Non-Government members is stated to far exceed the Government Members. The question however is of the cumulative effect of the above factors. This Court is unable to accept the submission that because the government does not hold a majority of the shares or that its nominees do not constitute a majority of the Board of Directors, there is no control over the NCCF by the appropriate Government. Even as regards financing, the financing through the holding of shares cannot be said to be insubstantial. The total paid up capital is Rs. 13.79 crores in which the contribution of Government of India is Rs. 10.74 crores."</i></p>	<p><b>Delhi High Court</b> Single judge Bench 14/05/2010</p>

	<p><b>NAFED:</b></p> <p><i>“55. The CIC observed that NAFED is a nodal agency of the Government of India for the purchase of agricultural and non-agricultural commodities (not covered under Price Support System) under Market Intervention Scheme and the losses incurred in the implementation of the schemes by NAFED are shared by the Government of India and the State Government concerned in the ratio of 50:50. It is contended by NAFED that “the limited role of the Central Government is providing budgetary support to NAFED to meet the losses incurred on Price Support operations undertaken on behalf of the Government”.</i></p> <p><i>56. However, the above features assume significance in the context of the RTI Act. The Market Intervention Schemes affect a large number of farmers all over the country. It has bearing on the vast market of agricultural commodities. It affects the way the agricultural commodities market behaves. NAFED plays a central role in this context....”</i></p> <p><i>[Krishak Bharti Cooperative Ltd. vs Ramesh Chander Bawa, WP (C) 6129/2007; National Agricultural Cooperative Federation of India Ltd. vs B M Verma, WP (C) 7787/2008 and National Consumer Cooperative Federation of India Ltd. vs Raj Mangal Prasad, WP (C) 7770/2008]</i></p>	
7.	<p>A total of eight <b>Cooperative societies, banks and sugar mills</b> were held to be substantially financed by the Haryana and Punjab Governments.</p> <p><b>The Court Observed:</b></p> <p><i>“46. ...The respective Governments have framed aided schemes to finance the petitioner-Institutions such as financial assistance to the Cooperative Societies, IDP project, NCDT scheme etc. besides providing other funds in the shape of share capital. ...</i></p> <p><i>62. As regards the financial aid to the societies/banks/Sugar Mills is concerned, it has come on record that the share capital of the government is 36% in case at Sr. No. 5: 12.13% in case at Sr. No. 4 and Rs. 83.33 lacs out of share capital of Rs. 12.54 crores in case at Sr. No. 8.”</i></p> <p><i>[The Hindu Urban Cooperative Bank Ltd. vs The State Information Commission and Others, (2011)ILR 2 Punjab and Haryana64]</i></p>	<p><b>Punjab and Haryana High Court</b> Single Judge Bench 09/05/2011</p>

III	Privatised Organisations and Special Purpose Vehicles (SPV)	
8.	<p><b>Bangalore International Airport Ltd.</b> was held to be substantially financed by the Karnataka Government directly and through State promoters who were partial owners of this joint venture. The Government had also given it land at concessional rates.</p> <p><b>The Court observed:</b></p> <p><i>“19. ... In the case on hand, it is to be noticed that a perusal of the agreements would conclusively go to show that the petitioner-BIAL is a beneficiary of innumerable exemptions which, if one were to translate into cash flow would certainly cascade into a substantial amount. Another factor which is required to be taken note of is large chunk of land to the extent of 4000 acres of prime agricultural land is acquired by paying enormous amounts as compensation to the farmers who owned the lands. It is estimated that this amount would run into hundred of crores. It was acquired for the said purpose i.e., BIAL and the same is conveyed to the petitioner-BIAL on a meagre sum of Re. 1/- per year. It is to be noticed that the project is a joint venture which is partly owned by the State promoters. Apart from the 26% equity, the State promoters including Government of Karnataka have also provided large amount which then would be more than the estimated Rs. 1000 Crores. ...</i></p> <p><i>21. Let us now consider what are the implications of the words 'substantially financed'. It is obvious that as per Section 2(h)(i) "body substantially financed" would be a body where the ownership may not lie with the Government, nor the control. Hence, clearly the wording 'substantially financed' would have to be given meaning at less than 50% holding. The company law gives significant rights to those who own 26% of the shares in a company. Perhaps this could be taken to define the criterion of 'substantial finance'. The finance could be as equity or subsidies in land or concession in taxation.</i></p> <p><i>22. Thus, I am of the view that the twin conditions of the RTI Act are attracted, inasmuch as. the petitioner- BLAL is required to be construed as a public authority which is substantially financed either directly or indirectly by the funds provided by the appropriate government.”</i></p> <p><i>(Bangalore International Airport Limited etc. vs Karnataka Information Commission etc. and The Public Information Officer, Karnataka State Industrial Investment Development Corporation Limited, Writ Petition No. 12076 of 2008)</i></p>	<p><b>Karnataka High Court</b> Single judge bench 09/02/2010</p>

9.	<p>The <b>New Tirupur Area Development Corporation Ltd. (NTADCL)</b> was held to be substantially financed by the Tamil Nadu Government. The Court held that the amount of Rs. 55 crores invested by the Tamil Nadu Government in a water supply project executed by NTADCL- a Special Purpose Vehicle was substantial. The extent of government control coupled with finances provided by the State Government constituted adequate basis to declare it a public authority.</p> <p><i>(New Tirupur Area Development Corporation Ltd. etc. vs State of Tamil Nadu etc. and Ors., AIR 2010 Mad176)</i></p>	<p><b>Madras High Court</b> Single Judge Bench 06/04/2010</p>
10.	<p><b>Delhi Integrated Multi Model Transit System Ltd.</b> a Special Purpose Vehicle of the Government of the National Capital Territory of Delhi was held to be substantially financed by the Delhi Government.</p> <p><b>The Court Observed:</b> <i>"The facts leading to the filing of the present writ petitions are as follows:</i></p> <p>1.1. <i>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 multimodal 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.</i></p> <p>1.2. <i>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. ...</i></p> <p>40. <i>... 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</i></p>	<p><b>Delhi High Court</b> Single Judge Bench 06/07/2012</p>

*incorporated in the SHA and AOA, is sufficient to clothe the petitioner with the character of a public authority under the Act. ...*

*53. 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.*

*54. 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.*

*55. 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 financier is generally not concerned whether the business of the enterprise is*



	<p><i>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.</i></p> <p><i>56. 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 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--vis the enterprise concerned. ...</i></p> <p><i>59. 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.</i></p> <p><i>[Delhi Multi Model Transit System Ltd. vs Rakesh Aaggarwal, 2012 (131) DRJ 537]</i></p> <p><i>(* The Court referred to the Kerala High Court's judgement in the Thalappalam case – see case #5 above.)</i></p>	
<b>IV</b>	<b>Autonomous Institutions</b>	
<b>11.</b>	<p><b>Electronics and Computer Software Export Promotion Council</b> was held to be substantially financed by the Central Government through the Department of Commerce. A Division Bench of the Court upheld the order of the single judge bench.</p> <p><b>The Court observed:</b></p> <p><i>"14. ... In our view, this plea of the appellant does not advance the cause of the appellant as in fact, the aim and object of the appellant is to support, protect, maintain, increase and promote the exports of electronic goods, computer software and related services and promote and develop use of electronics in other products by such methods as may be deemed necessary.</i></p>	<p><b>Delhi High Court</b></p> <p>1. Single Judge Bench 19/07/2006</p> <p>2. Division Bench (2 Judges) 01/09/2008</p>

	<p><i>Therefore, in pursuance of the objects of the council/appellant if it received a grant of a sum of Rs. 6.8 crore out of Rs. 11.8 crore for various projects, then such grants are in pursuance to the objects of the appellant. This also supports our view that the appellant was substantially financed by the government, even if the grant-in-aid was provided by the government for specific promotional programmes and projects and not for administrative expenses. The government grants certainly fall within the purview of the aims and object of the appellant.”</i></p> <p><i>(Electronic and Computer Software Export Promotion Council vs Central Information Commission and Ors., W.P. (C) No. 11434/2006 and E.C.S.E.P. Council vs Central Information Commission and Ors., LPA 1802/2006 and CM 11865/2006)</i></p>	
12.	<p>The <b>Tamil Nadu Road Development Co. Ltd.</b> was held to be substantially financed as it received several crores from the Central Government and the Tamil Nadu Government for undertaking a road construction project.</p> <p><i>[Tamil Nadu Road Development Co. Ltd. vs Tamil Nadu Information Commission and Anr., (2008)6ML J737]</i></p>	<p><b>Madras High Court</b> Division Bench (2 Judges) 05/08/2008</p>
13.	<p>The <b>Indian Olympic Association</b> was held to be substantially financed as it received grants-in-aid from the Central Government.</p> <p><b>The Court observed:</b></p> <p><i>“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.</i></p> <p><i>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.</i></p>	<p><b>Delhi High Court</b> Single judge bench 07/01/2010</p>

	<p>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."</p> <p>[Indian Olympic Association vs Veeresh Malik and Ors., WP(C) 876/2007]</p>	
<p><b>14.</b></p>	<p>The <b>Commonwealth Games Committee</b> was held to be substantially financed by the Central Government as it received interest free funds of which unspent funds it could retain.</p> <p><b>The Court observed:</b></p> <p>"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.</p> <p>68. Now, the disbursement of a substantial amount of loan –as assistance by itself, cannot be</p>	<p><b>Delhi High Court</b> Single judge bench 07/01/2010</p>

	<p><i>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. ... 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.”</i></p> <p><i>[Indian Olympic Association vs Veeresh Malik and Ors., WP(C) 876/2007]</i></p>	
<b>V</b>	<b>Educational Institutions</b>	
<b>15.</b>	<p><b>Aided private colleges</b> were held to be substantially financed by the Government of Kerala. The Court found that salaries, pensions and other benefits to teachers, maintenance and other kinds of grants were paid to their management bodies. The Court did not examine the quantum of finances that the petitioner received from Government as a ratio of the total finances of the organization.</p> <p><i>(M. P. Varghese etc. etc. vs Mahatma Gandhi University and Ors. etc., AIR 2007 Ker230)</i></p>	<p><b>Kerala High Court</b> Single Judge Bench 04/07/2007</p>
<b>16.</b>	<p>The <b>M.D. Sanatan Dharam Girls College</b> was held to be substantially financed by the Government of Haryana as it received grants-in-aid.</p> <p><b>The Court observed:</b></p> <p><i>“There is no controversy that the petitioner has been receiving 95% aid from the State of Haryana to disburse the salary and to meet the expenses of its employees. Therefore, it is covered by the expression used in Section 2(h)(d)(ii) of the Act namely 'non Government organisation substantially financed directly or indirectly by the funds provided by the appropriate</i></p>	<p><b>Punjab and Haryana High Court</b> Division Bench (2 Judges) 14/01/2008</p>

	<p><i>government'."</i></p> <p><i>[Principal, M.D. Sanatan Dharam Girls College and Anr. vs State Information Commissioner and Anr., AIR 2008 P&amp;H101]</i></p>	
17.	<p><b>Dhara Singh Girls High School</b> was held to be substantially financed by the Government of Uttar Pradesh as it received grant-in-aid.</p> <p><i>[Dhara Singh Girls High School through its Manager, Virendra Chaudhary vs State of Uttar Pradesh through its Secretary (Secondary Education), U.P. Government and Ors., AIR 2008 All 92]</i></p>	<p><b>Allahabad High Court</b> Single Judge Bench 24/01/2008</p>
18.	<p><b>D.A.V. College Sector 10, Chandigarh</b> was held to be substantially financed by the administration of the Union Territory of Chandigarh as it received grants-in-aid.</p> <p><b>The Court observed:</b></p> <p><i>"The petitioner has claimed that they are getting only 45% grant-in-aid after admitting that initially the grant-in-aid paid to them was to the extent of 95%. If on account of policy of the Government the grant-in-aid to the extent of 95% which was given initially allowing the petitioner to build up its own infrastructure and reducing the grant-in-aid later would not result into an argument that no substantial grant-in-aid is received and therefore it could not be regarded as 'public authority'."</i></p> <p><i>(D.A.V. College Trust and Management Society and Ors. vs Director of Public Instruction and Ors., AIR 2008 P&amp;H 117)</i></p>	<p><b>Punjab and Haryana High Court</b> Division Bench (2 Judges) 25/02/2008</p>
19.	<p><b>Private and 'non-government organisation colleges'</b> [sic] receiving financial grant and funds for paying teachers' salaries from the Uttar Pradesh Government are public authorities. The Court did not examine the quantum of finances that the petitioner received from Government as a ratio of the total finances of the organization. A Division Bench of the Court upheld the order of the single judge bench.</p> <p><i>[Committee of Management Shanti Niketan Inter College through its Manager and Shyam Lal Gupta S/o Late Sri Rekha Gupta vs. State of U.P. through Principal Secretary, Ministry of Education (Madhyamik) and Ors., Manu/UP/0679/2008; Surendra Singh S/o Sri Shanker Singh vs State of U.P. through its Secretary, Ministry of Education (Madhyamik) and Ors., 2009(1) ALD522]</i></p>	<p><b>Allahabad High Court</b> 1. Single Judge Bench 24/04/2008 2. Division Bench (2 Judges) 14/11/2008</p>
20.	<p>The <b>Committee of Management, Azad Memorial Poorva Madhyamik Vidyalaya</b> was held to be substantially financed by the Uttar Pradesh Government as it received grants-in-aid.</p> <p><i>(The Committee of Management, Azad Memorial Poorva Madhyamik Vidyalaya through its Manager, Indrasen</i></p>	<p><b>Allahabad High Court</b> Single Judge Bench 30/04/2008</p>

	<i>Singh and Indrasen Singh son of Late Musafir Singh vs State of Uttar Pradesh through Secretary (Basic Education), Government of U.P., State Secretary, Zila Basic Shiksha Adhikari and Jagdamba Singh son of Late Shri Shankar Singh, Manu/UP/0493/2008)</i>	
<b>21.</b>	<p>The <b>Committee of Management, Ismail Girls National Inter College</b> was held to be substantially financed by the Uttar Pradesh Government because it received funds for maintenance and payment of teachers' salaries.</p> <p><b>The Court observed:</b></p> <p><i>"7. ...The word "substantially financed" clearly indicates that the institution has not to be 100% financed by the State. The word "substantial" has been used only to indicate that even if the entire finance and expenditure of the institution is not borne by the Government still the institution will be covered by the definition of the public authority, as noticed above."</i></p> <p><i>(Committee of Management, Ismail Girls National Inter College vs. State of U.P. and Ors., AIR 2009 All36)</i></p>	<p><b>Allahabad High Court</b> Division Bench (2 Judge Bench)</p> <p>05/09/2008</p>
<b>22.</b>	<p><b>Sanskriti School</b> was held to be substantially financed by the Central Government because it received funds from various governmental sources and also land on lease at concessional rate.</p> <p><b>The Court observed:</b></p> <p><i>"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. ...</i></p> <p><i>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</i></p>	<p><b>Delhi High Court</b> Single Judge Bench</p> <p>07/01/2010</p>

	<p><i>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.</i></p> <p><i>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."</i></p> <p><i>[Sanskriti School vs Central Information Commission, WP(C) 1212/2007 decided together with the matter of Indian Olympic Association vs Veeresh Malik and Ors., WP(C) 876/2007]</i></p>	
<p><b>23.</b></p>	<p><b>Kamaraj College</b> was held to be substantially financed by the Tamil nadu Government as it received grant-in-aid.</p> <p><i>[Kamaraj College, Rep. by its Principal Dr. J. Mohanraj vs The Tamil Nadu Information Commission and A. Kalaivanan, W.P (MD) No. 5857 of 2009 and M.P (MD) No. 1 of 2009]</i></p>	<p><b>Madras High Court (Madurai Bench)</b> Single Judge Bench 31/08/2010</p>
<p><b>24.</b></p>	<p><b>Sree Narayana College</b> was held to be substantially financed by the Kerala Government as it received grants-in-aid and was also under its administrative control.</p> <p><b>The Court observed:</b> <i>"11.The appellants represent different private colleges which are affiliated to the different Universities in the State of Kerala. Before the learned Single Judge and also before us, it is not disputed that after the introduction of the Direct Payment Scheme, teachers and staff of all aided private colleges are paid by the Government directly. Their retiral benefits are also paid from the exchequer. ... The managements are paid maintenance and other grants for the upkeep of the buildings of the colleges. These are undisputed facts, as noticed in paragraph 9 of the impugned judgment. They are not disputed before us also. ...</i></p>	<p><b>Kerala High Court</b> 1. Single Judge Bench  2. Division Bench (2 Judges) 22.01.2010</p>

	<p><i>12. The Articles of Agreement entered into between the Government of Kerala and an Educational Agency under the Direct Payment Scheme provides, among other things, in clause 20 thereof, that the Government shall disburse, directly through the Principal of the institution, to the teaching and non-teaching staff of the institution, the pay and allowances due to them and which accrue from 1.9.1972. Clause 28 provides that the Government shall pay the Educational Agency a Grant towards contingency expenditure for each academic year and the Grant for each college or group of colleges shall be fixed by Government, calculated on a per capita figure with a ceiling, both to be worked out and fixed for each category of students with reference to the courses; Pre-Degree, Degree and Post Graduate in Arts and Science. Clause 29 provides that the Government shall pay the Educational Agency, every academic year, a Grant towards maintenance and repairs for each college or group of colleges calculated on the basis of a per capita figure with the help of the Public Works Department, with a ceiling to be worked out and fixed by Government separately with reference to the Arts Section and the Science Section, Junior Classes, Degree Classes and Post Graduate Classes. In terms of clause 30, the Government shall pay a Grant towards library and laboratory based on the norms worked out in consultation with the Universities. ...”</i></p> <p><i>[Principal Sree Narayana College vs State of Kerala and Ors., WP(C) No. 25735 of 2007(L); Sree Narayana College V State of Kerala and Ors., WA No. 1990, 1914, 2010, 2011, 2012, 2013, 2026, 2027, 2029, 2030, 2080, 2091 &amp; 2108 of 2007]</i></p>	
<p><b>25.</b></p>	<p><b>Two schools</b> were held to be substantially financed by the governments of Punjab and Haryana.</p> <p><b>The Court observed as follows:</b></p> <p><i>“63. Now adverting to the financial aid to the petitioner-Gita Girls School (at Sr. No. 9). the bare perusal of the record would reveal (as observed by the SIC) that the petitioner-school had received a sum of Rs. 2,37,912,1,86,931 and 1,58,760 as financial aid for the years 2008-09 and 2009-10 respectively from the District Education Officer, Kurukshetra. It has also received a sum of Rs. 4 lacs from MPLAD Scheme for the year 2007-08. Another sum of Rs. 15 lacs was also sanctioned and released to the school for building purpose.</i></p> <p><i>64. In so far as the Model School (at Sr. No. 10) is concerned,... HUDA, a statutory body of the</i></p>	<p><b>Punjab and Haryana High Court</b> Single Judge Bench 09/05/2011</p>



	<p><i>State, has allotted the prime school building constructed at the cost of Rs. 2.26 crore on HUDA land for a period of 30 years by relaxation of rules on lease hold basis at the nominal lease amount of Rs. 100 per annum for running the school of the society in the heart of city Rohtak.</i></p> <p><i>65. Similarly, petitioner-Saini Education Society (at Sr. No. 11) received annual grant of Rs. 43 lacs from the government out of total expenditure of Rs. 70 lacs. As per report of District Education Officer, the petitioner-society is receiving the government grants to the tune of 75% of the salaries of the sanctioned posts, which was released in favour of schools of the society.”</i></p> <p><i>[The Hindu Urban Cooperative Bank Ltd. vs The State Information Commission and Others, (2011)ILR 2 Punjab and Haryana64]</i></p>	
<b>VI Religious Institutions</b>		
26.	<p><b>Temples</b> brought under the <i>Hindu Religious and Charitable Endowments Act</i> are substantially financed by the Tamil Nadu Government.</p> <p><b>The Court observed:</b></p> <p><i>“4.It is the case of the petitioner that a temple cannot be brought under the purview of the RTI Act. Therefore, nominating the hereditary trustee as a public information officer under the purview of the Act is unwarranted. This court is unable to accept the said contention. In the present case, the temple is a public institution. Merely because it is administered by an hereditary trustee, the public character of a temple will not disappear. Temples are clearly brought under the HR&amp;CE Act and further, public collections are made for conducting various activities of the temple including rituals. The State Government also spends huge amounts every year for administering the department to manage the temples and also releases various grants for renovation of the temples including special grants for conducting Kumbabhishekams periodically. When that is so, it cannot be said that the temple is a private institution for the purpose of the RTI Act. In fact, if the temple is substantially financed by the State either in the form of administrative expenses or in the form of non recurring expenditure, certainly, it would be the institution covered by the provisions of the Act. Under the RTI Act, even a private body substantially funded by the State is covered by the RTI Act. When an information is sought for and if the activities of the temple will be kept secret, then it may also result in gradual</i></p>	<p><b>Madras High Court</b> Single Judge Bench 11/06/2012</p>

<p><i>deterioration of the temple administration. It cannot be contended that the temple activities are private activities and not covered by the provisions of the RTI Act.”</i></p>	
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<p><i>(Prem Anand, Hereditary Trustee, Sri Vengeeswarar Alagarperumal and Nagathamman Koil Devasthanam, Chennai v The Commissioner, H.R.&amp;C.E., W.P.No.14692 of 2012 and M.P.Nos.1 and 2 of 2012)</i></p>	
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**IN THE HIGH COURT OF DELHI**

W.P. (C) 8529/2009

Decided On: 30.04.2009

Appellants: **ICAI**

**Vs.**

Respondent: **Central Information Commissioner and Anr.**

**Hon'ble Judges:**

S. Ravindra Bhat, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Parag. P. Tripathi, ASG, Rakesh Agarwal and Vismai Rao, Advs.

For Respondents/Defendant: Nemo

**Subject:** [Right to Information](#)

**Acts/Rules/Orders:**

[Right to Information](#) Act, 2005 - Sections 2, 6, 8, 10 and 22; Official Secrets Act, 1923; Constitution of India - Articles 19(1), 19(2) and 141

**Cases Referred:**

Pritam Rooj v. University of Calcutta and Ors. AIR 2008 Cal 118; Higher Secondary Education v. Ayan Das 2007 (8) SCC 242; President, Board of Secondary Education, Orissa and Anr. v. D. Suvankar and Anr. 2007(1) SCC 603; Ahmedabad St. Xavier's College Society v. State of Gujarat 1974(1)SCC 717; Dr. Pradeep Jain v. Union of India 1984 (3) SCC 654

**Disposition:**

Petition dismissed

**JUDGMENT**

**S. Ravindra Bhat, J.**

C.M. No. 5520/2009 (Condonation of delay) For the reasons averred, the application is allowed. W.P. (C) 8529/2009, C.M. No. 5519/2009 (Stay Application)

1. The writ petitioners, The Institute of Chartered Accountants of India (ICAI), claims to be aggrieved by an order of the Central Information Commission (CIC) dated 23.12.2008 to the extent that the Commission directed disclosure of the applicant complainant's answer sheet to the information applicant. The applicant had elicited various kinds of information, including a copy of the answer sheet of the examination attempted by him. At the outset, learned ASG who appeared for the Institute submitted that the Division Bench ruling in Pritam Rooj v. University of Calcutta and Ors. [MANU/WB/0126/2008](#) covers the issues since that High Court had the occasion to deal with identical issues, i.e. data disclosure of examination in the form of answer sheet, to an individual who participates in the process. He also

conceded that answer sheets do fall within the meaning of the expression "information" under Section 2(f) of the [Right to Information Act, 2005 \(RTI\)](#).

2. Learned ASG, however, contended that the question as to the [right to information](#) and the right of the class of individuals who attempt examinations to access their answer sheets is squarely covered by the rulings of the Supreme Court in [Secretary West Bengal Council for Higher Secondary Education v. Ayan Das MANU/SC/7960/2007](#) and [President, Board of Secondary Education, Orissa and Anr. v. D. Suvankar and Anr. 2007\(1\) SCC 603](#). The argument was that the interpretation placed by the Supreme Court unalterably fixed the character of the right, in the sense that the declarations exclude the right of a candidate participating in the examination process to access information about the examination process by demanding copies of answer sheets.

3. The Supreme Court in [President, Board of Secondary Education, Orissa and Anr. v. D. Suvankar and Anr. 2007 \(1\) SCC 603](#) states as follows:

XXXX      XXXX      XXXX      XXXX

The Board is in appeal against the cost imposed. As observed by this Court in [Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkurmar Sheth](#), it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one was to be propounded. In the above premises, it is to be considered how far the Board has assured a zero-defect system of evaluation, or a system which is almost foolproof.

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The said judgment and reasoning was reiterated in Ayan Das's case (supra).

4. The subsidiary argument made by the ASG was that the right to seek answer sheets, if at all, could be claimed as part of Article 19(1)(a) of the Constitution and since the Supreme Court excluded that possibility, having regard to the objects of the RTI Act, i.e. effectuation of provisions of the right to freedom of expression and information, the possibility of accessing such class of information stands excluded from the right to freedom of expression.

5. The judgment of the Division Bench of the Calcutta High Court while upholding the right of a candidate, seeking copies of his answer sheets in public examination held even by statutory bodies examined and considered the judgment of the Supreme Court in Suvankar's case (supra); the relevant discussion of the Division Bench of Calcutta High Court is as follows:

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75. There is an understandable attempt on the University's part to not so much as protect the self and property of the examiner, but to keep the examiner's identity concealed. The argument made on behalf of the public authorities before the Central Information Commission has, thankfully, not been put forward in this case. This University has not cited the fiduciary duty that it may owe to its examiners or the need to

keep answer scripts out of bounds for examinees so that the examiners are not threatened. A ground founded on apprehended lawlessness may not stultify the natural operation of a statute, but in the University's eagerness here to not divulge the identity of its examiners there is a desirable and worthy motive--to ensure impartiality in the process. But a procedure may be evolved such that the identity of the examiner is not apparent on the face of the evaluated answer script. The severability could be applied by the coversheet that is left blank by an examinee or later attached by the University to be detached from the answer script made over to the examinee following a request under Section 6 of the Act. It will require an effort on the public authority's part and for a system to be put in place but the lack of effort or the failure in any workable system being devised will not tell upon the impact of the wide words of the Act or its ubiquitous operation."

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6. There is no dispute in this case that Section 2(f) defines "information" in the broadest possible manner. It states 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;

7. Under the scheme of the enactment, all classes of information except those which are explicitly exempted from disclosure under Section 8 have to be revealed. The exemption regime is itself broad and covers various diverse matters, including commercial information, trade secrets and so on. The information authorities set up under the enactment are empowered by Section 10 to sever such information which should not be disclosed from such class of information, which can be. Section 22 of the Act which overbears all existing laws states as follows:

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.

8. The argument of the petitioner that since the Supreme Court declared the law in such matters, and that candidates who seek copies of answer sheet cannot claim it as a matter of right, is unpersuasive. The Supreme Court's decisions were similar in both the instances; in Ayan Das case (supra) and D. Suvankar case (supra), the context was wide directions by High Court, requiring revaluation/re-verification (in the Suvankar case) and direction to reassess through another examiner in Ayan Das's case (supra). There is no discussion or mention of the RTI Act. Concededly, the judgments were not examining information applications under the RTI Act. Yet, a close scrutiny of the facts mentioned in both the judgments reveal that the claims were not premised on any of the provisions of the enactment. Apparently, they were in the context of writ petitions filed before the High Court. The judgments, therefore, have to be read in their terms, and in the contextual setting. There is no gain saying that the judgments of the Supreme Court on an issue constitute law declared under Article 141 of the Constitution. Yet, the judgments are in the context of what is declared and what is not declared. The "unarticulated" argument of no right under Article 19(1)(a) by the learned ASG cannot, therefore, be accepted. Doing so would mean that this Court would be reading into the two judgments on the intention to overbear the provisions of the RTI Act; a result too startling to accept.

9. As regards the second contention that since the Supreme Court held that there is no right to claim disclosure of answer sheets or copies, and the same is not part of the Right to Freedom of Expression and, therefore, implicitly excluded from the RTI Act; the contention too cannot be accepted. The mere fact that the statement of objects of, or the long title to the RTI Act mentions that it is a practical regime of the **right to information** for citizens; would not mean that a cribbed interpretation has to be placed on its provisions, on the same notion of implicit exclusion of that which would legitimately fall within Article

19(1)(a). No rule or interpretation or judgment of Supreme Court was discussed or relied on the point that the ruling in Suvankar's case (supra) excluded the right to access answer sheets, which would otherwise fall within the expression and, therefore, would fall within the purview of the RTI Act. The interpretation canvassed would lead to startling consequences when in the absence of enacted law under Article 19(2), the Court would be legislating, as it were, without the possibility of such exclusion being tested in Courts. A salutary rule of interpreting the Constitution is that fundamental rights should be construed broadly, to enable citizens to enjoy them [Ahmedabad St. Xavier's College Society v. State of Gujarat [MANU/SC/0088/1974](#); Dr. Pradeep Jain v. Union of India [MANU/SC/0047/1984](#)]. In any event, the Act confers positive rights which can be enforced through its mechanism. This Court should be extremely slow in interpreting such rights, dealing with personal liberties and freedoms on the basis of some inarticulate premise of a judgment.

10. For the above reasons, the writ petition and accompanying application are dismissed as misconceived. It is, however, open to the petitioner to work-out a regime where inspection can be afforded to the respondent/applicant, if such a proposal is acceptable to him.

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of judgment: 30.04.2009

+ W.P.(C) 8529/2009

ICAI

..... Petitioner

Through : Mr. Parag. P. Tripathi, ASG with Mr. Rakesh Agarwal and Ms. Vismai Rao, Advocate.

versus

CENTRAL INFORMATION COMMISSIONER & ANR. .... Respondents

Through : Nemo.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

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

**S. RAVINDRA BHAT, J (OPEN COURT)**

**C.M. No. 5520/2009 (Condonation of delay)**

For the reasons averred, the application is allowed.

**W.P. (C) 8529/2009, C.M. No. 5519/2009 (Stay Application)**

1. The writ petitioners, *The Institute of Chartered Accountants of India (ICAI)*, claims to be aggrieved by an order of the Central Information Commission (CIC) dated 23.12.2008 to the extent that

the Commission directed disclosure of the applicant complainant's answer sheet to the information applicant. The applicant had elicited various kinds of information, including a copy of the answer sheet of the examination attempted by him. At the outset, learned ASG who appeared for the Institute submitted that the Division Bench ruling in *Pritam Rooj v. University of Calcutta & Ors.* AIR 2008 Cal 118 covers the issues since that High Court had the occasion to deal with identical issues, i.e. data disclosure of examination in the form of answer sheet, to an individual who participates in the process. He also conceded that answer sheets do fall within the meaning of the expression "information" under Section 2(f) of the Right to Information Act, 2005 (RTI).

2. Learned ASG, however, contended that the question as to the right to information and the right of the class of individuals who attempt examinations to access their answer sheets is squarely covered by the rulings of the Supreme Court in *Secretary West Bengal Council for Higher Secondary Education v. Ayan Das* 2007 (8) SCC 242 and *President, Board of Secondary Education, Orissa & Anr. v. D. Suvankar & Anr.* 2007(1) SCC 603. The argument was that the interpretation placed by the Supreme Court unalterably fixed the character of the right, in the sense that the declarations exclude the right of a candidate participating in the examination process to access information about the examination process by demanding copies of answer sheets.

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***"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."***

8. The argument of the petitioner that since the Supreme Court declared the law in such matters, and that candidates who seek copies of answer sheet cannot claim it as a matter of right, is unpersuasive. The Supreme Court's decisions were similar in both the instances; in *Ayan*

*Das* case (*supra*) and *D. Suvankar* case (*supra*), the context was wide directions by High Court, requiring revaluation/re-verification (in the *Suvankar* case) and direction to reassess through another examiner in *Ayan Das's* case (*supra*). There is no discussion or mention of the RTI Act. Concededly, the judgments were not examining information applications under the RTI Act. Yet, a close scrutiny of the facts mentioned in both the judgments reveal that the claims were not premised on any of the provisions of the enactment. Apparently, they were in the context of writ petitions filed before the High Court. The judgments, therefore, have to be read in their terms, and in the contextual setting. There is no gain saying that the judgments of the Supreme Court on an issue constitute law declared under Article 141 of the Constitution. Yet, the judgments are in the context of what is declared and what is not declared. The “unarticulated” argument of no right under Article 19(1)(a) by the learned ASG cannot, therefore, be accepted. Doing so would mean that this Court would be reading into the two judgments on the intention to overbear the provisions of the RTI Act; a result too startling to accept.

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**APRIL 30, 2009**  
'ajk'

**S. RAVINDRA BHAT**  
**JUDGE**



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

**W.P. (C) 4596/2007**

Reserved on: 2<sup>nd</sup> August 2010  
Decision on: 17<sup>th</sup> 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 Yes digest?

**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 31<sup>st</sup> 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 1<sup>st</sup> 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 preceding 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 31<sup>st</sup> 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 9<sup>th</sup> 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  
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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** (6<sup>th</sup> 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** (5<sup>th</sup> Edn.) the word ‘substantial’ means “of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.” The word “substantially” has been defined to mean “in substance; as a substantial thing or being; essentially, intrinsically.” Therefore the word ‘substantial’ is not synonymous with ‘dominant’ or ‘majority’. It is closer to “material” or “important” or “of considerable value.” “Substantially” is closer to “essentially”. Both words can signify varying degrees depending on the context. 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 7<sup>th</sup> 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 *W.P.(C) No. 4596/2007*

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 29<sup>th</sup> 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 use, 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 3<sup>rd</sup> 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 26<sup>th</sup> November and 2<sup>nd</sup> 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 1<sup>st</sup> 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 negated 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**  
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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

**W.P.(C) No. 8219 of 2009**

INDIAN RAILWAY WELFARE ORGANISATION ..... Petitioner  
Through: Mr. A.K. Tewari, Advocate.

versus

D.M. GAUTAM & ANR. .... Respondents  
Through: Mr.A.N. Singh and  
Mr. A.K. Mishra, Advocates for R-1.

**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

**ORDER**  
**03.05.2010**

**W.P.(C) No. 8219 of 2009 & CM No. 4976 of 2009 (for stay)**

1. Is the Indian Railway Welfare Organisation ('IRWO') a public authority within the meaning of Section 2(1)(h) of the Right to Information Act, 2005 ('RTI Act')? The Central Information Commission ('CIC') has in the impugned order answered the said question in the affirmative. The CIC's order is under challenge in the present writ petition by the IRWO.

2. The IRWO states that it is a society registered under the Societies Registration Act of 1860. Its principal object is to promote and provide dwelling units all over India to serving and retired railway personnel and their widows on a no profit no loss basis. The dwelling units provided by the IRWO are on self-financing basis. It is stated that the IRWO's memorandum specifies that the sources of funds of the IRWO would be



predominantly and chiefly from nationalized and commercial banks. It is submitted that IRWO receives no grant from the Railway Board or the Central Government. It received a loan of Rs. 10 crores from the Ministry of Railways which has since been repaid. A loan of Rs. 6 crores was taken from the Railway public sector undertakings (PSUs) of which only Rs. 1.2 crores remains to be paid. IRWO submits that its affairs are administered by a governing body of which the Member (Staff) Railway Board is the ex-officio Chairman. It is submitted that the IRWO is neither an agent nor an instrumentality of State within the meaning of Article 12 of the Constitution of India. It maintains that there is neither a deep nor a pervasive control of the IRWO by the Indian Railways or the Ministry of Railways. There is no substantial funding of the IRWO either directly or indirectly by funds provided by the appropriate government, i.e the central government.

3. In the impugned order, the CIC has highlighted the following factors for concluding that IRWO is a 'public authority' within the meaning of Section 2(1) (h) of the RTI Act:

(a) IRWO is indirectly owned, controlled and substantially financed by the Railway Board and the Ministry of Railways.

(b) The initiation of the registration of the IRWO was by the Ministry of Railways. The basic infrastructure including land was also provided by the Railway Board and the Ministry of Railways.

(c) The initial loan of Rs.10 crores and the loans by the Railway PSUs constituted indirect financing of the IRWO.

(d) Property provided to the IRWO for its head quarters in Delhi was at a very nominal rate and that also constituted indirect financing by the central

government.

(e) IRWO works for the welfare of Railway employees and if a regime of transparency is ushered, the faith of Railway employees in it would be strengthened.

4. Learned counsel for the Petitioner submits that the IRWO had written to the Adviser, Land and Amenities, Railway Board on 10<sup>th</sup> May 2006 pointing out why it was not a public authority under Section 2(1)(h) of the RTI Act. No reply in response thereto was received from the Railway Board. On the other hand, at a meeting held to discuss the question of granting of loan to the IRWO by the Ministry of Railways, the Railway Board opined as under:

“IRWO is an independent organization. Ministry of Railway does not give any grant or loan to an independent organization. It cannot form part of our budget.

It is correct that financial assistance was provided in 1989-90. But that was with the approval of the Ministry of Finance. In this case also it has to be with the approval of Ministry of Finance.

Further, as per the extant orders on `New Service/New Instrument of Service`, loans to be provided to Public/Private institutions require Parliament's approval.”

5. It is submitted that it is not as if IRWO is granted a loan by the Ministry of Railways as and when it raises a demand. The Ministry of Railways exercises no control, whether administrative or financial, over the working of the IRWO. There are only 4 officials in the Ministry of Railways in ex

officio capacity out of the total 19 members in the governing body of the IRWO while the others are non-government members. No member of the governing body is nominated by the central government and no member can be removed by the central government. It is, therefore, submitted that there is no control of the IRWO by the central government. There is also no substantial financial assistance received by the IRWO from the Ministry of Railways.

6. Learned counsel for Respondent No. 1, on the other hand, highlights several other factors which make the IRWO a public authority for the purposes of the RTI Act. First, the Union Railway Minister in a budget speech made in Parliament in 1989-90 announced the registration of the IRWO and highlighted the fact that it had started its activities with a loan of Rs. 3 crores provided by the Ministry of Finance. Further, a sum of Rs. 10 crores had been proposed as a loan to the IRWO by way of capital in the Railway Budget of 1990-91. Secondly, in the registration process of the Society, the Ministry of Railways was the sole sponsor. The relevant extracts of the registration papers including a letter dated 20<sup>th</sup> September 1989 written by the Member (Staff) of the Railway Board to the Registrar of Societies stating that the “Ministry of Railways have decided to set up a Society to be known as Indian Railways Welfare Organisation...” is relied upon.

7. Thirdly, as regards the management and control which the Ministry of Railways/Railway Board exercises over the IRWO, the following factors are highlighted:

– Chairman, Railway Board is the Patron of the IRWO

- Member (Staff) Railway Board is the ex-officio Chairman IRWO and is a member of its Governing Body
- Executive Director, Establishment, Railway Board is a member of the Governing Body
- Executive Director, Finance, Railway Board is a member of the Governing Body
- Executive Director/Adviser, Land Management is a member of the Governing Body
- Managing Director, IRWO is appointed by nomination by its Patron (who is the Chairman, Railway Board) and the MD is a member of the Governing Body
- Director (Technical) IRWO is appointed by nomination by Member (Staff), Railway Board (who is the Chairman, IRWO) and is a member of the Governing Body
- Director (Finance) IRWO is appointed by nomination by the Member (Staff) Railway Board (who is the Chairman, IRWO) and is a member of the Governing Body
- Four co-opted Members in the Governing Body of IRWO are nominated/approved by the Chairman, Railway Board who is also the Patron, IRWO
- IRWO Grievance Committee (a permanent body) is chaired by the Adviser, Land and Amenities, Railway Board, who is a member of the Governing Body of the IRWO. He is also the Head of the Land and Amenities Directorate of the Railway Board.
- All issues of the IRWO including appointment of Directors, terms and conditions of their service including their tenure, house rent etc., demands and representations of IRWO employees are processed by the Land and Amenities Directorate of the Railway Board. IRWO was instructed to submit all cases to that Directorate requiring approval of the Railway Board.

8. As regards financial assistance, apart from the above factors, it is pointed

out that in 1998 on the request of the IRWO some of the PSUs of the Ministry of Railways i.e. IRCON, RITES and CONCOR were directed to give Rs. 2 crores each as soft loan to the IRWO. Further a request for a loan of Rs.100 crores was considered by the Ministry of Railways recently. It is also pointed out that the Railway Board sanctions complimentary passes to officers and staff of IRWO every year. There are 14 sets of passes for the Managing Director/Directors, 15 sets of passes for General Managers, 15 sets of posts for other officers and staff. Importantly, it is pointed out that the IRWO has its Corporate Office (Headquarters) in Delhi and a number of Zonal Offices which have been provided land/office accommodation by the Ministry of Railways on either very nominal charges or without any charges. A list of 9 such offices has been set out in the counter affidavit in the present writ petition. As far as Delhi is concerned, it is pointed out that office space has been provided for the headquarters of the IRWO in the Delhi Railway Office Complex, Shivaji Bridge (Minto Bridge) behind Shankar Market, New Delhi on licence basis for 21 years for just Rs.12,400 for approximately 3,000 sq. ft. area. The market rent could be at least Rs. 3 lakhs per month or Rs. 36 lakhs per year. There are other factors highlighted in the counter affidavit to show that in fact it is the Ministry of Railways and/or the Railway Board that controls the IRWO. It is therefore submitted that the IRWO answers the description of a public authority under Section 2(1)(h) of the RTI Act.

9. The above submissions have been considered. There is no denial by the IRWO that it is a society which was formed by a letter written by the Member (Staff), Railway Board to the Registrar of Societies. However, the

said letter is sought to be explained away by saying that the Member (Staff) was not perhaps aware of the legal status of IRWO. This Court is unable to appreciate this submission. The question is not whether the person who sent that letter was aware of the legal status but whether in fact it was the Indian Railways which formed the society. On that score, there appears to be no doubt.

10. Section 2(1)(h) of the RTI Act defines the expression 'public authority' to mean any authority or body or institution of self-government established or constituted by a law made by the Parliament or State Legislature or by a Notification or order by the appropriate Government and includes under Section 2(1)(h) (d) (i) and (ii):

(i) body owned, controlled or substantially financed;

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

the appropriate Government;

11. As far as the present case is concerned, the question can be approached from two angles. The first is whether IRWO is **controlled** by the appropriate Government. The second is whether as a non-governmental organisation it is substantially financed directly or indirectly by funds provided by the central government.

12. In a judgment dated 7<sup>th</sup> January 2010 of the learned Single Judge of this Court in *Indian Olympic Association v. Veeresh Malik* [W.P.(C) No. 876 of 2007] it has been observed, in the context of Section 2(h) as under:

“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.”

13. As regards what could constitute substantial financing, the Court in *Indian Olympic Association v. Veeresh Malik* observed as under:

“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.”

14. As regards the control of IRWO, this Court finds that the key posts in the IRWO are held by officials of the Railway Board although in an *ex*

*officio* capacity. It is not denied that the Chairman of the Railway Board is the patron of the Indian Railways and the Member(Staff), Railway Board is the Chairman of IRWO in *ex officio* capacity; that the Executive Directors of Establishment, Finance and Land Management are all members of the governing body; that the Managing Director of the IRWO is appointed by nomination by the Chairman, Railway Board and the Director (Technical), IRWO is by nomination by the Member (Staff) of Railway Board and is also a member of the governing body. The Director (Finance), IRWO is nominated by the Member (Staff) Railway Board. Four co-opted members are nominated/approved by the Chairman Railway Board. The IRWO Grievance Committee which is a permanent body is chaired by the Adviser, Land & Amenities, Railway Board. The above factors point to the control of the IRWO by the Ministry of Railways.

15. At this juncture it must be observed that the submission that the control has to be 'deep and pervasive' is based on the decisions rendered by the courts in the context of Article 12 of the Constitution. In the first place, the question whether IRWO is "state" is not relevant for answering the question whether it is a public authority for the purposes of the RTI Act. The definition of 'public authority' under Section 2 (1) (h) RTI Act does not talk of 'deep and pervasive' control. It is enough if it is shown that the authority is 'controlled' by the central government. The composition of the Governing Body of IRWO and the manner of appointments of key personnel of the IRWO as noticed hereinbefore bears testimony to the control that the central government through the Ministry of Railways and Railway Board has over IRWO.



16. As regards the financing, it is important to note that apart from the past financing through loans by the Indian Railways and the Ministry of Railways even the recent proposal from the Ministry of Railways for a loan to the IRWO has not been rejected. All that is said is that “in this case also it has to be with the approval of the Ministry of Finance”. Also importantly as regards the request by Indian Railways for loan from the PSUs it has been observed as under:

“IRWO requested for loan from Railway PSUs like Rs. 20 crores each from RITES, CONCOR and IRCON and Rs.10 crores each from IRCTC & Railtel Corporation at the same term and conditions as last time as mentioned at Genesis above. IRWO has discussed the matter with IRFC and advised that IRFC is agreeable to advance loan to IRWO at appropriate terms. However, IRWO still feels that possibilities may be explored for advancing the loan from Railway PSUs (viz. IRCON, RITES, CONCOR, etc.) since rate of interest from bank would be high.”

17. It is, therefore, not possible to agree with the contentions of learned counsel for the Petitioner that there is no substantial financing of the IRWO through funds directly or indirectly provided by the Ministry of Railways. The point here is whether such financing is accessible to the IRWO. The answer to that question has to be in the affirmative. This distinguishes IRWO from any other society that may not have similar access to government funds. The other factors highlighted in the counter affidavit filed by the Respondents also demonstrate the control over the IRWO of the Ministry of Railways.

18. For the aforementioned reasons, this Court is satisfied that no error has been committed by the CIC in holding that IRWO is a public authority within the meaning of Section 2(1)(h) of the RTI Act and directing disclosure to the Respondent of the information sought by them from the IRWO. The writ petition is dismissed. The interim order is vacated and the application is also dismissed.

**S. MURALIDHAR, J.**

**MAY 03, 2010**  
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**IN THE HIGH COURT OF ANDHRA PRADESH AT HYDERABAD**

Writ Petition No. 28810 of 2008

Decided On: 24.04.2009

Appellants: **Khanapuram Gandaiah S/o Late Balaiah**  
Vs.

Respondent: **The Administrative Officer, Ranga Reddy District Courts Cum Assistant State Public Information Officer Under the Right to the Information Act 2005, The Registrar General Cum Appellate Authority under the [Right to Information](#) Act 2005, High Court of A.P., The A.P. State Information Commission rep. by its Registrar and M. Seetharama Murthy S/o Chittenna, District Judge and Presently Registrar General, High Court of A.P.**

**Hon'ble Judges:**

Anil R. Dave, C.J. and R. Subhash Reddy, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Bojja Tharakam, Adv. for Rakesh Sanghi, Adv.

For Respondents/Defendant: D.V. Sitharam Murthy, SC for Respondent Nos. 1 and 2 and Vedavani, S.C. for Respondent No. 3

**Subject:** [Right to Information](#)

**Acts/Rules/Orders:**

[Right to Information](#) Act, 2005 - Sections 2, 4, 4(1), 6, 8, 8(1), 19(1) and 24; Judicial Officers' Protection Act, 1850 - Section 1; Judges (Protection) Act, 1985

**Cases Referred:**

Peoples' Union for Civil Liberties v. Union of India AIR 2004 SC 1442; M. Nagaraj v. Union of India AIR 2007 SC 71; Teyen v. Ram Lal ILR (1890) 12 All 115; Anowar Hussain v. Ajoy Kumar Mukherjee AIR 1965 SC 1651; H.W.F.D Souza v. Chandrikasingh AIR 1966 MP 223; Rachapudi Subba Rao v. The Advocate-General, Andhra Pradesh AIR 1981 SC 755; State of Rajasthan v. Prakash Chand AIR 1998 SC 1344

**ORDER**

**Anil R. Dave, C.J.**

1. Being aggrieved by the orders dated 23.11.2006, 20.01.2007 and 20.11.2007 passed by respondent Nos. 1 to 3 respectively dismissing the petition and appeals filed by him under the [Right to Information](#) Act, 2005 (for short, 'the Act'), the petitioner has filed this writ petition. In this petition, the petitioner has also prayed for a direction to respondent No. 1 to provide the information, asked by him vide his application dated 15.11.2006, from respondent No. 4. By virtue of the order dated 23.11.2006, respondent No. 1 had rejected the said application and respondent Nos. 2 and 3 have confirmed the order of respondent No. 1 in the first and second appeals filed by the petitioner.

2. The facts giving rise to the present litigation in a nutshell are as under:

Petitioner claimed to be in exclusive possession of Ac.8-35 gts. of land bearing Survey No. 284 of Puppalaguda Village, Rajendernagar Mandal, Ranga Reddy District as a Khouldar (cultivator) thereof. In the year 2002, one Dr.P. Mallikarjuna Rao filed a suit vide O.S. No. 854 of 2002 before Additional Junior Civil Judge (West & South), Ranga Reddy District praying for perpetual injunction against the petitioner and another from entering into the above land. An interlocutory application for interim injunction filed alongwith the said suit was dismissed by the Junior Civil Judge on the ground that the petitioner was in possession of the suit property and against the said order, Dr. Mallikarjuna Rao filed C.M.A. No. 185 of 2002 and the same was dismissed whereby the order of the Junior Civil Judge was confirmed. It was the case of the petitioner that during the pendency of the above suit, the mother, daughter and son-in-law of Dr. Mallikarjuna Rao had filed three suits viz., O.S. Nos. 805, 875 and 877 of 2003 before the 1st Additional Senior Civil Judge, Ranga Reddy District and the petitioner herein was defendant in O.S. No. 875 of 2003 and in the said suit, the trial Court granted interim injunction, against which the petitioner had preferred C.M.A. No. 67 of 2005, which had been dismissed by respondent No. 4 on 10.8.2006. The petitioner herein appears to be aggrieved by the order passed by respondent No. 4 in the said C.M.A but he did not challenge the said order.

3. It is undisputed that the petitioner did not challenge the order dated 10.08.2006 passed by respondent No. 4 before any higher Court, and, therefore, the said order has now become final. It may, however, be noted that after hearing of the petition was concluded, the learned Senior counsel for the petitioner had submitted that the petitioner had filed an application for review of the order dated 10.8.2006 passed in C.M.A. No. 67 of 2005. On 15.11.2006, he had filed an application under Section 6 of the [Right to Information](#) Act before the Administrative Officer-cum-Assistant State Public Information Officer under the [Right to Information](#) Act, 2005, Ranga Reddy District Courts, L.B. Nagar (respondent No. 1) seeking information to the queries made in paragraph 3 thereof. The said application had been rejected by respondent No. 1 on 23.11.2006, against which an appeal under Section 19(1) of the Act had been filed before the Registrar General-cum-Appellate Authority under the [Right to Information](#) Act, 2005 (respondent No. 2), but the same had been rejected on 20.1.2007 and against the said order, Second Appeal No. 1874 of 2007 had been filed by the petitioner before the Andhra Pradesh State Information Commission (respondent No. 3) and respondent No. 3 also dismissed the appeal on 20.11.2007. Challenging the above orders, the petitioner has filed the present writ petition by impleading the District Judge, who had passed the order in C.M.A. No. 67 of 2005, by name as respondent No. 4.

4. We have heard learned advocate Shri Bojja Tharakam, appearing for the petitioner and Shri D.V. Seetharama Murthy, learned Standing Counsel for High Court appearing for respondent Nos. 1 and 2 and have perused the relevant provisions of the [Right to Information](#) Act, 2005 and the case law relied on by them.

5. It has been submitted on behalf of the petitioner that respondent No. 4 had passed the order in C.M.A. No. 67 of 2005 without taking into consideration the written arguments and additional written arguments filed by the petitioner. It has also been submitted that respondent No. 4 had omitted to examine a patently fabricated General Power of Attorney (GPA) dated 14.12.1996 filed in the case as Ex.A.8; had failed to examine the letter dated 07.6.2006 written by Sub-Registrar, Mumbai; had not noticed the discrepancy in the names of the executants in the GPA and ignored the contention of the petitioner that the executants of the GPA were not in existence and were fictitious persons and, therefore, he had committed judicial dishonesty.

6. It has been submitted on behalf of the petitioner that respondent Nos. 1 to 3 have wrongly rejected the application filed by the petitioner under Section 6 of the Act on the ground that the correctness or otherwise of a judicial order or judgment cannot be questioned under the [Right to Information](#) Act. It has been submitted that the [right to information](#) is a fundamental right of a citizen and a citizen cannot be deprived of that right on the ground that the judicial officers are not amenable to the Act. In this connection, the petitioner has relied on the judgments of the Hon'ble Supreme Court in **Peoples' Union**

for **Civil Liberties v. Union of India** [MANU/SC/0019/2004](#) and **M. Nagaraj v. Union of India** [MANU/SC/4560/2006](#).

7. It has also been submitted on behalf of the petitioner that the Act does not give any special protection to the judicial officers and the **right to information**, which is a fundamental right of a citizen, cannot be taken away by refusing to provide the information sought for by the petitioner. It has been submitted that respondent No. 1 had wrongly rejected the application of the petitioner asking to give information as to why respondent No. 4 had written the judgment in a particular manner.

8. It has also been submitted on behalf of the petitioner that Sections 8(1)(b) and 24 of the Act do not provide for any exemption to the judges from giving the information sought for and, therefore, they also come within the purview of the provisions of the Act and, therefore, they are bound to give the information asked for by the parties.

9. On the other hand, the learned Standing Counsel appearing on behalf of the respondents has submitted that the petitioner has not questioned validity of the order passed in C.M.A. No. 67 of 2005 before any higher Court. Without challenging the order passed in C.M.A. No. 67 of 2005, the petitioner has levelled wild allegations against respondent No. 4 to the effect that he has committed judicial dishonesty by not taking into consideration the documents filed by the petitioner at the time of disposing of the C.M.A.

10. It has been next submitted that under the provisions of the Act, respondent No. 1 has to give reply to the application filed under Section 6 of the Act and, therefore, respondent No. 1 has not committed any mistake when he gave the reply with reasons for denying the information sought for by the petitioner.

11. It has also been submitted that in his application, the petitioner wanted to know the mind of the judge for rejecting the C.M.A., and not the material, which, in any form, was available in the records and, therefore, respondent No. 1 was right in rejecting the application of the petitioner.

12. We have heard the learned advocates at length.

13. The petitioner had filed an application before respondent No. 1 by invoking the provisions of Section 6 of the Act. Therefore, before going into the merits of the case, it would be appropriate to go through the relevant provisions under the Act. Sections 2(f), 2 (h), 2(i) and 2(j) define the words "information", "public authority", "record" and "**right to information**" respectively. The same read thus:

**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(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.

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

**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 place;

14. Section 4 of the Act deals with the "obligations of public authorities" with regard to giving information to the applicants under the Act. Section 4(1)(d), which is relevant for the purpose of deciding this petition, reads as under:

**4.** Every public authority shall:

(1)...

(d) Provide reasons for its administrative or quasi-judicial decisions to affected persons.

...

15. Section 8 of the Act specifies the circumstances under which the authorities have no obligation to give the information under the Act.

16. Upon reading of Sections 2(f), 2(i), 2(j) and 4(1)(d) of the Act, it is clear that a citizen has a right to receive "information", which is in any form, including records, documents, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information in relation to any private body which can be accessed by a public authority under any other law for the time being in force. Information does not mean every information, but it is only such information, which is recorded and stored and circulated by the public authority. A citizen has a right to receive such information, which is held by or under the control of any public authority and the public authorities have an obligation to provide reasons for its administrative or quasi-judicial decisions to the affected persons. At the same time, the public authorities are not obliged to provide any information which has been expressly prohibited by a Court or Tribunal or the disclosure of which might constitute contempt of Court.

17. Thus, upon reading the above provisions, it is clear that the authorities discharging judicial functions are not covered under Section 4 of the Act and, therefore, they are not obliged to provide any information to the applicant under the provisions of the Act in relation to the decisions taken by them. The reason for excluding the authorities concerned with giving judicial decisions is quite apparent. Judicial authorities are supposed to support their judicial decisions by giving reasons for which they come to a particular conclusion. They are supposed to pass reasoned orders so that the concerned party can know the reason for which he failed or succeeded and the appellate authority can know the reasons for which a particular conclusion was arrived at.

18. Coming to the case on hand, the petitioner had filed an application under Section 6 of the Act, seeking information from respondent No. 1. In the said application, the petitioner had asked as to why certain documents and arguments were not considered by the learned Judge while considering the C.M.A. The petitioner had also given details of some documents, which had not been considered, and the contents thereof had not been appreciated by the learned Judge while deciding the case. Thus, practically, the application was nothing but a memo of appeal, which could have been filed before the appellate court, but, instead of approaching the appellate court, the petitioner, for the reasons best known to him, had filed an application under the Act for knowing as to why the learned Judge had come to a particular conclusion, either by perusing or ignoring certain documents placed on record of the said case.

19. The petitioner, under the guise of seeking information from respondent No. 1 had virtually asked to know as to why and for what reason respondent No. 4, a Judicial Officer, had come to a particular conclusion, which was against the petitioner. Thus, by way of the application under Section 6, the

petitioner wanted to know from respondent No. 1 as to what transpired in the mind of respondent No. 4 while deciding the case wherein the petitioner was one of the parties to the litigation. In our opinion, what transpired in the mind of the Judge would not come within the definition of the word "record". Under the provisions of the Act, a citizen can seek only information, which is available on record with the public authority in material form, but cannot seek clarification by raising queries as to what was in the mind of the Judge when he decided the case. For the said purpose, he has to read the judgment and look at the reasons recorded by the learned judge and if he is aggrieved by the judgment for any reason, he has to file an appeal.

20. Though Sections 8(1)(b) and 24 of the Act do not provide any exemption to the judges or judicial officers from giving the information sought for, Section 4(1)(d) specifically states that the public authority shall provide reasons for its administrative or quasi-judicial decisions to affected persons. When Section 4(1)(d) is specifically stating about the reasons to be given by a public authority for its administrative or quasi-judicial decisions to the affected persons, the Court cannot introduce into it an entirely new provision and say that the public authorities shall also have to give reasons to the affected parties for the decisions taken on judicial side. It would be contrary to all rules of construction to read or add words into an Act unless it is absolutely necessary to do so. Moreover, the Court cannot reframe the legislation by adding words in the section.

21. Coming to the contention that respondent No. 4 had committed judicial dishonesty by not taking into consideration certain documents filed by the petitioner, we are of the opinion that the petitioner has no locus to raise this contention because he can only ask for the information under the provisions of the [Right to Information Act](#), but cannot question the correctness or otherwise of the order or judgment of a judicial officer under the provisions of this Act. In our opinion, the petitioner has raised this contention only with an oblique motive of levelling allegations against the judge, which is absolutely unjust and improper.

22. Even otherwise, it is to be noted that no person shall be liable to be sued in any civil court for any act done or ordered to be done by him in discharge of his judicial duty. Section 1 of the Judicial Officers' Protection Act, 1850, which gives such a protection, reads as under:

No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty.

23. As observed in cases of **Teyen v. Ram Lal** ILR (1890) 12 All 115, **Anowar Hussain v. Ajoy Kumar Mukherjee** [MANU/SC/0374/1965](#), **H.W.F.D Souza v. Chandrikasingh** [MANU/MP/0060/1966](#), and **Rachapudi Subba Rao v. The Advocate-General, Andhra Pradesh** [MANU/SC/0505/1980](#), protection under the afore-stated Act is absolute so long the action has been taken while performing the judicial duty.

24. In **Anowar Hussain v. Ajoy Kumar Mukherjee** (supra), the Hon'ble Supreme Court has observed:

Judicial Officers are not liable personally for the judgments rendered by them in their judicial capacity. Aggrieved party can neither make any personal allegations against the Judicial Officers nor demand any explanation from them for the manner in which the judgments were rendered. Such a course of action would amount to criminal contempt and interference with the administration of justice. Judgment or an order made by a judicial officer when acting in a judicial capacity can only be questioned by way of preferring an appeal or revision or some such proceeding before the higher judicial forum.

25. On the same principle and to provide similar protection, Judges (Protection) Act, 1985 was enacted. It was found necessary to enact the said Act to enable Judges to act fearlessly and impartially in discharge of their judicial duties. It will be difficult for the Judges to function if their actions in Court are made subject to legal proceedings, either civil or criminal. In **State of Rajasthan v. Prakash Chand** [MANU/SC/0807/1998](#), the Hon'ble Apex Court observed as under:

Even otherwise, it is a fundamental principle of our jurisprudence and it is in public interest also that no action can lie against a Judge of a Court of Record for a judicial act done by the Judge. The remedy of the aggrieved party against such an order is to approach the higher forum through appropriate proceedings. This immunity is essential to enable the Judges of the Court of Record to discharge their duties without fear or favour, though remaining within the bounds of their jurisdiction. Immunity from any civil or criminal action or a charge of contempt of court is essential for maintaining independence of the judiciary and for the strength of the administration of justice.

26. In relation to protection given to the Judges, it has been observed in Halsbury Laws of England, Third Edition (Vol.30) in paragraph 1352 at page 707:

**1352. Reasons for protection.** The object of judicial privilege is not to protect malicious or corrupt judges, but to protect the public from the danger to which the administration of justice would be exposed if the persons concerned therein were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. It is necessary that such persons should be permitted to administer the law not only independently and freely and without favour, but also without fear(s).

27. Such immunity has been conferred on judicial officers, so that the judges or judicial officers can act fearlessly, impartially and with full sense of security. In case of abuse of judicial powers, adequate remedy is provided on the administrative side for punishing them and, therefore, the protection so granted would not permit the judicial officers to exercise their judicial powers in a reckless or irresponsible manner. For the afore-stated immunity conferred upon judicial officers, we did not think it necessary to even issue notice to respondent No. 4.

28. It is undisputed that right of information is a fundamental right, as held by the Hon'ble Supreme Court in **Peoples' Union for Civil Liberties v. Union of India** (supra). However, under the provisions of the Act, a public authority is having an obligation to provide such information which is recorded and stored, but not the thinking process, which transpired in the mind of the authority which had passed an order on judicial side and, therefore, the above decision of the Hon'ble Supreme Court would not help the petitioner to substantiate his submissions.

29. It is also undisputed that there can be no rule of law if there is no equality before the law; and rule of law and equality before the law would be empty words if their violation is not a matter of judicial scrutiny or judicial review. This principle, which has been enunciated by the Hon'ble Supreme Court in **M. Nagaraj v. Union of India** (supra) and relied on by the petitioner, is not applicable to the case on hand because respondent Nos. 1 to 3 have not given any discriminatory treatment to the petitioner so as to do undue favour to respondent No. 4. Respondent Nos. 1 to 3 have only acted in terms of the Act and passed orders rejecting the application of the petitioner.

30. Even on merits, we do not find any error in the orders passed by respondent Nos. 1 to 3. Respondent No. 1 has rightly rejected the application of the petitioner and advised him to avail appropriate legal remedies available to him to challenge the order passed in C.M.A. No. 67 of 2005 on judicial side. If the petitioner is aggrieved by the order passed in C.M.A. No. 67 of 2005, the remedy lies elsewhere, but not the one which he has chosen to avail under the provisions of the Act. The first and second appeals filed by the petitioner before respondent Nos. 2 and 3 respectively have been rightly rejected by confirming the order of respondent No. 1.

31. In view of the above discussion, we do not find any merit in the petition and, therefore, the petition is rejected.



**IN THE HIGH COURT OF MADRAS (MADURAI BENCH)**

W.P (MD) No. 12165 of 2008

Decided On: 23.12.2008

Appellants: **K. Karuppasamy**  
**Vs.**

Respondent: **The State Chief Information Commissioner, Tamil Nadu Information Commission, The Public Information Officer-cum-Assistant, Director of Panchayats, Rural Development Department and The Assistant Public Information Officer-cum-Deputy Block Development Officer, Kayathar Panchayat Union**

**Hon'ble Judges:**

G. Rajasuria, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: G. Chandrasekar, Adv.

For Respondents/Defendant: D. Sasikumar, Government Adv. (Writs)

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act - Sections 7 and 20; Constitution of India - Article 226

**ORDER**

**G. Rajasuria, J.**

1. This writ petition has been filed to issue a writ of mandamus to direct the 3rd respondent to furnish the particulars sought for in the application made under Right to Information Act by the petitioner dated 06.06.2008 and consequently to direct the 1st respondent to punish the 2nd and 3rd respondents under Section 20 of Right to Information Act for non-compliance of Section 7 of the Right to Information Act.

2. Heard the learned Counsel for the petitioner and also Mr. D.Sasikumar, learned Government Advocate, who took notice on behalf of the respondents.

3. The grievance of the petitioner as aired by the learned Counsel for the petitioner is to the effect that the petitioner made an application dated 06.06.2008 to the third respondent to furnish the following informations:

(i) How many houses were allotted in Theethampatty Village till 2008-09 and give explanation to that.

(ii) Under what scheme the houses were allotted.

(iii) Who were the allottees and their address.

(iv) Whether free scheme patta or registered document? Give the copy of same under Right to Information Act.

(v) To give the House Tax receipts of the allottees who are in occupation.

But he has furnished only the name of the allottees and nothing more. Appeal was filed against it to the 2nd respondent and the order was modified. As against which, Second Appeal was filed before the first respondent and the same is pending. The petitioner has approached this Court under Article 226 of the Constitution of India, as he could not get any order from the first respondent.

4. Be that as it may. The issue here is very limited. The petitioner has sought for five particulars as per the application dated 06.06.2008. On perusal of the said representation, I am of the considered view that the first four items are tenable and the last one is not relevant at all. It appears out of the first four items, only the names of the allottees were furnished to the petitioner.

5. Hence, in these circumstances, the following direction is issued:

The third respondent shall furnish information to the petitioner under the aforesaid four captions in full within a period of one month from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is disposed of. No costs.

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

**W.P.(C) 6129/2007**

Reserved on: 12<sup>th</sup> March 2010

Decision on: 14<sup>th</sup> May 2010

KRISHAK BHARTI COOPERATIVE LTD. .... Petitioner  
Through: Mr. Om Prakash, Advocate

versus

RAMESH CHANDER BAWA .... Respondent  
in person

**W.P.(C) 7787/2008**

NATIONAL AGRICULTURAL COOPERATIVE  
FEDERATION OF INDIA LTD. .... Petitioner  
Through: Mr. V.P. Singh, Sr. Advocate  
with Ms. Anju Bhattarcharya, Mr. Om  
Prakash and Mr. M.I. Chaudhary, Ms.  
Maninder Acharya, Advocates.

versus

B.M. VERMA .... Respondent  
Mr. Brahm Dutt with  
Mr. Deepak Pandey, Advocates

**W.P.(C) 7770/2008**

NATIONAL COOPERATIVE CONSUMER  
FEDERATION OF INDIA LTD. .... Petitioner  
Through: Mr. V.P. Singh, Sr. Advocate  
with Ms. Anju Bhattarcharya, Mr. Om  
Prakash and Mr. M.I. Chaudhary,  
Advocates.

versus

RAJ MANGAL PRASAD .... Respondent  
Through: Mr. Brahm Dutt with  
Mr. Deepak Pandey, Advocates

**CORAM: JUSTICE S. MURALIDHAR**

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the report or not? Yes
3. Whether the judgment should be referred in the digest? Yes

**JUDGMENT**

**14.05.2010**

***The Question***

1. A feature common to the three petitioners - the Krishak Bharti Co-operative Ltd. (KRIBHCO) [the petitioner in W.P. (C) No. 6129/2007], the National Cooperative Consumer Federation of India Ltd. (NCCF) [the petitioner in W.P. (C) No. 7770/2008] and the National Agricultural Cooperative Federation of India Ltd (NAFED) [the petitioner in W.P.(C) No. 7787/2008] – is that each is a society deemed to be registered under the Multi-State Co-operative Societies Act, 2002 (‘MSCS Act’). The question for consideration is whether each petitioner is a “public authority” within the meaning of Section 2(h) of the Right to Information Act, 2005 (RTI Act)? The Central Information Commission (CIC) has, by an order dated 9<sup>th</sup> September 2008 (in the case of NAFED and NCCF) and by an order dated 10<sup>th</sup> July 2007 (in the case of KRIBHCO) answered the question in the affirmative. The CIC’s aforementioned orders have been challenged in these petitions.

### *The Context*

2. Before proceeding to notice the facts in each of the petitions, it is necessary to interpret the words “public authority” under Section 2 (h) of the RTI Act given the context of the RTI Act and in relation to the MSCS Act. The Statement of Objects and Reasons (SOR) of the RTI Act indicates that in order to ensure greater and more effective access to information, the earlier Freedom of Information Act, 2002 was extensively overhauled. It was envisaged that there would be an appellate machinery with investigating powers to review the decisions of the Public Information Officers. The RTI Act has provisions that make the failure to provide any information as per law punishable with fine. It has “provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosures by authorities.”

3. The preamble to the RTI Act indicates that it is a statute 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.” The preamble to the RTI Act notes that “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;”.

4. It is in the background of the above ‘context’ of the RTI Act that its provisions have to be interpreted. Section 2 which is the definition section begins with the words “In this Act, **unless the context otherwise requires...**”. The learned author Justice G.P. Singh observes: “When the question arises as to the meaning of a certain provision in a statute, it is not only legitimate but proper to read that provision in its context.” (G.P.Singh, **Principles of Statutory Interpretation**, 9<sup>th</sup> Edn. 2004, p.31) In **R.S. Raghunath v. State of Karnataka, (1992) 1 SCC 335** it was observed (SCC at p. 347):

“It is also well settled that the Court should examine every word of a statute in its context and to use context in its widest sense. In *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.*(1987) 1 SCC 424 it is observed that: “That interpretation is best which makes the textual interpretation match the contextual.” In this case, Chinnappa Reddy, J. noting the importance of the context in which every word is used in the matter of interpretation of statutes held thus: (SCC p. 450, para 33)

“Interpretation must depend on the text and the context. They are the bases of interpretation. One may

well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.”

5. In *AG v. HRH Prince Ernest Augustus (1957) 1 All ER 49* (at p. 61) it was observed by Sir John Nicholl: “The key to the opening of every law is the reason and the spirit of the law – it is the *animus imponentis*, the intention of the law-maker, expressed in the law itself, taken as a whole. Hence to arrive at the true meaning of any particular phrase in a statute, that particular phrase is not to be viewed detached from the context – meaning by this as well the title and the preamble as the purview or enacting part of the statute.”

6. It is plain that the provisions of the RTI Act have to be interpreted keeping in view the SOR, the Long title and the Preamble to glean the legislative intent and the context. As observed in the above decisions, the other provisions of the RTI

Act also indicate its overall context. The expression ‘right to information’ has been defined in Section 2(j) to mean the right to information accessible under the Act “which is held by or under the control of any public authority”. The expression ‘information’ under Section 2 (f) has been defined to mean “material in any form, including records, documents, memos.....which can be accessed by a public authority under any other law for the time being in force”. Section 4 spells out the obligations of public authorities which include maintenance of all its records, publishing the particulars of its organization, functions, duties, the procedure followed in the decision-making process for the discharge of its functions and so on. What is interesting in the context of the present cases, is that the obligation under Sections 4 (1)(b) (xii) includes the dissemination by such public authority of “the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes”. Under Section 4 (2), the public authority is expected to *suo motu* take steps to provide as much information 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”. There can, therefore, be no manner of doubt that the RTI Act casts a statutory obligation on a public authority to disclose the information held by it which is accessible to the public. The overall purpose and context is to usher



transparency and accountability into the working of every public authority.

7. The RTI Act, after several amendments to its predecessor statute i.e. the Freedom of Information Act 2002, received the assent of the President and came into force on 12<sup>th</sup> October, 2005. It is still the initial phase of the implementation of the RTI Act. Not surprisingly, therefore, many institutions and entities are unclear whether they are a 'public authority' and whether they are therefore required to comply with the statutory requirements under the Act. Section 24 exempts from disclosure information concerning certain organisations which are listed in the Second Schedule. Again this immunity is not a blanket one. It cannot be invoked where the information pertains to either violation of human rights or corruption.

8. The initial attempt by most organizations and entities is to avoid the obligations under the RTI Act. Since the culture of transparency has not fully set in, and old habits die hard, there is a resistance on the part of institutions and entities to avoid being declared a 'public authority'. So it is with the three petitioners, KRIBHCO, NCCF and NAFED.

***Reading Section 2(h)***

9. Now turning to Section 2 (h) of the RTI Act, it 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;”

10. On a plain reading of the provision, the expression “public authority” can mean:

- (a) an authority or a body or an institution of self-government established or constituted by or under the Constitution,
- (b) an authority or a body or an institution of self-government established or constituted by a law made by Parliament,
- (c) an authority or a body or an institution of self-government established or constituted by a law made by the State legislature,
- (d) an authority or a body or an institution of self-government established or constituted by a notification issued or order made by the appropriate government.

11. While there is no question that each of the three entities, KRIBHCO, NCCF and NAFED, is a ‘body’ none of them is either an institution constituted or established “by or under” the Constitution or “by” a central or state legislation. The legislature

has made a conscious distinction between “by or under” (which is used in relation to the Constitution) and “by” in relation to a central or state legislation. If, therefore, it was enough for the body to be established “under” a central or state legislation to become a public authority then each body registered or deemed to be registered under the MSCS Act or for that matter every company registered under the Companies Act would be a ‘public authority’. However that is not the case here.

12. If, therefore, none of these entities is a body that answers the description of being established or constituted under a Constitution, or by a law made by the Parliament or by the State Legislature, then the question that next arises is, if any of them is a body established or constituted “by notification issued or order made by the appropriate Government” in terms of Section 2 (h) (d) of the RTI Act. It is nobody’s case that any of these entities has been established or constituted only by a notification issued or an order made by the appropriate Government. That leaves us with the remaining limb of Section 2 (h) (d) which is conjoined with the main provision by the words “and includes”. Therefore, in relation to the present cases, what requires to be examined is whether each of these entities is, in terms of Section 2 (h) (d) (i), a body owned, controlled, or substantially financed by the appropriate government, or in terms of Section 2 (h) (d) (ii), a non-government

organisation substantially financed directly or indirectly by funds provided by the appropriate government?

***Implication of “includes”***

13. Before embarking on a more detailed analysis it is necessary to recapitulate the law concerning interpretation of the conjunctive “and includes”. The expression “and includes” connotes that those entities which answer the description following those words need not fall within the definition of entities that precede those words. The word “includes” is generally understood in statutory interpretation as enlarging the meaning of the words or phrases in the body of the statute. In *CIT v. Taj Mahal Hotel (1971) 3 SCC 550* the Supreme Court was considering whether the word ‘plant’ in Section 10 (2) of the Income Tax Act 1922, include sanitary pipes and fittings in a building as well? Section 10 (5) had defined ‘plant’ to include “vehicles, books, scientific apparatus, surgical equipment purchased for the purpose of business.” The Court held:

“The word “includes” is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used, those words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include.”

14. In *Mahalakshmi Oil Mills v. State of A.P. (1989) 1 SCC 164* the Supreme Court was construing the meaning of the word 'tobacco' under the Andhra Pradesh General Sales Tax Act, 1957 which by incorporation referred to definition in the Central Excises and Salt Act, 1944. The latter Act defined 'tobacco' to mean "any form of tobacco, whether cured or uncured and whether manufactured or not, **and includes** the leaf, stalks and stems of the tobacco plant, **but does not include** any part of a tobacco plant while still attached to the earth." Since an exemption was granted to such products from sales tax, the assesses wanted the expression to be interpreted as widely as possible and the State as narrowly as possible. In the background of these arguments, it was held (SCC, p.168):

"We are inclined to accept the contention urged on behalf of the State that the definition under consideration which consists of two separate parts which specify what the expression means and also what it includes is obviously meant to be exhaustive. As Lord Watson observed in *Dilworth v. Commissioner of Stamps* 1899 AC 99 the joint use of the words "mean and include" can have this effect. He said, in a passage quoted with approval in earlier decisions of this Court: (AC pp. 105-06)

"Section 2 is, beyond all question, an interpretation clause, and must have been intended by the legislature to be taken into account in construing the expression "charitable devise or bequest," as it occurs in Section 3. It is not said in terms that "charitable bequest" shall mean one or other of the things which are enumerated, but that it shall "include" them. 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 show 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.*’ (emphasis ours)”

15. It must straightway be noticed that Section 2 (h) (d) (i) and (ii) have not been happily worded. The provision has added to the confusion rather than clarifying the position. Perhaps an appropriate manner of reading the said provision would be to ask:

(i) is the entity in question a body

owned by the appropriate government? or

controlled by the appropriate government? or

substantially financed by the appropriate government?

or

(ii) is the entity a non-government organisation substantially financed directly or indirectly by funds provided by the appropriate government?

16. It needs to be further clarified that it is not the case of the respondents here that any of these entities is a “non-government organisation substantially financed directly or indirectly by funds provided by the appropriate government”. That takes them out of the purview of Section 2 (h) (d) (ii). Although it must also be noted that in relation to KRIBHCO the CIC wrongly mentions this provision. The Respondents also do not contend that any of these

entities is wholly “owned” by the appropriate government. That then leaves us with only the following question to answer in relation to these three entities: **Are KRIBHCO, NCCF and NAFED bodies that are either controlled or substantially financed by the appropriate government?** That in turn brings up the question as to when it can be said that a ‘body’ is “controlled” by the appropriate government and when can it be said that it is “substantially financed” by the appropriate government?

***“Controlled”***

17. The expression “appropriate government” has been defined under Section 2 (a) of the RTI Act. The government which either establishes or controls or constitutes or owns or controls or substantially finances the entity would be the ‘appropriate government’. In the context of the entities deemed to be registered under the MSCS Act, it is possible to have more than one appropriate government. This aspect will be discussed in some detail later. However, the expressions “controlled” or “substantially financed” have not been defined. In order to understand whether a body is “controlled” by the appropriate government one would have to examine its organizational structure, its bye-laws and memorandum and articles of association, if any, and the statutory provisions which envisage control over such bodies by the appropriate government. For the

limited purpose of understanding the word “controlled”, an examination is also to be undertaken of the pattern of shareholding or any other form of control of such bodies by the appropriate government. It is in this last context that the provisions of the MSCS Act are relevant. These too will be discussed shortly.

18. At this juncture a brief reference may be made to the legal and ordinary meanings of the word “control”. The word “control” has been defined in **Black’s Law Dictionary** (6<sup>th</sup> Edn.) to mean “power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee. The ability to exercise a restraining or directing influence over something.” The **Shorter Oxford English Dictionary** (5<sup>th</sup> Edn.) defines it as “the act of power of directing or regulating; command, regulating influence” or “a means of restraining or regulating; a check; a measure adopted to regulate prices, consumption of goods etc.” In both senses therefore the key word is “influence” and not necessarily “domination”.

19. The learned Senior Counsel for the petitioners referred to case law concerning the interpretation by the Supreme Court and the High Courts of the expression ‘State’ under Article 12 of the Constitution and whether a body is one which is discharging a public function for the purposes of Article 226 of the Constitution.



In the considered view of this Court, neither case law is relevant to the questions that arise in the context of the RTI Act. That is why this Court dwelt on the principles governing 'contextual' interpretation. In the context of the RTI Act it may well be that a body which is neither a "state" for the purposes of Article 12 nor a body discharging public functions for the purpose of Article 226 of the Constitution might still be a 'public authority' within the meaning of Section 2 (h) (d) (i) of the RTI Act. To state it differently, while a 'body' which is either a 'state' for the purposes of Article 12 or a 'body' discharging public functions for the purpose of Article 226 is likely to answer the description of 'public authority' in terms of Section 2 (h) (d) (i) of the RTI Act, the mere fact that such body is neither, will not take it out of the definition of 'public authority' under Section 2 (h) (d) (i) of the RTI Act. To explain further, it will be noticed that in all the decisions concerning the interpretation of the word 'state' under Article 12 the test evolved is that of "deep and pervasive" control whereas in the context of the RTI Act there are no such qualifying adjectives "deep" and "pervasive" vis-à-vis the word "controlled." To illustrate, in *Pradeep Biswas v. Institute of Chemical Biology* 2002 (5) SCC 111, the Supreme Court summarized the 'test' as under (SCC at p.134):

"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.” (emphasis supplied)

20. Therefore while applying the above test to determine if the body in question was “state” the question to be asked was whether there was ‘pervasive’ control over the body by the appropriate government and if that was answered in the affirmative then it may “afford an indication whether a corporation is a State agency or instrumentality.” In the considered view of this Court, since Section 2 (h) (d) (i) RTI Act uses the word “controlled” without any qualification as to the degree of control, it is not to enough show that there is “no deep or pervasive control” over these entities by the appropriate Government. The question is not whether there is “deep” control, whether there is “dominance” by the appropriate government or whether the government’s nominee directors are in ‘majority’. If they are, no doubt, it would indicate that the entity is a ‘public authority’ but if they are not, that does not mean that the entity is on that ground not a public authority for the purposes of the RTI Act. What may be a ‘public authority’ for the purposes of the RTI Act need not be ‘state’ under Article 12 or

amenable to Article 226 of the Constitution. It is the context of transparency and accountability, of accessibility of its working to the public that controls the interpretation of the expression 'public authority', not the amenability to judicial review of its decisions. If one asks the wrong question in the context of the RTI Act one is unlikely to get the right answer. In the present cases, the petitioners would have to show that there was or is no control or there is unlikely to be any control whatsoever over their affairs by the appropriate government if they want to escape the definition of 'public authority' under the RTI Act.

21. It is for the same reason that this Court does not find the judgments of the High Courts, holding these entities not to be amenable to the writ jurisdiction under Article 226 of the Constitution, to be relevant for the purpose of the present cases. While, if that question had been answered in the affirmative, it would make the task of holding them to be public authorities for the purposes of RTI Act simpler, the mere fact that for the purpose of Article 226 of the Constitution any or all of these entities are held to be not amenable to the writ jurisdiction cannot be determinative of the question whether they are 'public authorities' for the purposes of the RTI Act. To elaborate, although in *J.S. Arneja v. NCCF 1994 (28) DRJ 546* the Division Bench of this Court held the NCCF not to be 'State' within the meaning of

Article 12, and in *NAFED v. National Processed Food Cooperative Marketing Federation of India Employees Union 2001 (58) DRJ 799 (DB)* this Court held that NAFED is not amenable to the writ jurisdiction under Article 226 of the Constitution and in *D.G. Katti Shetty v. NCCF* [judgment dated 3<sup>rd</sup> June 2003 in W.P.(C) No. 28014 of 1999 (DB)], the Karnataka High Court held likewise as regards NCCF, it is not helpful for deciding whether either entity is a 'public authority' within the meaning of Section 2 (h) (d) (i) of the RTI Act.

22.The decision of this Court in *Krishak Bharati Co-operative Ltd. v. Union of India, 2008 (154) DLT 452*, quashing an order of the Government of India directing the repatriation to itself of equity held in KRIBHCO is also not relevant in the present context. As a result of the repatriation, the government's share in KRIBHCO as on 31<sup>st</sup> December 2009 was reduced to 48.36%. This only meant that government did not have 'majority' shareholding in KRIBHCO. If the question was whether government had 'deep and pervasive' control over KRIBHCO after this development the answer undoubtedly would be in the negative. But for the purpose of Section 2 (h) (d) (i) of the RTI Act the question to be asked is whether it can be said that the government that holds 48.6% shares of KRIBHCO has no control whatsoever over its affairs? The answer to that question cannot

certainly be in the negative. The concept of a ‘controlling interest’ in a company or a body governed by shares is a well known one. Even a 10% shareholding in a large company that is not closely held can be construed as a ‘controlling interest’.

23. Reliance was placed by learned Senior Counsel appearing for the petitioners on the decision of the Supreme Court in *Federal Bank Ltd. v. Sagar Thomas (2003) 10 SCC 733*. The issue there was about the amenability of a private bank to the jurisdiction of the High Court under Article 226 of the Constitution. The ratio of *Pradeep Biswas and Ajay Hasia v. Khalid Mujib (1981) 1 SCC 722* was followed. It was held that “any business or commercial activities whether bank, manufacturing units or relate to any kind of business generating resources, employment, production and resulting in circulation of money are no doubt, such which do have impact on the economy of the country in general. But such activities cannot be classified as one falling in the category of discharging duties or functions of a public nature.” At the cost of repetition, this Court would like to emphasise that the above tests are not relevant for the present cases. The key words as far as the RTI Act is concerned are the opening words of Section 2 which read: “unless the context otherwise requires”. Therefore, the interpretation of the words “public authority” has to be in the context that has been laid out in the SOR, the preamble, the long

title and other provisions of the RTI Act itself. The question is not whether there is “deep” and “pervasive” control of the bodies in question by the appropriate government, but whether there is the absence of any “control” over such bodies by the appropriate government.

***“Substantially financed”***

24. The second limb of Section 2 (h) (d) (i) of the RTI Act requires an examination if any of the petitioners is “substantially financed by the appropriate government”? It is important to note that the word “financed” is qualified by the word “substantially” indicating a degree of financing. Therefore, it is not enough for such bodies to merely be financed by the government. They must be “substantially financed”. In simple terms, 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. In an annual budget of Rs. 10 crores, a sum of Rs. 20 lakhs may not constitute a dominant or majority financing but is certainly a substantial sum. An initial corpus of say Rs.10 lakhs for such an organization may be ‘substantial’. It will depend on the facts and circumstances of a case. Merely because percentage-wise the financing does not constitute a majority of the total finances of that entity will not mean that the financing is not ‘substantial’. A reference may be made to two different meanings of the word

‘substantial’. In **Black’s Law Dictionary** (6<sup>th</sup> Edn.) the word ‘substantial’ is defined as “of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.” The word “substantially” has been defined to mean “essentially; without material qualification; in the main; in substance; materially.” On the other hand in the **Shorter Oxford English Dictionary** (5<sup>th</sup> Edn.) the word ‘substantial’ means “of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; solid; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.” The word “substantially” has been defined to mean “in substance; as a substantial thing or being; essentially, intrinsically.” Therefore the word ‘substantial’ is not synonymous with ‘dominant’ or ‘majority’. It is closer to “material” or “important” or “of considerable value.” “Substantially” is closer to “essentially”. Both words can signify varying degrees depending on the context.

25. This has been brought out well in a recent judgment of this Court in *Indian Olympic Association v. Veeresh Malik* [judgment dated 7<sup>th</sup> January 2010 in W.P. (C) No. 876 of 2007]. The question

before the learned Single Judge was whether the Indian Olympic Association, the Sanskriti School and 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.”

26. The approach of other High Courts in interpreting Section 2 (h) (d) of the RTI Act is instructive. They have adopted a contextual and liberal interpretation keeping in view the purpose and object of the RTI Act. In *Diamond Jubilee Higher Secondary School v. UOI* [W.P. No. 36901 of 2006, judgment dated 16<sup>th</sup> March 2007] the Madras High Court held that an aided private recognized school came under the provisions of the RTI Act. It was held: “It is too late in the date to hold that the RTI Act, 2005 will not apply to the petitioner school, which is a non-governmental organisation that has been substantially funded by the State”. It was found that



there were 59 teaching staff and all of them were paid 100% salary from the aid received from the government. The management was getting about Rs.1.1 crores every year from the government for running the school. In *DAV College Trust and Management Society v. Director of Public Instruction AIR 2008 P & H 117*, wherein it was held that DAV College, Chandigarh was a 'public authority' it was observed that merely because the grant-in-aid to the entity had reduced from 95% to 45% it would not take it out of the purview of the RTI Act. The two factors that weighed with the Court were that the entity was performing a public function affecting the life of a huge segment of society and in addition it was receiving substantial grant-in-aid. The Allahabad High Court in *Dhara Singh Girls High School v. State of Uttar Pradesh AIR 2008 All 92* likewise held that a private school receiving grant from the State Government was a public authority for the purpose of RTI Act. It was held that "whenever there is even an iota of nexus regarding control and finance of public authority over the activity of a private body or institution or an organization etc. the same would fall under the provisions of Section 2(h) of the Act." In *Committee of Management Shanti Niketan Inter College v. State of U.P. AIR 2009 All 7*, it was held by the Allahabad High Court that the RTI Act would apply to that institution.

27. The Karnataka High Court in *Dattaprasad Co-operative*

*Housing Society Ltd. v. Karnataka Chief Information Commissioner & Registrar of Cooperative Societies, Govt. of Karnataka AIR 2009 Kant 1* held that a cooperative housing society was not a public authority within the meaning of the RTI Act. It was held that “solely on the basis of supervision and control by the Registrar of Societies; and definition of ‘public servant’ in the cooperative societies and in the Karnataka Lokayukta Act, 1984 a society cannot be termed as public authority”. It was noticed that in the said case the society in question “was neither owned nor funded or controlled by the State”. However, in the context of present cases, it cannot be said that neither of these entities neither controlled nor funded by the State. This will be discussed shortly hereafter in respect of each petitioner. A second distinguishing feature is that the concerned statute under which the society was registered was not examined to determine if there was any control over the society by the government.

28. On the other hand, the Kerala High Court in *Thalapalam Service Co-operative Bank v. Union of India AIR 2010 Ker 6* held that co-operative societies registered under the Kerala Co-operative Societies Act are public authorities for the purposes of the RTI Act. It was held that a body substantially financed by the funds provided by the appropriate Government would fall within Section 2 (h). It was further held that the expression ‘substantially

financed' had no fixed meaning.

29. In *Tamil Nadu Road Development Co. Ltd. v. Tamil Nadu Information Commission [2008] 145 Comp Cas 248 (Mad)*, a Division Bench of the Madras High Court held that Tamil Nadu Road Development Company Ltd. was substantially controlled by the Government both in terms of the composition of the Board of Directors and also the manner in which the Articles of Association had been drawn up. Reliance was placed on the observations in *R. Anbazhagan, Dy. Manager (Mech.), Tamil Nadu Newsprint and Papers Ltd. v. State Information Commission 2009 (1) ID 7*, whereby the Tamil Nadu Newsprint and Papers Ltd. was held to be a public authority.

30. Therefore for the purposes of Section 2 (h) (d) (i) for determining whether there is 'control' over the entity or there is 'substantial financing' of such entity by the appropriate government the approach should not be to ask if there is 'predominant' or 'majority' control or financing by the appropriate government. The financing may not be a majority one and yet be 'substantial'. The shareholding or the membership of the nominee directors on the board may not be in the majority and yet there may be 'control'. The provisions of the statute under which the entity is registered has also to be examined for this purpose.

31. One other aspect that needs to be mentioned is that the 'control' or 'substantial financing' need not necessarily be *in presenti*. An entity had in the past been controlled or substantially financed by the appropriate government, and has ceased to be so at present, need not cease to be a 'public authority' as long as the potential for being so controlled or substantially financed in future exists. Also, once an entity has been established or substantially financed by the appropriate government at any point in time it acquires the tag of a 'public authority' for the purposes of the RTI Act.

#### ***The MSCS Act***

32. That brings up the need to undertake an examination of the various provisions of the MSCS Act to determine if there is a control over these petitioners by the appropriate government. Chapter XV of the MSCS Act is relevant. Under Section 106 a copy of the bye-laws is to be kept open for inspection at the registered office of the society. Likewise the various registers including the register of members, copies of annual returns and the register of debenture holders are to be kept at the registered office, and is open for inspection by any member or debenture holder, without fee or by any other person, on payment of such sum as may be prescribed for each inspection. Under Section 108 the books of account and other books and papers are open to

inspection by the Central Registrar, by an officer of the Government and by members of the society. The annual accounts and balance-sheet are to be laid before the society. Under Section 113 the inspection of minutes' book of general meetings and meetings of the board is open to any of the members of a society. Therefore, barring the registers of members and debenture holders, the indexes, the annual returns and other certificates referred to in Section 106, the other documents referred to in Sections 108 onwards are not open to inspection by public.

33. Turning to the provisions that indicate some form of control by the government of a MSCS, it is seen that it is possible for a government to have 'majority' shareholding in an MSCS which then is a 'specified' MSCS under Section 122 and the central government can issue directions thereunder to such MSCS. It can also supersede the Board of such MSCS under Section 123. However, in terms of the 'Explanation' to Sections 122 and 123 the Central Government may not have the power to give directions to or supersede the board of a specified MSCS if the government's shares in it are below 50%. However, this by itself does not mean that there is no control whatsoever of the government over a non-specified MSCS. Under Section 124 of the MSCS Act, the power to make rules which affects and controls the functioning of a MSCS is with the central government. The power of the Central

Registrar, an appointee of the central government, is detailed in a range of provisions including Sections 78, 79, 80, 81, 82, 83, 86, 89, 93, 115 and 117. Further under Section 61 the Central Government on a request from a MSCS society can subscribe to the share capital of such MSCS. Under Section 77 the central government can direct a special audit of the MSCS in certain cases. Under Section 82 the debts due to the central government get a high priority in insolvency proceedings concerning the MSCS. Therefore through various provisions of the MSCS Act, the central government, or the state government where the context requires, exercises control over the MSCS.

34. The position in regard to each of the petitioners is examined next.

### ***KRIBHCO***

35. KRIBHCO is a national level MSCS deemed to be registered under the MSCS Act, 2002. It is engaged in manufacturing and selling, inter alia, chemical fertilizers and urea. It is stated that the authorized share capital of KRIBHCO is Rs. 500 crores and the subscribed and paid-up share capital is Rs. 396.50 crores. It had a membership of 6306 as on 31<sup>st</sup> March 2007. It is stated that Government of India is a member of KRIBHCO and as on 31<sup>st</sup> March 2007 had a shareholding worth Rs. 267.71 crores i.e.

67.59%. Subsequently, Government of India's shareholding was reduced to Rs. 188.90 crores, i.e., 48.36%. KRIBHCO'S object is to promote economic and social betterment of its members by undertaking the business of manufacture, production, development, processing, conversion, sale, distribution, marketing, import, export, trade or otherwise deal in, store, or transport, build, construct, fabricate or otherwise turn to account, in India and abroad of chemical fertilizers, bio-fertilizers, man-made fibers, detergents, soaps, chemicals, petro-chemicals, refining hydrocarbons, drugs and pharmaceuticals, industrial products, cement, steel, electronic products, satellite receivers, pesticides, seeds, agricultural machinery and implements and other agricultural inputs/outputs, agricultural items, agro-based industrial items, food products, aquaculture, forestry products, power generation and distribution from conventional or non-conventional energy sources, automobiles, breweries, housing and real estate, construction and fabrication, and to provide/undertake the business of oil exploration, communication and telecommunication, information technology, shipping, trading, banking and insurance and to undertake such other activities which are conducive and incidental thereto, through self-help and mutual aid in accordance with cooperative principles. The membership of KRIBHCO is open among others to various cooperative societies as per bye-law 6 of KRIBHCO which are primarily engaged in development of

agriculture. Bye-law 24 gives the source of funds of the society which includes loans and deposits, debentures, bonds, commercial papers within India and abroad, grant-in-aid and donation. Bye-law 27 provides that the final authority shall vest with its General body constituted under its bye-laws. There is a representative general body consisting of the members of the Board of Directors, one delegate to be nominated by each organization holding shares of the value of Rs. 5 lacs, and above and delegates to be elected from amongst their representatives of member society/organization in each State/Union Territory at the rate of one delegate for every 100 members. However, the maximum number of delegates from State/Union Territory shall not exceed 20.

36. Bye-law 30 enlists the powers of General body which includes powers like election and removal of Board of Directors, distribution of net profits, expulsion of members, review of operational deficit, approval of annual budget etc. Bye-law 38 sets out the composition of the Board of Directors of KRIBHCO. The maximum number of Directors is 21 excluding the functional and co-opted directors. 8 directors are to be elected by the General Body of whom 3 shall be representatives of the “Apex Marketing Federations” of the different States/Union Territories. Not more than 3 directors are to be nominated by the Government of India based on the equity share capital held by the Central Government.



If any organization is providing long term credit to KRIBHCO then it shall also be eligible to nominate one Director; 2 Experts as Directors from amongst eminent economists or management experts could be co-opted by Board, if there is a provision to that effect in the loan agreement.

37. Clause 47 gives a range of powers to the Board of Directors, which includes the power to admit members, convene meetings, fill up vacancies in the General Body amongst the elected delegates and to recommend to the General Body for distribution of profits, to appoint, suspend or remove the Managing Director or other directors and to take all important decisions relating to withdrawal, transfer or forfeiture of shares. Under Clause 55, there shall be an Audit Committee consisting of Chairman, Vice Chairman, 3 non official Directors, Managing Director and Finance Director.

38. KRIBHCO contends that in terms of its bye laws the final authority vests in the General Body in which the Non-Government Members far exceed the Government nominees. It is submitted that KRIBHCO functions independently and without any financial assistance or interference of any nature by the Government. It is submitted that transparency in discharge of day to day business is maintained by KRIBHCO in the normal course of its business in

terms of provisions contained under Chapter-XV of the MSCS Act.

39. To complete the narration of relevant facts concerning KRIBHCO it must be noted that the present case emanated from an application made by Respondent 2, who was an employee of KRIBHCO and had been transferred from Chandigarh to Bhopal for administrative reasons. While the litigation initiated by him challenging his transfer order was pending, he sought information from KRIBHCO. However, it was declined on the ground that KRIBHCO is not a public authority. Among other grounds urged by KRIBHCO is that the CIC had wrongly observed that “Department of Fertilizers of Government of India is one of the major promoters of the KRIBHCO”. It is stated that this finding was entirely incorrect. There were 12 promoter members of KRIBHCO. It is submitted that KRIBHCO is neither dependent on the aid/fund or financial assistance of the Government or local body in any manner nor does it receive any financial assistance/grant for its day to day business. The employees of KRIBHCO are not subject to the disciplinary proceedings as applicable to government servants or employees of public sector undertakings. KRIBHCO is not a government organization or establishment and its employees are neither government servants nor public servants.

40. KRIBHCO seeks to draw comparison with the Indian Farmer's Fertilizer Cooperative Ltd. (IFFCO), which is also an MSCS registered under the MSCS Act. Reliance was placed on the judgment of Rajasthan High Court in *Chittar Singh v. IFFCO* (CWP No. 139 of 1986) and *Bihar State Cooperative Marketing Union v. IFFCO* (CWP No. 7303 of 1993) of the Patna High Court in which it was held that IFFCO is not an authority within the meaning of Article 12 of the Constitution. Likewise, in *Ashok Kumar v. Union of India* (CM WP 21772 of 2006), the Allahabad High Court held that KRIBHCO is not a State or other authority under Article 12 of the Constitution. Reliance was also placed on the decision of the Supreme Court in *S.S.Rana v. Registrar Co-op. Societies (2006) 11 SCC 634* where it was held that the Kangra Central Cooperative Bank Ltd., against whom an employee had filed a writ petition challenging an order terminating his services, was not amenable to Article 226. It was observed that a control by the State as a general regulation under the Cooperative Societies Act was only meant to ensure proper functioning of the societies and that the state "would have nothing to do with its day-to-day functioning." Here again, the emphasis was on examining whether the bank in question satisfied the tests laid down in *Pradeep Kumar Biswas*. As already noted before, this is not relevant in the present context of the RTI Act. The question whether a body is a 'public authority' for the purposes of the RTI Act is not the same

as the question whether such body is a 'state' under Article 12 or discharging a public function for the purposes of Article 226.

41. In the instant case, the CIC has in its impugned order, noticed the contentions of the respondents herein as under:

“Even if KRIBHCO does not receive any grant from the Government to meet its expenditure, it is covered u/s 2(h)(d)(ii) of the RTI Act, as the Government is the major stakeholder by way of providing funds for its sustenance.

KRIBHCO is a public authority as defined under aforesaid section of the RTI Act as the total share capital of Govt. of India (excluding the share capital of 20 other States of India) in KRIBHCO is more than 68% and every year dividend is also given to all the share holders which includes the Govt. of India also. Section 2(h)(d)(ii) of the RTIU Act is therefore duly applicable.

Govt. of India has both administrative and regulatory control over the affairs of KRIBHCO. The Registrar of Multi-State Co-operative Societies, an officer appointed by the Central Government, has a wide control over the affairs of the Co-operative Society like KRIBHCO.

As a major shareholder, the Govt. of India has a wide control, though indirectly, over the functioning of the respondent.”

42. In the context of the present case, this court proceeds on the footing that the appropriate government for KRIBHCO would be the central government. It is significant that Government of India's paid-up share capital in KRIBHCO in monetary terms was Rs. 268 crores as on 31<sup>st</sup> March 2007. It was reduced to Rs.188.90 crores subsequently. Investing in share capital is a known means of

financing an entity. A sum of Rs. 189 crores, cannot be said to be insubstantial financing. A shareholding of 48.36% cannot mean that government has no 'control' over KRIBHCO. 'Substantial' financing does not have to mean 'majority' or 'dominant' financing. A 'controlling' interest through shareholding does not necessarily mean 'majority' shareholding.

43. As regards 'controlled', it is significant that the Registrar of the MSCS is an officer appointed by the Central Government. Direct or indirect control over the affairs of an MSCS like KRIBHCO is possible even through the nominee directors of the Central Government. The nominee Directors may not constitute a majority of the Board of Directors. However, they could well influence, directly or indirectly control its decisions. In the meeting of the Board of Directors, even if some members are in a minority, they may still be able to persuade the others to agree to their point of view. On a case by case, it is very difficult to say that three among 21 members of a Board do not or cannot exercise control over its decisions. There is a mistake in assuming that word 'control' has to mean majority control. There can be a control by a minority as well. The controlling interest need not be numerically in the majority.

44. Therefore, the absence of any adjective like "deep" or

“pervasive” qualifying the word “controlled” in Section 2 (h) of the RTI Act, means that any control over the body by the central government will suffice to make it a ‘public authority’. On a reading of KRIBHCO’s bye laws, it is not possible to come to the conclusion that there is no control over the affairs of KRIBHCO by the Central Government. It was contended that Government of India no longer holds 51% of the paid-up share capital and, therefore Sections 122 and 123 do not apply to KRIBHCO. While, it is correct that in terms of the Explanation to Sections 122 and 123 the Central Government cannot issue directions, it can still make rules under Section 124 for various matters governing the functioning of KRIBHCO. Even if KRIBHCO has repatriated a substantial investment in its share capital by the Government of India, the latter still holds 48.38% of the total paid-up share capital of KRIBHCO. It would therefore not cease to be a “public authority” as this extent of shareholding is sufficient for government to ‘control’ KRIBHCO. Financing through investment in share capital which is of a ‘substantial’ kind cannot be ignored in this context. Also, the mere fact that the extent of shareholding might come down to less than 50% at a given point in time is not relevant. That KRIBHCO is amenable to government control through various devices as spelt out in the MSCS Act itself, is what is significant. For the above reasons, this Court upholds the decision of the CIC that KRIBHCO is a public authority for the

purpose of Section 2 (h) of the RTI Act.

### *NCCF*

45. The NCCF describes itself as a co-operative society which was sponsored by the co-operative leaders with the main objective of promoting co-operative marketing and ensuring that farmers get ready market and remunerative prices for their produce. The objectives of NCCF are to organize, promote and develop marketing, processing and storage of agricultural, non-agricultural items, horticultural and forest produce, undertake inter-state, import and export trade and to act and assist the technical advice in agricultural, non-agricultural, non traditional production for the promotion and working of its members, partners, associates and co-operative marketing, processing and supply societies in India. The objectives include (i) carrying on importing and exporting activities relating to consumer goods such other articles; (ii) establishing, running or sponsoring processing and manufacturing units for the production of consumer goods; (iii) establishing trade connections with suppliers and manufacturers and other dealers, preferably co-operative organizations and arranging for the procurement and distribution of consumer goods, (iv) rendering technical guidance and assistance to its member institutions in particular and consumer societies in general in regard to grading, packaging, standardization, bulk-buying, storing, pricing, account

keeping and other business techniques. It is also permitted to secure requisite facilities, assistance and financial aid both for itself and for its member institutions, either from the Government or from other sources. NCCF is also permitted to act as agents of Central/State Government or other undertakings or cooperative institutions or any other business enterprises for selling, storing and distributing the consumer goods.

46. The membership of NCCF is stated to be open. The members listed out in Bye law 5 are:

“(a) Apex Level Cooperative Marketing organizations for Union Territories,

(b) State Level general purpose cooperative marketing federation excluding Union territories.

(c) State and Regional level cooperative institutions like special cooperative federations, tribal cooperative federations and tribal cooperative development corporations engaged primarily in the marketing processing or distribution of agricultural, minor forest and allied produce agricultural requisites and consumer goods

(d) Cooperative marketing/Processing societies other than those covered above engaged primarily in the marketing, processing or distribution of agricultural, minor forest and allied produce, agricultural requisites and consumer goods and having a minimum turnover of Rs. 50 lacs and above during the year preceding the date of application.

(e) Government of India;

(f) National Cooperative Consumer’s Federation and any other national level cooperative organization;

(g) Any other National level Cooperative



Organisation on reciprocal basis.”

47. It is claimed that NCCF has not received any assistance from the Government of India, either in the form of share capital contribution, loan or subsidy since 1996. As regards the share capital the position is as follows:

“The authorized share capital of the Federation is Rs. 20 crores consisting of one lakh shares of the value of Rs. 2000/- each to be subscribed by members. The government has also been holding 10,137 non-redeemable shares in the NCCF ever since 1994-95. On the other hand, the non-redeemable shares held by others were 13,725 during the year 1999-2000, 14,475 during the year 2000-01 and 14,550 during the year 2001-02 of Rs. 2000/- each, fully paid up. Thus, the contribution to the share capital by persons other than government is more than the contribution by the Government. The government has also been holding redeemable shares which arise from 35,875 held in the year 1994-95 to 72,625 in the year 2001-01 and reduced to 71,625 in 2001-2002. As on 31<sup>st</sup> March 2007, the total paid share capital of NCCF was Rs. 13.79 crores of which the redeemable contribution made by the Government of India was of Rs. 10.74 crores. But what is significant about these shares is that they are redeemable after five years from the date of allotment in ten equal annual instalments. Therefore, the funding by the Government by way of redeemable shares is virtually a loan repayable in 10 installments by the NCCF.”

48. As far as the Board of Directors are concerned, in terms of Bye law 24, there is one nominee each of National Cooperative Union of India, National Cooperation Development Corporation and NAFED on reciprocal basis. The membership of Non-Government members is stated to far exceed the Government Members. The question however is of the cumulative effect of the above factors. This Court is unable to accept the submission that because the government does not hold a majority of the shares or that its nominees do not constitute a majority of the Board of Directors, there is no control over the NCCF by the appropriate Government. Even as regards financing, the financing through the holding of shares cannot be said to be insubstantial. The total paid up capital is Rs. 13.79 crores in which the contribution of Government of India is Rs. 10.74 crores.

49. There is a third aspect of the matter as noticed by the CIC. NCCF provides technical guidance to its constituent members to sub-serve the interests of consumer cooperation movement in India. The Department of Agriculture & Cooperation, in its communication dated 7<sup>th</sup> May 2008 informed the CIC about the objectives of the NCCF as under:

#### “2.2 Objective

The main object of the NCCF is to assist, aid and counsel its member institutions as per principle of cooperation and to facilitate their working including providing supply support to consumer cooperatives

and other distributing agencies for distribution of consumer goods at reasonable and affordable rates and rendering technical guidance and assistance to them for improving their managerial and operational efficiency and generally to act as spokesman of consumers' cooperative movement in India and also to assist organization and promotion of Consumer Cooperative Institutions in areas, where the State Consumer Federations or the Wholesale Stores are not functional.”

50. On a conspectus of the above factors, this Court is unable to find any error in the conclusion of the CIC that NCCF is a public authority within the meaning of Section 2 (h) of the RTI Act.

### ***NAFED***

51. As far as NAFED is concerned, the Department of Agricultural & Cooperation, in its communicated dated 7<sup>th</sup> May 2008, informed the CIC about the role of the NAFED as under:-

#### *“1.4 Role of the Government*

1.4.1 NAFED is the Central nodal agency of the government of India to undertake procurement of oilseeds and pulses under Price Support Scheme (PPS). The objective of the scheme is to provide regular marketing support to the farmers to sustain and improve the production of oilseeds and pulses. The 100% losses incurred by NAFED in the implementation of the Price Support Scheme is borne by the Government of India.

1.4.2 NAFED is also the Central nodal agency of the Government of India to make purchase of horticultural/agricultural commodities (not covered under Price Support System) under Market Intervention Scheme (MIS). Purchases under MIF are made after the Government of India, on the specific request of the concerned State Government approves the proposal as per guidelines of the scheme. The

losses in the implementation of the MIS are shared by the Government of India and the state Government concerned in ratio of 50:50 basis. (In case of the North Eastern Region States 75:25)

1.4.3 The business activities of NAFED may be broadly divided into two categories: (1) NAFED functions as a Central agency for carrying out Minimum Support Price operations under Price Support Scheme & implementing Market Intervention Scheme; and (2) NAFED undertakes commercial activities on its own without policy guidelines, approval or monetary assistance from the Central Government. The officers of NAFED (including office bearers and members of the Board) discharge their functions within the ambit of its bye law, policies laid down by its General Body and guidelines of its Board of Directors. In this respect also NAFED discharges its functions as an autonomous body.

1.4.4 There is no shareholding of the Central Government in NAFED nor the Central Government provides any grants for its commercial operations. There is no role of the Central Government in the business programmes of NAFED for marketing of various agricultural and non-agricultural products considerations and under Public Private Partnership business with its business associates.

1.4.5 While reviewing the working of NAFED, the autonomy and self-governance of NAFED in respect of its all other commercial activities should be kept in view. The limited role of the Central Government is providing budgetary support to NAFED to meet the losses incurred on Price Support operations undertaken on behalf of the Government. A copy each of bye-laws and Annual Report of NAFED for the year 2006-07 are at Annexure-I & II respectively. (sic)”

52. It seems that even according to the petitioner the main objective of NAFED is to organize, promote and develop marketing, processing and storage of agricultural, non-agricultural and non-traditional items, horticultural and forest produce,

undertake inter-state, import and export trade and to act and assist for technical advice in agricultural, non-agricultural, non-traditional production for the promotion and working of its members, partners, associates and co-operative marketing, processing and supply societies in India. Like the NCCF, the Bye-laws of NAFED also contain similar provisions as regards its membership.

53. The shareholding pattern in NAFED is as under:-

“The authorized share capital of the Federation is Rs. 20 Crores consisting of 4000 shares of the value of Rs. 25,000/- each to be subscribed by members categorized under bye-law 4(a)(i), 4(A)(ii), 4(a)(iii) and 4(a)(v) and, 40,000 shares of Rs. 2,500/- each to be subscribed by the members categorized under Bye law 4(A)(iv).

The entire share capital are held by the members mentioned above and no share capital is held by the Government of India.”

54. According to NAFED, they are neither financed nor administratively controlled or dominated by the Central Government or State Government. There is no shareholding of the Central Government, and Central Government has no role in the business programme of NAFED. Reliance was placed on the judgment of a Division Bench of this Court in *NAFED v. NPFCMFIEU* where it was held that NAFED is not an ‘instrumentality’ or ‘State’ and therefore not amenable to its jurisdiction under Article 226 of the Constitution.

55. The CIC observed that NAFED is a nodal agency of the Government of India for the purchase of agricultural and non-agricultural commodities (not covered under Price Support System) under Market Intervention Scheme and the losses incurred in the implementation of the schemes by NAFED are shared by the Government of India and the State Government concerned in the ratio of 50:50. It is contended by NAFED that “the limited role of the Central Government is providing budgetary support to NAFED to meet the losses incurred on Price Support operations undertaken on behalf of the Government”.

56. However, the above features assume significance in the context of the RTI Act. The Market Intervention Schemes affect a large number of farmers all over the country. It has bearing on the vast market of agricultural commodities. It affects the way the agricultural commodities market behaves. NAFED plays a central role in this context. The cumulative effect of these factors go to show that there is control over the activities of NAFED by the Central Government. Further, even if at a given point in time there is no tangible, visible control, the structure of an MSCS like NAFED is such that it is always amenable to government control. This is what is relevant for the purpose of the definition of ‘public authority’ under Section 2 (h) of the RTI Act.

## *Epilogue*

57. Waiting for little bits of information to percolate to them on urea prices, fertilizer stocks and their movements, the market position and availability of agricultural commodities are millions of farmers all over the country, some of whom may be members of the myriad co-operative societies that in an indirect manner participate in the functioning of multi-state co-operative societies like KRIBHCO, NCCF and NAFED. The information held by these entities is relevant not just to the farmers but millions of workers on land and traders in the agricultural commodities sector. The information held by these entities is also vital to the lives and livelihoods of millions of 'little' persons that look to the sky every morning to hope that they will be able to survive the day. Then there are those who are interested in how the various schemes that are to be implemented through the multi-state co-operative societies are in fact being implemented. Are the monies well spent? Are the schemes benefiting those whom it should? And so on. This information too is held by these three and other multi-state co-operative societies. That then is the significance of the CIC's ruling that KRIBHCO, NCCF and NAFED are 'public authorities' under the RTI Act, a decision with which this Court concurs.

58. Over three decades ago Justice Krishna Iyer speaking for the

Court in *Mohinder Singh Gill v. The Chief Election Commissioner (1978) 1 SCC 405* had occasion to talk of the “little man.” He recalled the following words of Winston Churchill about the power of the vote of that little man:

“At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”

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 cooperative 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.

***Conclusion***

60. For the aforementioned reasons, this Court finds no error having been committed by the CIC in its conclusion that KRIBHCO, NCCF and NAFED are 'public authorities' within the meaning of Section 2 (h) of the RTI Act.

61. Each of the writ petitions is accordingly dismissed with costs of Rs. 20,000/- which will be paid by each Petitioner to the respective Respondent within four weeks.

**S. MURALIDHAR, J.**

**MAY 14, 2010**  
'ashish'

**Equivalent Citation:** AIR2007Ker230, 2007(2)KLJ749

**IN THE HIGH COURT OF KERALA**

W.P. (C) Nos. 4668, 4933, 6667, 6714, 6774, 9547, 9548, 9592, 9594, 9595, 12244, 12730 and 13714 of 2007

Decided On: 04.07.2007

Appellants: **M.P. Varghese etc. etc.**  
**Vs.**  
Respondent: **Mahatma Gandhi University and Ors. etc.**

**Hon'bleJudges:**

S. Siri Jagan, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: K. Ramakumar and T. Ramprasad Unni, Advs. in W.P. (C) No. 4668/2007 and A.N. Rajan Babu, K. Sunitha Vinod and P. Gopalakrishnan (MVA), Advs.

For Respondents/Defendant: T.A. Shaji, S.C., Benchamin Paul, G.P. and V.A. Mohammed, Adv. for R1 in W.P. (C) No. 4668/2007 and M. Rajegopalan Nair and M. Ajay, S.Cs., State Information Commn. and Benchamin Paul, G.P.

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 2, 3 and 4; Kerala University Act, 1974 - Sections 5, 25 and 60; Constitution of India - Articles 12 and 19

**Cases Referred:**

Ajay Hasia v. Khalid Mujub AIR 1981 SC 487

**Disposition:**

Petition dismissed

**ORDER**

**S. Siri Jagan, J.**

1. The petitioners in these writ petitions are principals of private aided colleges in the State. The issue involved in all these writ petitions is common and therefore these writ petitions are disposed of by this common judgment.

2. The issue involved is as to whether aided private colleges would come within the purview of the Right to Information Act, 2005 ("the Act" for short).

3. The contention raised by the petitioners is that the aided private colleges are not authorities coming within the purview of the definition of "public authority" under Section 2(h) of the Act. They would submit that going by the scheme of the Act, the object behind the Act is to uphold the fundamental right to freedom of speech and expression. According to them, since a fundamental right can be enforced only against the Government, Governmental agencies or instrumentalities of the Government, the Act can be enforced only against such authorities. In short, they would contend that the term, "public authority" would take in only Government and those instrumentalities of State which would come within the definition of "State" under Article 12 of the Constitution of India.

4. The petitioners would further submit that although there is some control by and financial aid from the Government to these aided private colleges, the same would not amount to deep and pervasive control and substantial financing by the Government, without which these aided private colleges would not answer the definition of "public authority" under the Act. They also particularly refer to the preamble to the Act in their attempt to show that the Act is primarily intended for protection of the fundamental right to freedom of speech and expression and that the same is intended to be applicable to Governments and their instrumentalities alone who alone are accountable to the Government as stated in the preamble. Since those colleges are not accountable to the Government, they cannot be saddled with the liability to comply with the provisions of Act, is the submission made. In the above circumstances, the petitioners seek to quash the directions issued to the colleges to comply with the provisions of the Act by appointing Information Officers as stipulated in the Act and to declare that such colleges are not public authorities as defined in Section 2(h) of the Act, as also to restrain the respondents from enforcing the provisions of the Act against such colleges.

5. The Government, State Information Commission and the University who are the respondents in the writ petitions stoutly oppose the contentions and prayers of the petitioners. All of them would contend that aided private colleges in the State are substantially controlled and financed by the Government, and fully controlled by the Universities. Therefore, they come squarely within the definition of "public authority" under Section 2(h)(d) of the Act. According to them, the scope of the definition of "public authority" is much wider than that of "State" as defined in Article 12 of the Constitution of India. They also rely on the very same preamble to show that the applicability of the Act is not confined to Government and instrumentalities of Government alone, but all authorities which exercise public functions. They would submit that apart from providing of land and buildings and appointment of staff and teachers, all other facts of the management of the colleges are strictly controlled by the Government and the Universities and hence they are bodies owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government as provided in the definition of "public authority" under the Act.

6. The petitioners rely on the decision of *Ajay Hasia v. Khalid Mujub* reported in [MANU/SC/0498/1980](#), which is one of the earliest authorities on the question as to the interpretation of the definition of "State" under Article 12 of the Constitution of India and would submit that only those institutions which would satisfy the tests laid down by that decision for answering the definition of "State" would come within the purview of the Act.

7. I have considered the rival contentions in detail. I shall first deal with the contention of the parties with reference to the preamble to the Act, which reads thus:

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

WHEREAS the Constitution of India has established democratic Republic;

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

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

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:

(Emphasis supplied)

Of course, in one part, the same certainly refers to 'Government and their instrumentalities accountable to the governed', but on a reading of the preamble as a whole, the same itself would make it abundantly clear that the scope of the Act is much wider in its applicability. The Preamble starts with the statement that the Act is intended 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 Act is intended to harmonise the conflict between the right of the citizens to secure access to information and the necessity to preserve confidentiality of sensitive information. I am not satisfied that the preamble would not in any way have the effect of indicating that the purpose of the Act is to confine its applicability to Government and instrumentalities of Government.

8. In any event, the applicability of the Act is to be determined based on the provisions of the Statute also. Section 3 of the Act lays down that subject to the provisions of the Act, all citizens shall have right to information. Section 4 of the Act lays down obligations of public authorities in the matter of supply of information. The said section requires public authorities to comply with the provisions of the Act. The term, "public authority" is defined in Section 2(h) of the Act thus:

2. Definitions.- In this Act, unless the context otherwise requires,-

xxx    xxx    xxx    xxx  
xxx    xxx    xxx    xxx

(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;

So what has to be looked into in this case is as to whether these aided private colleges are bodies owned or controlled or substantially financed, directly or indirectly by funds provided by the appropriate Government.

9. The following facts are not in dispute. After the introduction of the direct payment system, teachers and staff of all aided private colleges are paid by the Government directly. These teachers and staff are also paid pension and other retirement benefits from the exchequer. The emoluments, pattern, duties and conditions of service of the teaching and non-teaching staff of these colleges are as prescribed by the University Acts, (See for example Sections 5(xiii) and 60 of the Kerala University Act, 1974). The qualifications for admission of students to the various courses of studies and to the examination and the conditions under which exemptions may be granted are also prescribed by the Universities, (for example Section 25(v) of the Kerala University Act, 1974). The fees collected from the students are remitted to the Government. The managements are paid maintenance and other grants for the upkeep of the buildings of the college. Selection for admission of students has to be in accordance with the University Act, Statutes and Ordinances. Selection and appointment of teachers although made by the managements, have to be made strictly in accordance with the University Act, Statutes and Ordinances. Such appointments are to be approved by the University and the Government. In short, every facet of the functions of these aided private colleges is strictly controlled and financed by the Government. For coming within the definition of 'public authority' either control or financing by Government need be satisfied. In this case, both the conditions are satisfied. In the above circumstances, I have no doubt in my mind that these aided private colleges are bodies controlled and substantially financed directly or indirectly by the funds provided by appropriate Government. Further, these colleges deal with information relating to educational activities pertaining to students who pay fees to the Government and teachers and staff whose salaries are paid by the Government. When these colleges are financed and controlled by the Government and Universities and they are privy to information relating to students and staff, those information's do not have the character of private or sensitive information and the public have a right of access to such information so as to ensure transparency in the conduct of the management of the colleges in which the public are vitally interested. Denial of such information would be against the very object of the statute. Essentially much of these information relate to

students, teachers and staff of these colleges, and not to any information to any private activities of the managements of the colleges. That being so, these colleges would certainly answer the definition of public authority" under Section 2(h) of the Act.

10. Since I have already held that the applicability of the Act is not confined to bodies answering the definition of "State" under Article 12 of the Constitution of India, I do not think it necessary to advert to the *Ajay Hasia'* case (supra) which lays down the tests to determine which authorities would fall within the ambit of "State" under Article 12 of the Constitution of India. Farther, when the Act makes the same applicable to 'public authorities' as defined therein there is no need to give a restricted meaning to the expression 'public authorities' strait-jacketing the same within the four corners of 'State' as defined in Article 12 of the Constitution, especially keeping in mind the object behind the Act. The definition of 'public authority' has a much wider meaning than that of 'State' under Article 12. Further, the definition of "State" under Article 12 is primarily in relation to enforcement of fundamental rights through Courts, whereas the Act is intended at achieving the object of providing an effective framework for effectuating the right to information recognised under Article 19 of the Constitution of India.

In the above circumstances, I do not find any merit in these writ petitions and accordingly the same are dismissed.

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

**W.P. (C) 2234/2010**

**MANISH KUMAR..... Petitioner  
in person**

**versus**

**PUBLIC INFORMATION OFFICER  
AND ANR. ....  
Respondents  
Through: Mr. Sanjeev Rajpal, Advocate**

**CORAM : JUSTICE S. MURALIDHAR**

**O R D E R  
07.04.2010**

**CM No. 4528 of 2010  
Exemption allowed subject to all just exceptions.  
The application is disposed of.  
W.P.(C) 2234/2010**

**1. The Petitioner who appears in person is aggrieved by an order dated 4th March 2010 passed by the Central Information Commission. It appears that on a complaint filed by the Petitioner regarding tax evasion by one Pawan Kumar, the Income Tax Department commenced investigations. On 12th May 2009, the Petitioner sought information about the progress in the Tax Evasion Proceedings (TEP). By a letter dated 11th June 2009 the Petitioner was informed by the Central Public Information Officer (CPIO) of the Circle 47 (1), Income Tax Department that the details of the return of income/wealth filed by Pawan Kumar were in the nature of personal information of the concerned tax payer and confidential under Section 138 of the Income Tax Act, 1961. Further, the information was held by the tax authority as personal information and, therefore, could not be disclosed under Section 8 (1) (j) of the RTI Act. It was also pointed out that the Petitioner had matrimonial disputes with his wife and the said**

Pawan Kumar was his father-in-law. The information was being sought by him in order to strengthen his position in the matrimonial dispute and, therefore, the disclosure would not be in public interest but was really concerning the private interest of the Petitioner.

2. After the Appellate Authority confirmed the order of the CPIO, the Petitioner approached the CIC. By the impugned decision of the CIC, the CPIO has been directed to disclose the broad outcome of the TEP to the applicant within four months time. It is, however, being clarified that the CPIO need not disclose the details of investigations.

3. Having heard the Petitioner, who appears in person, this Court is of the view that the impugned order does not call for any interference.

4. The petition is dismissed.

**S. MURALIDHAR, J.**

**APRIL 07, 2010**



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2009

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.NO.16070 of 2009

and

M.P.NO.1 OF 2009

M.Kaliaperumal

.. Petitioner

Vs.

1.The Central Information Commissioner,  
O/o the Central Information Commission,  
Block No.IV, 5th Floor,  
Old JNV Campus,  
New Delhi-110 067.

2.The Appellate Authority-cum-  
Director of Postal Services,  
O/o the Post Master General,  
Vijayawada-520 010.  
State of Andrapradesh.

3.The Public Information Officer-cum-  
Superintendent of Post Offices,  
Gudur Division,  
Gudur (NL)-524 101.  
State of Andhrapradesh

.. Respondents

This writ petition is preferred under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records from the third respondent's impugned order Proc.No.E/AC/Mis./DIgs/2008-09/Gudur, dated 16.05.2008 which was confirmed by the second respondent's impugned order Proc.No.PG/RTI Act 61/2008, Vijayawada-10, dated 2.7.2008 and

the first respondent's impugned order CIC/AD/A/09/00413, dated 01.05.2009, quash the same and to direct the respondents to furnish the information sought for as per petitioner's application dated 11.3.2008 under Section 6 of RTI Act.

For Petitioner : Mr.T.P.Kathiravan

For Respondents : Mr.G.Jehanathan, CGC

- - - -

#### ORDER

Heard both sides.

2.The petitioner has come forward to challenge the order of the third respondent, i.e. The Public Information Officer-cum-Superintendent of Post Offices, Gudur Division, State of Andhrapradesh, challenging the order, dated 16.5.2008 which was confirmed by the second respondent vide his order, dated 2.7.2008 and the first respondent's order dated 1.5.2009. After setting aside those orders the petitioner wanted the information sought in his application, dated 11.3.2008 under Section 6 of the Right To Information Act (for short RTI Act).

3.In his representation, dated 11.3.2008, the petitioner sought for an information relating to one K.Ramachandra Rao, a retired time-scale Sub-Post Master, who was drawing his pension from Gudur Head Post Office, Nellore District. In the residential address of the said person given in the official document, i.e. No.4/7/156, Nelcost Road, Gudur, Nellore District, State of Andhrapradesh, he was not available. The reason why the petitioner wanted to know his address was that the petitioner had secured a judgment and decree against him before the VII Assistant City Civil Court, Chennai in O.S.No.764 of 1997, dated 16.12.1998. The petitioner wanted to execute the decree. Therefore, he wanted his address. However, the petitioner was informed that the information sought for cannot be granted to him since the reasons adduced by him were not convincing and the representation related to private litigation cases between the petitioner and the retired pensioner Ramachandra Rao and it did not come under the purview of a Public Interest Litigations.

4.The petitioner filed an appeal against the said order to the second respondent. In the appeal, the petitioner stated that the said Ramachandra Rao had committed forgery and the Court had also awarded costs in his civil suit. Therefore, he was not able to take further civil and criminal action against him. The appellate authority dismissed the appeal in terms of Section 8(1) (j) r/w Section 11 of the Act. It was stated that there is no relationship with any public activity or interest and the

information sought for related to a third party. Such information cannot be furnished as no public interest was involved.

5. The petitioner filed a second appeal, dated 25.7.2008 before the first respondent. It was stated that the information is required for the legal prosecution of Government of India's pensioner. The said person is liable for criminal prosecution. Hence the information sought for was neither prohibited under Section 8(j) nor under 8(d) of the RTI Act.

6. The first respondent, by an order, dated 1.5.2009 in paragraph 5 held as follows:

"5.The Commission observed, based on the documents provided, that there is a private litigation case between the Appellant and Mr.Ramachandra Rao and that there is no relationship of the disclosure with any public activity or interest and is of the opinion that the address can be provided by the Court to the Applicant, if required and denies the information under Section 8(1)(g) of the RTI Act."

7.It is this order which is under challenge. Notice was issued to the respondents. The third respondent had also filed a counter affidavit, dated 25.9.2009, justifying the denial of information. In paragraphs 21 and 22 of the counter affidavit, it was averred as follows:

"21.I submit that the petitioner states that no prejudice will be caused to the said pensioner Sri.K.Ramachandra Rao if his residence address is furnished and he is liable for criminal prosecution for having committed forgery in production of promissory note. This department is no way connection with these things.

22.I submit that there is no violation of Article 14,16 & 19 of Constitution of India as alleged in this para since the information was not furnished as it relates to personal information and has not relationship to any public activity or interest under Section 8(1)J of RTI Act, 2005 (Annexure-R2)."

8.The short question that arises for consideration is whether the petitioner is entitled to get the information sought for by him?

9.The exemptions for refusing to grant information is listed under Section 8(1) of the RTI Act. It is relevant to extract the relevant exemptions found in Sections 8(1)(d),(e),(g),(h) and (j) of the RTI Act, which reads as follows:

8(1)(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;

....

(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;

....

(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."

10. It can be seen that the refusal by the respondents was not hit by any of the exemptions provided above. In this context, it is necessary to refer to certain legal precedents which may have a bearing on this issue.

11. This Court vide its judgment in V.V. Mineral Vs. The Director of Geology & mining, Chennai and others reported in 2007 (4) MLJ 394 held that the motive of a person seeking information is not relevant with reference to a third party documents. In paragraphs 16 and 17 of the said judgment, it was observed as follows:

"16. From the above it is clear that when RTI Act was enacted it does not give any full immunity for disclosure of a third party document. But, on the other hand, it gives the authorities under RTI Act to weigh the pros and cons of weighing the conflict of interest between private commercial interest and public interest in the disclosure of such information.

17. Therefore, no total immunity can be claimed by any so-called third party. Further, if it is not a matter covered by Section 8(1)(d) of the Act, the question of any denial by the Information Officer does not arise. Therefore, on appeal preferred by the petitioner, the first respondent held that it is not an issue covered by Section 8(1)(d) of the Act. If it is only covered by Section 8(1)(d) of the Act, the question of denial of information by the authority may arise."

12. Subsequently, this Court in A.C. Sekar Vs. Deputy Registrar of Co-operative Societies, Thiruvannamalai District and others reported in 2008 (2) MLJ 733 held that an information even relating to the attendance put in by a third party was considered to be relevant and such information cannot be denied on the ground that it is coming under the private domain. In paragraph 9 of the said judgment, it was observed as follows:

"9. Therefore, the attempt of the petitioner to thwart the direction issued by the first respondent cannot be countenanced by this Court. In fact, in these

days, when there is an increasing allegation of misfeasance and malfeasance committed in fair price shops are coming to the notice of the public, the RTI Act can be potent weapon to check such illegal and criminal activities of the staff employed in those shops. If ultimately by furnishing of such information, the affairs of the Society can be brought to the attention of the authorities, who are in charge of supply of essential commodities, it can stem the tide of further rot into the system."

13. Similarly, when the list of loan defaulters together with their photographs were sought to be published by the Nationalized Bank in Newspapers, the same was challenged by placing reliance upon the right to privacy and also by stating that the Banking Laws provided secrecy clause. V.Ramasubramanian, J. vide his judgment in K.J.Doraisamy Vs. The Assistant General Manager, State Bank of India, Erode Branch, Erode-638 001 reported in 2006 (5) CTC 829 rejected such claims. In doing so, he also placed reliance upon the provisions of the RTI Act and rejected the right of privacy claimed by the petitioner therein. In paragraph 31, he has observed as follows:

"31. Lastly, with the advent of the Right to Information Act, 2005, the Bank has become obliged to disclose information to the public. Section 3 of the said Act entitles all citizens to a right to information. Section 4(2) of the said Act provides as follows:

"(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 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."

Public Authority is defined under Section 2(h) of the Act to include "any body owned, controlled or substantially financed". Therefore, the respondent Bank is a Public Authority within the meaning of the Act and they owe a duty to disseminate information even suo moto.

Certain exemptions are listed out under Section 8 of the Right to Information Act, 2005, two of which are of significance and they read as follows:

-omitted-

Thus the aforesaid provision leaves no room for any doubt that the 'Right to Privacy' fades out in front of the 'Right to Information' and 'larger public interest'.

The said judgment was also confirmed by a division bench of this Court.

14. If it is seen in the context of the above legal precedents, the petitioner's demand for the residential address of a Central Government pensioner

would be denied solely on the ground that the petitioner is pursuing a private civil litigation and therefore, such an information could not be furnished.

15. In the present case, the motive for the demand for a Central Government pensioner's exact whereabouts in execution of a civil court's decree may not be irrelevant. Whether the pensioner really exists on the date of receipt of his pension or whether any fraudulent claims are being made from the Central Government can also be a relevant factor. In those cases, if any person wants to find out whether the pension amount paid by the Central Government is really going to an actual beneficiary or bogus claims are being made, such information cannot be denied.

16. In the present case, a third party though had admittedly given an address in which address he was not to be found. The court notices could not be served on him. Whereas, he is getting pension from a particular post office regularly. A question came up before the Supreme Court as to whether a pensioner goes out of control of the Government once he retired from service and becomes a pensioner. After referring to the relevant rule, the Supreme Court in *State of Maharashtra Vs. M.H. Mazumdar* reported in 1988 (2) SCC 52, in paragraph 5 observed as follows:

"5. The aforesaid two rules empower government to reduce or withdraw a pension. Rule 189 contemplates withholding or withdrawing of a pension or any part of it if the pensioner is found guilty of grave misconduct while he was in service or after the completion of his service. Grant of pension and its continuance to a government servant depend upon the good conduct of the government servant. Rendering satisfactory service maintaining good conduct is a necessary condition for the grant and continuance of pension. Rule 189 expressly confers power on the government to withhold or withdraw any part of the pension payable to a government servant for misconduct which he may have committed while in service. This rule further provides that before any order reducing or withdrawing any part of the pension is made by the competent authority the pensioner must be given opportunity of defence in accordance with the procedure specified in note I to Rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules. The State Government's power to reduce or withhold pension by taking proceedings against a government servant even after his retirement is expressly preserved by the aforesaid rules. The validity of the rules was not challenged either before the High Court or before this Court. In this view, the government has power to reduce the amount of pension payable to the respondent. In *M. Narasimhachar V. State of Mysore* (1960) 1 SCR 971 = AIR 1960 SC 247 and *State of Uttar Pradesh V. Brahm Datt Sharma* (1987) 2 SCC 179 similar rules authorising the government to withhold or reduce the pension granted to the government servant were interpreted and this Court held that merely because a government servant retired from service on attaining the age of superannuation he could not escape the liability for misconduct and negligence or financial irregularities which he may have committed during the period of his service

and the government was entitled to withhold or reduce the pension granted to a government servant."

17. Therefore, if it is seen in the above context, a pensioner does not cease to become totally out of control from the Government. On the contrary, his conduct and character are continuously monitored by the Central Government. In that context, the whereabouts of such pensioner is also very much relevant and it cannot be a private information. The authorities are bound to help in execution of Court orders.

18. Instances are many and news is coming from many parts of India that pension claims are made even in the name of dead persons. Therefore, such information cannot be shut out when a query is made regarding the real address of a Government pensioner.

19. In the light of the above, the impugned orders stands set aside. The writ petition will stand allowed. The respondents are directed to furnish the correct address of K. Ramachandra Rao to the petitioner within thirty days from the date of receipt of copy of this order. No costs. Consequently, the connected MP stands closed.

18.11.2009

Index : Yes

Internet : Yes

vvk

To

1. The Central Information Commissioner,  
O/o the Central Information Commission,  
Block No.IV, 5th Floor,  
Old JNV Campus,  
New Delhi-110 067.

2. The Appellate Authority-cum-  
Director of Postal Services,  
O/o the Post Master General,  
Vijayawada-520 010.  
State of Andrapradesh.

3. The Public Information Officer-cum-  
Superintendent of Post Offices,  
Gudur Division,  
Gudur (NL)-524 101.  
State of Andhrapradesh

K.CHANDRU, J.

vvk

**Equivalent Citation:** AIR2007Bom121, 2007(109)Bom.L.R.844, 2007(4)MhLj573

**IN THE HIGH COURT OF BOMBAY**

Writ Petition No. 1750 of 2007

Decided On: 23.03.2007

Appellants: **Mr. Surupsingh Hrya Naik**

**Vs.**

Respondent: **State of Maharashtra through Additional Secretary, General Administration Deptt. and Ors.**

**Hon'bleJudges:**

F.I. Rebello and R.M. Savant, JJ.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Y.S. Jahagirdar, Sr. Adv. and S.S. Kanetkar, Adv.

For Respondents/Defendant: A.A. Kumbakoni, Associate Adv. General and V.P. Malvankar, AGP for Respondent Nos. 1 to 4 and Party-in-Person for Respondent No. 5

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 2, 3, 4, 6, 6(2), 7, 7(1), 7(3), 8, 8(1), 9, 11, 18, 19(1) and 19(4); Central Act; Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002; Indian Medical Council Act, 1956; Goa Rights of Information Act, 1997-Section 5; Constitution of India - Article 21

**Case Note:**

**Right to Information — Sections 2(f), 2(j), 2(n), 3, 4, 6 to 8, 11, 18 and 19 of the Right to Information Act, 2005 — Indian Medical Council Act, 1956 — Regulations 2.2, 7, 14 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 — Petitioner convicted for contempt of Court sentenced one month imprisonment — Petitioner suspecting heart problems shifted to hospital for 21 days and remaining tenure served in jail — Medical reports of the Petitioner sought by Respondent 5, a private citizen from the hospital contending the same as important in the larger public interest — Information denied — Respondent No.5 filed appeal before Respondent No.3 — Dismissed — Second appeal preferred before Respondent No.2 — Appeal allowed with direction to furnish information — Direction not complied with — Petitioner contended disclosure of information would lead to invasion of privacy — Private information whether can be disclosed without the consent of whom it pertains to — Whether Petitioner can be allowed to claim privilege or confidentially in respect of the medical**



records maintained by a public authority, during the period of incarceration — Held, as per the act, information that cannot be denied to Parliament or a State Legislature should not be denied to any person — Test in such matter is always between the private rights of a citizen and of the third person to be informed — Object of the Act leans in favour of making available the records in the custody or control of the public authorities — Regulations cannot override the provisions of the Information Act — In case of inconsistency between the Regulations and the Information Act, the later would prevail and the information will have to be made available as per the Act — Act however, carves out exceptions, including the release of personal information, disclosure of which has no relationship to any public activity or interest — In such cases a discretion has been conferred on the concerned Public Information Officer to make available such information, which to be exercised according to the facts of each case — Records of a person sentenced or convicted and admitted in hospital during such period should be made available to the person seeking information provided such hospital is maintained by the State or Public Authority — Information can be denied only in rare and in exceptional cases with valid reasons recorded in writing — Petitioner needs to be given an opportunity by way of notice — Failure on the part of Respondent No.2 to give such opportunity to the Petitioner, impugned Order liable to be set aside — Matter remanded back to Respondent No. 2 and to dispose of the matter according to law

Ratio Decidendi:

*“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 can not override the provisions of the Right to Information Act.”*

## JUDGMENT

F.I. Rebello, J.

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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.

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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.

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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(i) 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 information Subject 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.

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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

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(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 Admiralty/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.* [MANU/SC/0333/1993](#).

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. Can such a person during the period of incarceration, claim privilege or confidentiality 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 public's 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 [MANU/SC/0149/1997](#). The issue arose in a matter of telephone tapping. The Supreme Court noting its judgment in Kharak Singh v. State of U.P. [MANU/SC/0085/1962](#), 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. [MANU/SC/0056/1995](#) 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 modern 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 [MANU/SC/0733/1998](#). 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)(i) 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)(i) applies in its entirety to Section 8(1)(a) to 8(1) or only to Section 8(1)(i). 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 21 of 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)(i) and in that context it would have to be so interpreted. So reading the proviso applies only to Section 8(1)(i) 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 Legislature 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. [MANU/SC/0038/1974](#) 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 possess.

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\(1\)\(i\)](#) 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.

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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\(1\)\(i\)](#) 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 [MANU/SC/0438/1996](#). 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.

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**Equivalent Citation:** [2007]136CompCas568(Mad), 2006(5)CTC829, (2006)4MLJ1877, [2007]78SCL196(Mad)

**IN THE HIGH COURT OF MADRAS**

Writ Petition No. 17761 of 2006 and M.P. Nos. 1 and 2 of 2006

Decided On: 22.11.2006

Appellants: **Mr. K.J. Doraisamy**

**Vs.**

Respondent: **The Assistant General Manager, State Bank of India, Erode Branch and The Chief Manager (PBD), State Bank of India, Erode Branch (0837)**

**Hon'ble Judges:**

V. Ramasubramanian, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Amalaraj and S. Penikilapatti, Adv.

For Respondents/Defendant: K. Sankaran, Adv.

**Subject: Constitution**

**Acts/Rules/Orders:**

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act - Sections 13, 13(2), 13(4) and 17; Recovery of Debts Due to Banks and Financial Institutions Act, 1993; Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Rules - Rule 8, 8(1) and 13(2); Official Secrets Act, 1923 - Rules 3 and 4; Income Tax Act; Prevention of Terrorism Act, 2002; Evidence Act; Indian Stamp Act - Section 73; Right to Information Act, 2005 - Sections 2, 3, 4(2), 4(2)(1) and 8; Security Interest (Enforcement) Rules, 2002 - Rule 8; Representation of People (Amendment) Ordinance 2002 - Rule 9; Representation of People (Amendment) Ordinance 2002 - Section 13(4); Indian Penal Code - Sections 499 and 500; Constitution of India - Articles 19, 19(2), 21, 104 and 105; Representation of People (Amendment) Ordinance 2002 - Section 13(4)

**Cases Referred:**

Jolly George Varghese v. The Bank of Cochin AIR 1980 SC 470; M.P. Sharma v. Satish Chandra AIR 1954 SC 300; Kharak Singh v. State of U.P. (AIR 1963 SC 1295); Govind v. State of M.P. and Ors. 1975 (2) SCC 148; Maneka Gandhi v. Union of India (1978) 1 SCC 248; Coralie Mullin v. The Administrator, Union Territory of Delhi AIR 1981 SC 746; R. Rajagopal v. State of Tamil Nadu 1994 (6) SCC 632; People's Union for Civil Liberties v. Union of India 2004 (9) SCC 580 : 2003 (4) SCC 399; People's Union for Civil Liberties v. Union of India (1997) 1 SCC 301; Mr. 'X' v. Hospital 'Z' (2003) 1 SCC 500; Mr. 'X' v. Hospital 'Z' (1998) 8 SCC 296; State of U.P. v. Raj Narayan 1975 (4) SCC 428; S.P. Gupta v. Union of India 1981 (Supp) SCC 87; Union of India v. Association for Democratic Reforms (2002) 5 SCC 294; Sharda v.

Dharmpal (2003) 4 SCC 493; Shankarlal Agarwalla v. State Bank of India AIR 1987 Calcutta 29; Tournier v. National Provincial and Union Bank of England (1924) 1 KB 461 at 472; Weld-Blundell v. Stephens; Kattabomman Transport Corporation Ltd.v. State Bank of Travancore AIR 1992 Kerala 351; District Registrar v. Canara Bank (2005) 1 SCC 496

**Disposition:**

Petition dismissed

**Case Note:**

**Constitution — Right to Privacy — Article 21 of the Constitution — Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act — Petitioner committed default in payment of installment of loan borrowed from bank — Bank issued a notice under Section 13(2) of the Act — Subsequently, Bank also issued notice, threatening to recover loan by enforcing security and bringing it to sale by publishing details of properties as well as photographs of borrower in Newspapers — Hence, present petition was filed for seeking Writ of Mandamus for directing bank to forbear from publishing photographs in any Newspapers or Magazines — Petitioner contended same as violative of Article 21 — Held, individual right to privacy is not absolute and also under certain circumstances, duty to maintain secrecy superceded by larger public interest as well as by the Banks own interest — Further, writ of Mandamus could be issued only to compel performance of a statutory or public duty and not for preventing performance of same — Accordingly, there was no violation of any right or legal provision in threat to publish photographs of borrower for non repayment of loan — Consequently, petition dismissed**

**Ratio Decidendi:**

***“Right to privacy’ is not absolute and it fades out in front of ‘Right to Information’ and ‘larger public interest’.”***

**ORDER**

**V. Ramasubramanian, J.**

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1. The question as to whether a Bank/Financial Institution, has the right to publish the photograph of the defaulting borrower in Newspapers, and if such publication offends Article 21 of the Constitution, falls for consideration in this writ petition.

2. The petitioner borrowed a term loan of Rs. 6 lakhs from the State Bank of India on 15.5.2001. On the petitioner committing default in payment of the monthly instalments, the Bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, on 6.2.2006. Subsequently, the Bank also issued a notice dated 22.5.2006, threatening to recover the loan by enforcing the security and bringing it to sale by publishing the details of the properties as well as the photographs of the borrower and the surety in Tamil and English Newspapers.

3. Contending that the publication of his photograph and the photograph of the surety would be violative of Article 21 of the Constitution, the petitioner has filed the above writ petition, seeking a Writ of Mandamus, directing the respondents to forbear from publishing the photographs in any Newspapers or Magazines. The Writ petition was admitted on 15.6.2006 and an interim direction was issued to the respondents not to publish the photographs in any Newspapers or Magazines. The Bank had come up with a petition to vacate the said interim direction and by consent of parties, the writ petition itself was taken for final disposal.

4. I have heard Mr. Amalaraj S. Penikilapatti, learned Counsel appearing for the petitioner and Mr. K. Sankaran, learned Counsel appearing for the respondents.

5. In the background of an increasing trend among borrowers to avail loans and commit default and later bargain with the Banks and Financial Institutions for the waiver of a portion of the interest and a portion of the principal if possible, the Banks and Financial Institutions were compelled to devise innovative methods to secure their interest and also to recover their dues. Some statistics furnished in the Statement of Objects and Reasons to the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, were mind boggling as seen from the following extract:

Whereas on 30th September, 1990 more than 15 lakhs of cases filed by the Public Sector Banks and about 304 cases filed by the Financial Institutions were pending in various Courts, recovery of debts involved more than Rs. 5,622/- crores in dues of Public Sector Banks and about Rs. 391/- crores of dues of the Financial Institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country.

6. Even after the enactment of Act No. 51 of 1993 and the amendment to the same by Amending Act 1 of 2000, it was felt that the system could not keep pace with change in time. Therefore, with a view to regulate the securitisation and reconstruction of financial assets and enforcement of security interest, the Parliament enacted the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In the Statement of Objects and Reasons to the said Act, the Law Makers took note of the fact that the Banking and Financial Sector in our country do not have a level playing field as compared to other participants in the Financial Markets in the World and that our existing legal frame work relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. Therefore, obviously with a view to keep pace with the changing commercial practices and financial sector reforms, the Banks appear to be adopting new techniques, one of which is the issue on hand viz., a threat to publish photograph of the defaulters in Newspapers.

7. The right of the Bank to adopt any lawful method for the recovery of its dues, including the publication of the photograph of the defaulter has come directly into conflict with the right to privacy and dignity of the borrower, which has now come to be recognised, to some extent, as part of the right to life guaranteed under Article 21 of the Constitution. It is this tension between the right of the Bank and the right to privacy, that is sought to be resolved in this writ petition.

8. The Universal Declaration of Human Rights, 1948 asserted in its preamble that "recognition of the human dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the World". Article 17 of the International Covenant on Civil and Political Rights, 1966, ratified by India reads as follows:

(1) No one shall be subject to arbitrary or unlawful interference with his privacy, family, human or correspondence, nor to lawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

9. Though International Human Rights norms or International Conventions cannot be effectuated by Courts, the principles contained therein have been imported into the Fundamental Rights guaranteed under the Constitution, whenever they fell for interpretation. Drawing inspiration from Article-11 of International Covenant on Civil and Political Rights, 1966, the Supreme Court held in *Jolly George Varghese v. The Bank of Cochin* [MANU/SC/0014/1980](#) that "the march of civilisation has been a story of progressive subordination of property rights to personal freedom". Though in the earliest decision in *M.P. Sharma v. Satish Chandra* [MANU/SC/0018/1954](#), the Supreme Court held Page 3282 that there is no justification to import the right to privacy into our Constitution by a process of strained construction, analogous to American Fourth Amendment, it was for the first time in the year 1963 that the right to privacy was recognised as part of the right to life under Article [21](#) of the Constitution, in the minority view expressed by Justice Subba Rao in *Kharak Singh v. State of U.P.* [MANU/SC/0085/1962](#). Though the majority view was otherwise, Justice Subba Rao held that the concept of liberty in Article [21](#) was comprehensive enough to include privacy and that a person's house, where he lives with his family is his "castle" and that nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy. The following extract from the minority view expressed by Justice Subba Rao and Justice Shah in the said judgment, laid the foundation for the development of the Law relating to the right to privacy:

The Scientific methods used to condition a man's mind are in a real sense physical restraints, for they engender physical fear channelling one sections through anticipated and expected grooves. So also the creation of conditions which necessarily engender inhibitions and fear complexes can be described as physical restraints. Further, the right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life.

10. The right to privacy came into focus in a much more pronounced way in *Govind v. State of M.P. and Ors.* [MANU/SC/0119/1975](#). Recognising that the right to privacy is not explicit in our Constitution, the Supreme Court held in paragraph-23 of the said judgment as follows:

23. Individual autonomy, perhaps the central concern of any system of limited Government, is protected in part under our Constitution by explicit Constitutional guarantees. "In the application of the Constitution our contemplation cannot only be of what has been but what may be". Time works changes and brings into existence new conditions. Subtler and far-reaching means of invading privacy will make it possible to be heard in the street what is whispered in the closet. Yet, too broad a definition of privacy raises serious question about the propriety of judicial reliance on a right that is not explicit in the Constitution. Of course, 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.

11. After holding that the right to privacy must encompass and protect the personal intimacies of the home, family, marriage, mother hood, procreation and child rearing, the Supreme Court went on to hold in the same judgment that a claimed right must be a Fundamental Right implicit



in the concept of ordered liberty. In paragraphs 25 and 27, the Supreme Court expounded the theory further, on the following lines:

25. Rights and freedoms of citizens are set forth in the Constitution in order to guarantee that the individual, his personality and those things Page 3283 stamped with his personality shall be free from official interference except where a reasonable basis for intrusion exists. "Liberty against Government", a phrase coined by Professor Corwin expresses this idea forcefully. In this sense, many of the Fundamental Rights of Citizens can be described as contributing to the right to privacy.

27. There are two possible theories for protecting privacy of home. The first is that activities in the home harms 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 themselves, an image that may reflect the values of their peers rather than the realities of their natures.

12. Highlighting the importance of the right guaranteed under Article [21](#), Justice V.R. Krishna lyer, in his separate but concurring judgment in *Maneka Gandhi v. Union of India* [MANU/SC/0133/1978](#) held as follows:

Life is a terrestrial opportunity for unfolding personality, rising of higher states, moving to fresh woods and reaching out to reality which makes our earthly journey a true fulfillment - not a tale told by an idiot full of sound and fury signifying nothing, but a fine frenzy rolling between heaven and earth. The spirit of man is at the root of Article [21](#). Absent liberty, other freedoms are frozen.

13. The right to life was held to be inclusive of the right to live with human dignity, in *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* AIR 1981 SC 746. In paragraph-6 of the said judgment, the Supreme Court held that "the right to life enshrined in Article [21](#) cannot be restricted to mere animal existence and that it means something much more than just physical survival." In paragraph-7, the Supreme Court went on to hold as follows:

7. But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.

Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair Page 3284 and just procedure established by law which stands the test of other fundamental rights.



14. R. Rajagopal v. State of Tamil Nadu [MANU/SC/0056/1995](#) is a turning point in the history of the development of the law of privacy in India. The question concerning the freedom of the press vis-a-vis the right to privacy was examined by the Supreme Court at length in the said case. Dealing with the origin of the said right, the Supreme Court held in paragraph-9 as follows:

9. The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which a new cause of action for damages resulting from unlawful invasion of privacy was recognised. This right has two aspects which are but two faces of the same coin - (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion. The first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising - or non-advertising - purposes or for that matter, his life story is written - whether laudatory or otherwise - and published without his consent as explained hereinafter. In recent times, however, this right has acquired a constitutional status. We shall proceed to explain how? Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article [21](#).

15. After an elaborate discussion of the American, Australian and English Case Law, the Supreme Court summarised the principles flowing from the discussion, in paragraph-26 as follows:

26. We may now summarise the broad principles flowing from the above discussion:

(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 Page 3285 and media among others. We are, however, of the opinion that in the interests 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 was

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 Parliament and legislatures protected as their privileges are by Articles [105](#) and [104](#) respectively of the Constitution of India, represent exceptions to this rule.

(4) So far as the Government, local authority and other organs and institutions exercising governmental power are concerned, they cannot maintain a suit for damages for defaming them.

(5) Rules 3 and 4 do not, however, mean that Official Secrets Act, 1923, or any similar enactment or provision having the force of law does not bind the press or media.

(6) There is no law empowering the State or its officials to prohibit, or to impose a prior restraint upon the press/media.

16. In *People's Union for Civil Liberties v. Union of India* [MANU/SC/0149/1997](#), relating to the tapping of telephones, the Supreme Court categorically affirmed in paragraph-17 of its judgment that the right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article [21](#) of the Constitution and that the said right cannot be curtailed "except according to procedure established by law". At the same time, the Apex Court also added a note of caution in paragraph-18 as follows:

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.

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17. *Mr. 'X' v. Hospital 'Z'* (1998) 8 SCC 296 arose out of a claim for damages made by a person against the hospital which disclosed the fact that the patient tested positive for HIV (+) infection, resulting in his proposed marriage being called off and the patient being ostracised by the Community. Dealing with the contention that the right to privacy was invaded, the Supreme Court held in paragraphs 27 and 28 as follows:

27. Right of privacy may, apart from contract, also arise out of a particular specific relationship which may be commercial, matrimonial, or even political. As already discussed above, doctor-patient relationship, though basically commercial, is, professionally, a matter of confidence and, therefore, doctors are morally and ethically bound to maintain confidentiality. In such a situation, the public disclosure of even true private facts may amount to an invasion of the right of privacy which may sometimes lead to the clash of one person's "right to be let alone" with another person's "right to be informed.

28. Disclosure of even true private facts has the tendency to disturb a person's 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 the right to life envisaged by Article [21](#).

Though certain observations made in the said judgment, were later held to be uncalled for by a Three Member Bench of the Supreme Court in Mr. "X" v. Hospital "Z" [MANU/SC/1121/2002](#), the law laid down on the right to privacy was not upset.

18. Thus, by judicial pronouncements, the right to privacy and dignity were held to be part of the Fundamental Right to life and personal liberty guaranteed under Article [21](#) of the Constitution right from the decision of the Supreme Court in Kharak Singh's case. However, all the decisions referred to above did not put a stamp on such right as an absolute or in violable right.

19. In Govind v. State of M.P. [MANU/SC/0119/1975](#), the Supreme Court held as follows:

There can be no doubt that privacy - dignity claims deserve to be examined with care and to be denied only when an important counter vailing interest is shown to be superior.

In paragraph-28 of the same judgment, the Supreme Court held as follows:

28. 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.

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20. Even in R. Rajagopal v. State of Tamil Nadu [MANU/SC/0056/1995](#), cited supra, the Supreme Court held that the right to privacy has to go through a case-by-case development and that the concepts dealt with herein are still in the process of evolution. In paragraph-28 of the said judgment, the Supreme Court made it clear that the impact of Article [19\(1\)\(a\)](#) read with Clause (2) thereof on Sections [499](#) and [500](#) of the Indian Penal Code are not gone into by the Court and that they may have to await a proper case.

21. In Mr. "X" v. Hospital 'Z' 1998 (8) SCC 296 cited supra, the Supreme Court again made it clear that the right to privacy is not an absolute right, in the following words:

The right however is not absolute and may be lawfully restricted for the prevention of crime, disorder or protection of health or more or less or protection of rights and freedom of others.

22. In People's Union for Civil Liberties v. Union of India [MANU/SC/0234/2003](#) arising out of a challenge to the Constitutional validity of the Representation of People (Amendment) Ordinance 2002, dealing with the requirement to furnish information by a candidate contesting an Election, the Supreme Court held that "by declaration of a fact, which is a matter of public record, that a candidate was involved in various criminal cases, there is no question of infringement of any right of privacy". Even with regard to the declaration of assets by candidates, the Supreme Court held that a person having assets or income is normally required to disclose the same under the Income Tax Act or such similar Fiscal Legislation. The Supreme Court in the said case placed primacy on "the right to information" first adverted to in State of U.P. v. Raj Narayan [MANU/SC/0032/1975](#) and followed in S.P. Gupta v. Union of India 1981 (Supp) SCC 87 and amplified in Union of India v. Association for Democratic Reforms [MANU/SC/0394/2002](#).

23. Dealing with the right to privacy and personal liberty, in the context of proceedings for divorce in which one of the parties to the litigation was alleged to be of unsound mind and was required to undergo a medical examination, the Supreme Court held in *Sharda v. Dharmpal* [MANU/SC/0260/2003](#) as follows:

The right to privacy in terms of Article [21](#) of the Constitution is not an absolute right. If there were a conflict between the Fundamental Rights of two parties that right which advances public morality would prevail.

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24. Again in *People's Union for Civil Liberties v. Union of India* [MANU/SC/1036/2003](#), arising under The Prevention of Terrorism Act, 2002, requiring any member of the public to disclose information to the Police, the Supreme Court held that the right to privacy is not an absolute right and it is subservient to that of security of State.

25. Once it is seen that the right to privacy is not an absolute or inviolable right, then the next question that falls for consideration is as to whether the Bank, with whom the customer has a fiduciary relationship, is entitled to disclose or publicise the information in their possession, resulting in a breach of the duty of secrecy and confidentiality. Dealing with the duty of the Bank to maintain secrecy qua its customer, it was held in *Shankarlal Agarwalla v. State Bank of India* AIR 1987 Calcutta 29, as follows:

10. The Banker is under an obligation to secrecy. According to Lord Halsbury's Laws of England 4th Edn. Vol.3 p.72 Article [97](#).

It is an implied term of the contract between a banker and his customer that the banker will not divulge to third person without the express or implied consent of the customer either the state of the customer's account or any of his transactions with the bank or any informations relating to the customer acquired through the keeping of his account unless the banker is compelled to do so by order of a Court or the circumstances give rise to a public duty of disclosure or protection of the banker's own interest requires it.

11. In the case reported in (1924) 1 KB 461 at 472 *Tournier v. National Provincial and Union Bank of England* it was held that under four heads the bank could disclose such informations namely - (a) where the disclosure was under compulsion by law, (b) where there was a duty to the public to disclosure, (c) where the interest of the bank require disclosure and (d) where the disclosure was made by express or implied consent of the customer. It was held:

An instance of the first class is the duty to obey an order under the Banker's Books Evidence Act. Many instances of the second class might be given. They may be summed up in the language of Lord Finlay in *Weld-Blundell v. Stephens* where he speaks of cases where a higher duty than the private duty is involved, as where "danger to the State or public duty may supersede the duty of the agent to his principal". A simple instance of the third class is where a bank issues a writ claiming payment of an overdraft stating on the face of the writ the amount of the overdraft. The familiar instance of the last class is where the customer authorises a reference to his banker.

26. Thus even the English law recognized that the 'duty of the Bank to disclose information to the public' or the 'interest of the Bank requiring disclosure' supercedes the duty of secrecy.

27. The extent of liability of a Bank to maintain secrecy towards its customers, fell for consideration in *Kattabomman Transport Corporation Ltd. v. State Bank of Travancore* AIR 1992 Kerala 351, which arose out of the dismissal of an Page 3289 employee of a public sector undertaking, set aside by the High court. The High court directed reinstatement with back wages subject to the condition that the employee was not gainfully employed anywhere. The employer came to know that the employee was actually employed in a foreign country and was making remittances to the Bank. Therefore the employer requested the Bank to provide details of the remittances made by the employee but the same was resisted by the Bank on the ground that they were under an obligation to maintain secrecy and fidelity. Analysing the law on the duty of secrecy and fidelity for the Bank, the Division Bench of the Kerala High Court held in paragraphs 14, 15 and 17 as follows:

14. In J. Milnes Holden's "The Law and Practice of Banking", Volume 1 (at page 67), adverting to duty to the public to disclose the author refers to the abovesaid cases. The author refers to the observations of Bankes, L.J. in *Tournier's case*, (1924) 1 KB 461, wherein Atkin, L.J., considered that the right to disclose exists "to the extent to which it is reasonably necessary... for protecting the bank, or persons interested, or the public, against fraud or crime". The author also refers to the report of the Committee on Privacy (the 'Younger Committee') (Cmnd 5012 (1972)).

15. In Tannan's "Banking Law and Practice in India", 18th Edition, 1989 (at page 175) the banker's obligation to secrecy is considered and reference is made to the decision in *Tournier case*, (1924) 1 KB 461. The author states that there are limitations in the rule to the extent mentioned in *Tournier's case*.

17. From the aforesaid principles, it is clear that the banking practices and usages customary among bankers in India are same as in England. There can be gathered from Paget's Law of Banking, J. Milnes Holden's "The Law and Practice of Banking" and Tannan's "Banking Law and Practice in India". The principles laid down therein have therefore been accepted in India too.

28. In *District Registrar v. Canara Bank* [MANU/SC/0935/2004](#) the Supreme Court was concerned with a State Amendment brought forth by the State of Andhra Pradesh, to Section 73 of the Indian Stamp Act, by which, a person authorised by the Collector was empowered to search and seize any registers, books, records, papers, documents or other proceedings in the custody of a Bank for the purpose of discovering any fraud or omission in relation to the stamp duty payable on a document. The Banks themselves challenged the vires of the said amendment on the ground that it offended both the right to privacy of their customers, as well as the duty of the Banks to maintain secrecy and confidentiality. Tracing the origin of the right to privacy, the Supreme court held in paragraph 18 of its judgment as follows:

18. The right to privacy and the power of the State to "search and seize" have been the subject of debate in almost every democratic country where fundamental freedoms are guaranteed. History takes us back to *Semayne's case* decided in 1603 where it was laid down that "Every man's house is his castle." One of the most forceful expressions of the above maximum was that of William Pitt in the British Parliament in Page 3290 1763. He said: "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail 'its roof may shake' the wind may blow through it 'the storm may enter, the rain may enter' but the King of England cannot enter - all his force dare not cross the threshold of the ruined tenement.

Listing out the circumstances under which such right could be curtailed, the Supreme court held in para 34 as follows:

34. Intrusion into privacy may be by - (1) legislative provisions, (2) administrative/executive orders, and (3) judicial orders. The legislative intrusions must be tested on the touchstone of reasonableness as guaranteed by the Constitution and for that purpose the Court can go into the proportionality of the intrusion vis-a-vis the purpose sought to be achieved. (2) So far as administrative or executive action is concerned, it has again to be reasonable having regard to the facts and circumstances of the case. (3) As to judicial warrants, the Court must have sufficient reason to believe that the search or seizure is warranted and it must keep in mind the extent of search or seizure necessary for the protection of the particular State interest. In addition, as stated earlier, common-law-recognised rare exceptions such as where warrantless searches could be conducted but these must be in good faith, intended to preserve evidence or intended to prevent sudden danger to person or property.

29. The above discussion makes it clear that from the point of view of the individual, his right to privacy is not absolute and from the point of view of the Bank, the duty to maintain secrecy is superceded by a larger public interest as well as by the Bank's own interest under certain circumstances.

30. Coming to the authority of law, by which the Bank may be allowed to publish the photograph of the defaulter, it is seen that Section 13(4) of the Sarfaesi Act authorizes the Bank to take possession of the secured asset and sell it. The procedure for such sale is prescribed under Rule 8 of the Security Interest (Enforcement) Rules, 2002. Sub-rule (1) of Rule 8 reads as under:

8. Sale of immovable secured assets.--(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

Appendix IV to the said Rules which contains the Form in which the Possession Notice is to be issued by the Bank, steers clear any doubt that one may have. Para 2 and 3 of the Format of Notice under Appendix IV reads as follows:

The borrower having failed to repay the amount, notice is hereby given to the borrower and the public in general that the undersigned has taken possession of the property described herein below in exercise of powers conferred on him/her under Section 13(4) of the said Ordinance read with rule 9 of the said Rules on this... day... of the year....

The borrower in particular and the public in general is hereby cautioned Page 3291 not to deal with the property and any dealings with the property will be subject to the charge of the... (name of the Institution) for an amount Rs... and interest thereon.

Thus the Statutory rules themselves provide for a notice not merely to the defaulting borrower, but also to the public in general. Therefore the threat held out by the Bank to publish the photograph of the borrower and the surety, is also authorized by the statutory rules.



31. Lastly, with the advent of the Right to Information Act, 2005, the Bank has become obliged to disclose information to the public. Section 3 of the said Act entitles all citizens to a right to information. Section 4(2) of the said Act provides as follows:

(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 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.

Public Authority is defined under Section 2(h) of the Act to include 'any body owned, controlled or substantially financed'. Therefore, the respondent Bank is a Public Authority within the meaning of the Act and they owe a duty to disseminate information even suo moto.

Certain exemptions are listed out under Section 8 of the Right to Information Act, 2005, two of which are of significance and they 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---

(a) ...

(b) ...

(c) ...

(d) ...

(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) ...

(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 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.

Thus the aforesaid provision leaves no room for any doubt that the 'Right to Privacy' fades out in front of the 'Right to Information' and 'larger public interest'.

32. If borrowers could find newer and newer methods to avoid repayment of the loans, the Banks are also entitled to invent novel methods to recover their dues. Moreover, the petitioner is not entitled to seek the relief of a writ of mandamus for the following reasons also:

(a) It is a fundamental principle of the Law of Writs that a Writ of Mandamus can be issued only to compel the performance of a statutory or public duty. But the prayer made in the present writ petition is to prevent the Bank from the performance of its public duty.

(b) What is challenged in the present writ petition, is a notice under Section [13](#) of the Sarfaesi Act. The petitioner has a statutory remedy of appeal under Section [17](#) of the Act, without exhausting which, he is not entitled to invoke the writ jurisdiction of this Court.

Hence I find no violation of any right or legal provision in the threat held out by the respondent Bank to publish the photographs of the borrower and the surety for the non repayment of the loan. Consequently the writ petition fails and is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.



**IN THE HIGH COURT OF DELHI**

W.P.(C) 3845/2007

Decided On: 28.04.2009

Appellants: **Mujibur Rehman**  
**Vs.**  
Respondent: **Central Information Commission**

**Hon'ble Judges:**

S. Ravindra Bhat, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Girija Krishan Verma, Adv.

For Respondents/Defendant: Yogmaya Agnihotri, Adv. for Resp. 3 and 6

**Subject: Service**

**Acts/Rules/Orders:**

[Right to Information](#) Act, 2005 - Sections 4(1), 5(4), 5(5), 7(1), 19(3), 19(8), 20, 20(1) and 20(2); CDA Rules, 1978; Constitution of India - Article 226

**Cases Referred:**

Surya Dev Rai v. Ram Chander Rai 2003 (6) SCC 675; Hari Vishnu Kamath v. Ahmad Ishaque 1955-IS 1104 : AIR 1955 SC 233

**Disposition:**

Petition allowed

**JUDGMENT**

**S. Ravindra Bhat, J.**

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 under Section 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 Section 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.

4. 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 under Section 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 Section 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 Section 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 Section 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 under Section 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 fide 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 [MANU/SC/0095/1954](#), 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 [MANU/SC/0559/2003](#), 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 [MANU/SC/0095/1954](#) 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.

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**REPORTABLE**

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

+ **WRIT PETITION (CIVIL) NO. 4748 OF 2007**

% **Reserved on : 26<sup>th</sup> November, 2009.**  
**Date of Decision 15<sup>th</sup> April, 2010.**

NATIONAL STOCK EXCHANGE OF INDIA LIMITED .... Petitioner  
Through Mr. Ashok Desai, Sr. Advocate with Mr.  
Sanjay Bhatt, Advocate.

**VERSUS**

CENTRAL INFORMATION COMMISSION &  
OTHERS.....Respondents.

Through Mr. B.V. Niren, CGSC & Ms. Akriti  
Gandotra, Advocate for UOI.

Mr. K. Lall, respondent No. 2 in person.

Mr. Rajan Narain and Mr. Rajat Bhardwaj,  
Advocates for CERS in CM No. 3359/2008.

**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, National Stock Exchange of India Limited, claims that they are not a 'public authority' as defined by Section 2(h) of the Right to Information Act, 2005 (hereinafter referred to as the Act, for short). The aforesaid definition clause is significant as a citizen is entitled to enforce his right to ask for information only from

a 'public authority' as defined in Section 2(h) and not from bodies, which are not public authorities.

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

“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 organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;”

3. Section 2(h) of the Act consists of two parts. The first part states that public authority means any authority or body or institution of self-government established or constituted by or under the Constitution, by any enactment made by the Parliament or the State Legislature or by a notification issued or order made by the appropriate Government. The second part starts from the word 'includes' and states the term 'public authority' includes bodies which are owned, controlled or substantially financed directly or indirectly by funds provided by the appropriate Government and non-Government organizations substantially financed directly or indirectly by the funds provided by the appropriate Government. Interpreting



the second part of the definition and whether conditions (a) to (d) apply, S. Ravindra Bhat, J. in his judgment dated 7<sup>th</sup> January, 2010 in W.P. (C) No. 876/2007 titled ***Indian Olympic Association versus Veeresh Malik and Others*** and other cases has observed as under:-

**“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/Nongovernmental\\_organization](http://en.wikipedia.org/wiki/Nongovernmental_organization)..accessed on 28-12-2009 @19:52 hrs)

*“...Non-Government organization (NGO) is a term that has become widely accepted as referring to a legally constituted, non-Government 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-Government status and excludes government representatives from membership in the organization. Unlike the term intergovernmental organization, "non-Government 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.”

4. The term “substantially financed” has also been interpreted in the same judgment and it has been held that majority test is not appropriate to decide whether or not a non-Government organization is substantially financed directly or indirectly by the appropriate Government. It has been explained that financing in percentage terms in relation to the total budget of a body is not important. While deciding the question whether an organization has been infused or has taken benefit of substantial financing, directly or indirectly from the Government in paragraphs 58 to 60 of the said judgment, learned

single Judge had examined the scope and ambit of the second part and its relationship with the first part and observed in paragraph 60 as under:-

“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 predominantly 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, .....

(emphasis supplied)

5. I have referred the second part of Section 2(h) of the Act and the aforesaid judgment, as these are relevant to the present case and give an indication of the legislative intent while defining the term ‘public authority’. It is obvious that the term ‘public authority’ has been given a broad and wide meaning not only to include bodies which are owned, controlled or substantially financed directly or indirectly by the Government but even non-Government organizations, which are substantially financed directly or indirectly

by the Government. The idea, purpose and objective behind the beneficial legislation is to make information available to citizens in respect of organizations, which take benefit and advantage by utilizing substantial public funds. This ensures that the citizens can ask for and get information and know on how public funds are being used and there is accountability, transparency and openness. Even private organizations, which are enjoying benefit of substantial funding directly or indirectly from the Governments, fall within the definition of 'public authorities' under the Act.

6. The first part of Section 2(h) of the Act states that public authorities means authorities, institutions of self-government or bodies which have been established or constituted in the manner specified in (a) to (d). Each of the said words has been interpreted below. Effect of conditions (a) to (d) mentioned in the first part has been examined.

7. Webster's Comprehensive Dictionary (International Edition) defines the term 'authority' as "the person or persons in whom government or command is vested; often in the plural". Meaning to the word "authority" in Webster's Third New International Dictionary is "a public administrative agency or corporation having quasi-governmental powers and authorized to administer a revenue-producing public enterprise". Meaning of 'authority' given in The Law Lexicon P. Ramanatha Aiyar, Second Edition-1997 is "a person or persons, or a body, exercising power of command; generally in plural: as the civil and military authorities". In ***Rajasthan State Electricity Board v. Mohan Lal***,(1967) 3 SCR 377, 385 the Supreme Court referred to the dictionary mean of the term 'authority' and observed;

“5. The meaning of the word “authority” given in *Webster’s Third New International Dictionary*, which can be applicable, is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue-producing public enterprise. This dictionary meaning of the word “authority” is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi governmental functions. The expression “other authorities” is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words “other authorities” are used in Article 12 of the Constitution.

6. In *Smt Ujjam Bai v. State of Uttar Pradesh*, Ayyangar, J., interpreting the words “other authorities” in Article 12, held: “Again, Article 12 winds up the list of authorities falling within the definition by referring to “other authorities” within the territory of India which cannot obviously be read as ejusdem generis with either the Government and the Legislatures or local authorities. The words are of wide amplitude and capable of comprehending every authority created under a statute and functioning within the territory of India or under the control of the Government of India. There is no characterisation of the nature of the ‘authority’ in this residuary clause and consequently it must include every type of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in order to implement those laws.” In *K.S. Ramamurthi Reddiar v. Chief Commissioner, Pondicherry*, this Court, dealing with Article 12, held: “Further, all local or other authorities within the territory of India include all authorities within the territory of India whether under the control of the Government of India or the Governments of various States and even autonomous authorities which may not be under the control of the Government at all.” These decisions of the Court support our view that the expression “other authorities” in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. Under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned in Article 19(1)(g). In Part IV, the State has been given the same meaning as in Article 12 and one of the Directive Principles laid down in Article 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Article 12, is thus comprehended to include bodies

created for the purpose of promoting the educational and economic interests of the people. The State, as constituted by our Constitution, is further specifically empowered under Article 298 to carry on any trade or business.”

8. The term ‘authority’ has been a subject matter of judicial decisions of the Supreme Court while examining Articles 12 and 226 of the Constitution of India and has been given wider meaning. The Supreme Court in ***Praga Tools Corporation versus Shri C.A. Imanual and Others***, (1969) 3 SCR 773 had observed:

“6. In our view the High Court was correct in holding that the writ petition filed under Article 226 claiming against the company mandamus or an order in the nature of mandamus was misconceived and not maintainable. The writ obviously was claimed against the company and not against the conciliation officer in respect of any public or statutory duty imposed on him by the Act as it was not he, but the company who sought to implement the impugned agreement. No doubt, Article 226 provides that every High Court shall have power to issue to any person or authority orders and writs including writs in the nature of habeas corpus, mandamus etc. or any of them for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. But it is well understood that a mandamus lies to secure the performance of a public or statutory duty in the performance of which the one who applies for it has a sufficient legal interest. Thus, an application for mandamus will not lie for an order of reinstatement to an office which is essentially of a private character nor can such an application be maintained to secure performance of obligations owed by a company towards its workmen or to resolve any private dispute. (See *Sohan Lal v. Union of India*), In *Regina v. Industrial court* mandamus was refused against



the Industrial court though set up under the Industrial courts Act, 1919 on the ground that the reference for arbitration made to it by a minister was not one under the Act but a private reference. "This Court has never exercised a general power" said Bruce, J. in *R. v. Lawisham Union* "to enforce the performance of their statutory duties by public bodies on the application of anybody who chooses to apply for a mandamus. It has always required that the applicant for a mandamus should have a legal and a specific right to enforce the performance of those duties". Therefore, the condition precedent for the issue of mandamus is that there is in one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified which appertains to his or their office and is in the nature of a public duty. 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 of 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 purposes of fulfilling public responsibilities. [Cf. *Halsbury's Laws of England*, (3rd ed.), Vol. II, p. 52 and onwards].

7. The company being a non-statutory body and one incorporated under the Companies Act there was neither a statutory nor a public duty imposed on it by a statute in respect of which enforcement could be sought by means of a mandamus, nor was there in its workmen any corresponding legal right for enforcement of any such statutory or public duty. The High Court, therefore, was right in holding that no writ



petition for a mandamus or an order in the nature of mandamus could lie against the company.”

9. In ***Ramana Dayaram Shetty versus The International Airport Authority of India & Others***, (1979) 3 SCR 1014, the Supreme Court noticed that the power of the executive Government to affect the lives of the people is growing and there has been a tremendous expansion of welfare and social service functions by the State. It was also noticed that this has resulted in greater frequency with which ordinary citizens come into association or encounter with the State policy holders. In ***Ajay Hasia and Others versus Khalid Mujib Sehravardi and Others***, (1981) 1 SCC 722 it was observed that there would be considerable erosion of the efficiency of the fundamental rights in case the term ‘authority’ is interpreted narrowly by allowing the State to adopt stratagem of carrying out their functions through instrumentality of agency of a corporation and excluding the same. It was accordingly observed in paragraph 11 of the judgment as under:-

“11. We may point out that it is immaterial for this purpose whether the corporation is created *by* a statute or *under* a statute. The test is whether it is an instrumentality or agency of the Government and not as to how it is created. The inquiry has to be not as to how the juristic person is born but why it has been brought into existence. The corporation may be a statutory corporation created by a statute or it may be a government Company or a Company formed under the Companies Act, 1956 or it may be a society registered under the Societies. Registration Act, 1860 or any other similar statute. Whatever be its genetical origin, it would be an “authority” within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the facts in the light of the relevant factors. The concept of

instrumentality or agency of the Government is not limited to a corporation created by a statute but is equally applicable to a Company or society and in a given case it would have to be decided, on a consideration of the relevant factors, whether the Company or society is an instrumentality or agency of the Government so as to come within the meaning of the expression “authority” in Article 12.”

10. Section 2(h) of the Act does refer to the manner of establishment or constitution in conditions (a) to (d) but condition (d) expands the term to include establishment or constitution by a notification or order by an appropriate government. Legislative enactment is not necessary and ‘authority’ under condition (d) of the section 2(h) can be established or constituted by an executive action. ‘Authority’ may be statutory or non statutory. Effect and relevance of conditions (a) to (d) has been examined later on.

11. In ***Ajay Hasia’s case*** (supra), the Supreme Court quoted with approval the test laid down in ***International Airport Authority’s case*** to decide whether an organization/body is an authority against whom a writ could be issued under Article 226 of the Constitution of India and it was observed:-

“9. The tests for determining as to when a corporation can be said to be an instrumentality or agency of Government may now be culled out from the judgment in the *International Airport Authority case*. These tests are not conclusive or clinching, but they are merely indicative indicia which have to be used with care and caution, because while stressing the necessity of a wide meaning to be placed on the expression “other authorities”, it must be realised that it should not be stretched so far as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression. A wide enlargement of the meaning must be tempered by a wise

limitation. We may summarise the relevant tests gathered from the decision in the *International Airport Authority case* 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. (SCC p. 507, para 14)

(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. (SCC p. 508, para 15)

(3) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is State conferred or State protected. (SCC p. 508, para 15)

(4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality. (SCC p. 508, para 15)

(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. (SCC p. 509, para 16)

(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.” (SCC p. 510, para 18)

If on a consideration of these relevant factors it is found that the corporation is an instrumentality or agency of Government, it would, as pointed out in the *International Airport Authority case*, be an “authority” and, therefore, ‘State’ within the meaning of the expression in Article 12.”

12. Conflict between ***Sukhdev Singh versus Bhagatram Sardar Singh Raghuvanshi***, (1975) 1 SCC 421 and ***Sabhajit Tewary v***

**UOI** (1975) 1 SCC 485 was examined by seven Judges of the Supreme Court in the case of **Pradeep Kumar Biswas versus Indian Institute of Chemical Biology**, (2002) 5 SCC 111. The majority judgment approved of the tests specified in the case of **Ajay Hasia** and has observed as under:

“31. The tests to determine whether a body falls within the definition of “State” in Article 12 laid down in *Ramana* with the Constitution Bench imprimatur in *Ajay Hasia* form the keystone of the subsequent jurisprudential superstructure judicially crafted on the subject which is apparent from a chronological consideration of the authorities cited.

40. 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.”

13. More recently in ***Binny Limited and Another versus V.V. Sadasivan***, (2005) 6 SCC 657, the Supreme Court has reiterated that Article 226 of the Constitution is couched in a way that even a Writ can be issued against a body which is discharging public function and the decision sought to be corrected or enforced must be in discharge of a public function. 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 of public interest. In the said judgment, the Supreme Court quoted the following passage on what are regarded as public functions from De Smith, Woolf and Jowell in the book *Judicial Review of Administrative Action*, Fifth Edition in Chapter 3, paras 0.24 and 0.25, which reads as under:-

“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 organisations 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 ‘recognise 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.”

14. The aforesaid passage quoted above specifically holds that stock exchanges perform public functions. Power of judicial review under Article 226 is designed to prevent cases of abuse of power and neglect of duty by a public authority. The Act ensures transparency, openness and accountability of the authorities by giving rights to citizens to ask for and get information. The Act effectuates and provides statutory and enforceable legal right to enforce the Right to Information ingrained and part of Article 19(1) (a) of the Constitution. The term ‘authority’ used in Section 2(h) of the Act has to be read in the light of the aforesaid tests and paragraph 40 of the judgement in the case of **Pradeep Biswas** (supra.). Whether and when an ‘authority’ is a ‘public authority’ in view of conditions (a) to (d) in Section 2(h) of the Act has been examined later on.

15. Black’s Law Dictionary 6<sup>th</sup> Edition defines “institution” as an establishment, especially one of eleemosynary or public character or one affecting a community. In Law Lexicon, P. Ramanatha Aiyar, 2<sup>nd</sup> ed. 1997 it has been defined as “an establishment of a public character, a place where the business of a society is carried on; the organization itself.” “The word ‘institution’ properly means an organization organized or established for some specific purpose, though it is sometimes used in statutes and in common parlance in the sense of the building or establishment in which the business of such society is carried on.” In section 2(h) the word ‘institution’ is qualified by the words ‘self government’. The words ‘self government’ refers to the nature of activities that are performed. The activities should be in nature of governmental or public functions but the institution may be independent and free from governmental control.

'Self government' will cover and encompass independent, autonomous self managed or governed organizations which have been permitted, allowed and are performing what are regarded as governmental or public functions. Pervasive and deep control of the government is not necessary. What are public functions has been examined above with reference to De Smith, Woolf and Jowell in the book Judicial Review of Administrative Action, Fifth Edition. An institution which performs public functions and has been created for discharging public or statutory duties as distinguished from private functions can be an 'institution of self government'.

16. Law Lexicon, P. Ramanatha Aiyar, 2<sup>nd</sup> ed. 1997 defines 'body' as "a number of individuals spoken of collectively, usually associated for a common purpose, joined in a certain cause or united by some common tie or occupation, as, legislative body, the body of clergy; a body corporate." 'Authority' or 'institution of self-government' are sub-species and can be included in the term 'body'. The terms 'authority' or 'institution of self-government' are restrictive/narrower than the term 'body'. Nature and type of the activity undertaken by a 'body' is not of primary concern or importance. The term 'body' is extremely wide and unless a purposive interpretation is given, keeping in mind the legislative intention, the said term will include within its scope every and all kind of organization or concerns of two or more persons performing purely private functions. The petitioner is correct in their contention that all private bodies are not 'public authorities'. The petitioner is also correct that the words "establish or constituted" and (a) to (d) of Section 2(h) do not curtail and restrict the definition of 'public authority' to exclude all private bodies like private companies or societies of private nature. These, it was rightly stated, can be established by an order or notification issued by an appropriate



government. Section 2(h) of the Act would have been differently worded if all bodies were 'public authorities', once conditions mentioned in (a) to (d) are satisfied. The term 'public authority' would not have been used, if the Act was to apply to all bodies including private bodies. While retaining extensive and comprehensive nature of the word 'body', the same has to read down keeping in mind the legislative intention and language of section 2(h) of the Act including the second part thereof.

17. The word 'body' will take its colour; is susceptible of analogous meaning and is to complement the two terms 'authority' and 'institution of self government' but has to be read alongwith the second part of section 2 (h) of the Act. Doctrine of Noscitur A Sociis, may not be fully applicable. The second part of section 2(h) of the Act, specifically deals with 'body' and is to be kept in mind. It consists of two parts. Clause (i) states that 'body' owned, controlled or substantially financed directly or indirectly by government are included and regarded as a 'public authority'. Bodies owned or controlled by government will normally qualify to be and are regarded as 'authorities'. Further, 'authorities' or 'institutions of self government' are generally beneficiaries of substantial government finance, though other bodies may be beneficiaries of substantial government finance. Thus, as held in paragraph 60 in the case of **Indian Olympic Association**(supra), clause (i) applies to all bodies, whether or not they are 'authorities' or 'institutions of self government', that are owned or controlled or substantially financed by the appropriate government. Under Clause(i), requirements of conditions (a) to (d) need not be satisfied and are not required to be examined. In **Indian Olympic Association** and other cases (supra), Clause(ii) has been interpreted to include private non



government organisations that are substantially financed, directly or indirectly from government funds. Again for Clause(ii) requirements of conditions (a) to (d) are not required to be satisfied. Read in this manner the term 'body' means an organisation which is owned or controlled or substantially financed directly or indirectly by the government. The three conditions, i.e., owned, controlled, substantially financed are distinct in alternative and not cumulative. The nature and type of activity and functions undertaken by the organisation are inconsequential and immaterial. If a body satisfies requirements of Clause(i) or (ii), conditions (a) to (d) need not be satisfied. Thus, when second part of Section 2(h) applies, satisfaction of conditions mentioned in (a) to (d) need not be examined.

18. Learned counsel for the petitioner laid considerable emphasis on the words "established" and "constituted" and the requirements specified in (a) to (d) of part one of the Section 2(h). It was stated that the term "established" means initial establishment or creation of authority, body or institution of self-government by or under the Constitution, by an enactment made by the Parliament or State Legislature or by a notification or order issued by the appropriate Government. The word "constituted" it was submitted refers to constitution of a body with appointment of members as in the Central Coordination Committee by a notification under Section 3(1) Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

19. The words 'established and constituted' used in Section 2(h) of the Act have to be interpreted in the context in which the said words have been used. In Webster's Third New International Dictionary, it

has been held that the word 'establish' has been given a number of meanings, namely, to found or base squarely, to make firm or stable, to bring into existence, create, make start, originate. In Shorter Oxford English Dictionary, Third Edition, the word 'establish' has been given in number of meanings, i.e., to ratify, confirm, settle to found, to create. Founding is not the only meaning of the word 'establish' and it includes creation also. In Bouvier's Law Dictionary (Third Edition), Vol. I, it has been said that the word 'establish' occurs frequently in the Constitution of the United States and it is there used in different meanings; and five such meanings have been given, namely -(1)"to settle firmly to fix unalterably, to establish justice; (2) to make or form: as to establish a uniform rule of naturalization; (3) to found, to create, to regulate: as, Congress shall have power to establish post officers; (4) to found, recognize, confirm or admit: as, Congress shall make no law respecting an establishment of religion; (5) to create, to ratify, or confirm, as We, the people, etc., do ordain and establish the Constitution".

20. Thus, it cannot be said that the only meaning of the word 'establish' is to be found in the sense in which an eleemosynary or another institution is founded. The word 'established' need not mean the initial foundation and it includes creation, confirmation or recognition.

21. The word 'constituted' is wider than the word 'established'. The word 'constituted' in section 2(h) of the Act not only refers to the first act/acts by which a body or organization is set up but a subsequent act or acts which will have the effect of conferring on an organization or a body, a special status and constitute a 'body' with status of an 'authority' or 'institution of a self-government' for the

purpose of Section 2(h) of the Act. A private institution or a body may be incorporated or formed by acts of private persons but subsequent statutory enactment or an order or notification issued by the appropriate Government can result in constitution and conferring upon the said body, status of an 'authority' or an 'institution of self-government'. For example, a private or a public company upon incorporation may be a body but not an 'authority' or institution of self government' but subsequently a enactment, order or notification can result in its constitution as an 'authority' or 'institution of self government' which was not in existence till the enactment, notification or order was made. An organisation in existence can be 'constituted' or 'established' as an 'authority' or 'institution of self government' by a subsequent enactment or order/notification. A private company upon its incorporation or registration does not become an 'authority or institution of self government' as defined above under section 2(h) of the Act, but by a subsequent enactment or order/notification issued can become an 'authority or institution of self government'. Thus, subsequent enactment, order or notification may have the effect of establishing or constituting an 'authority or institution of self government'. The word "constituted", has to be liberally interpreted to include cases where an organization or a body is already set up but by virtue of a notification or order passed by appropriate Government or statutory enactment is conferred and given status of an 'authority' or an 'institution of self-government'. The words 'established' or 'constituted' have to be read in a manner so as to effectuate the legislative intent in Section 2(h) of the Act.

22. Conditions (a) to (c) are clear, expressive and lucid. Condition (a) refers to establishment or constitution 'by or under' the Constitution, while conditions (b) to (d) refer to establishment or

constitution 'by' an enactment, notification or order. Word 'by' an enactment or notification or order is narrower than 'by or under' an enactment or notification or order. 'Under' an enactment or notification or order is wider than 'by'. The word 'by' refers to direct establishment and constitution of authority, body or institution of self government as a result of legislation, notification or order. The word 'under' will include establishment or constitution under power or authority conferred on an authority/body by an enactment, notification/ order. However, notification or order can be issued in exercise of Executive power and can be a result of power conferred by legislation or even by subordinate legislation on an authority/body. Condition (d) of Section 2(h) of the Act does not envisage or require any specific type or nature of an order or notification. The requirement is only a notification or an order which has the effect of establishing or constituting 'authority, institution of self-government or a body'. There is no further requirement or condition which is required to be complied with or fulfilled.

23. It is difficult to conceive of an 'authority' or an 'institution of self-government' which has been established or constituted by any mode or manner other than the mode and manner specified in conditions (a) to (d) of Section 2(h). There can be 'bodies' which are established or constituted by or under the Constitution or by statutory enactment or by a notification or order issued by appropriate Government. These 'bodies' will be 'public authorities' if they are like 'authorities' or 'institutions of self government'. Further, the second part of the definition clause which starts with the words "includes" and expands the term "bodies" is not with reference to the establishment or constitution or conditions (a) to (d) but with reference to 'body' owned, controlled or substantially financed directly or indirectly by funds of appropriate

Government or even private bodies or non-government organizations which are substantially financed directly or indirectly by funds of appropriate Government.

24. The term 'appropriate Government' has been defined in Section 2 (a) of the Act to mean:-

- “2 (a) “appropriate Government” means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—
- (i) by the Central Government or the Union Territory administration, the Central Government;
  - (ii) by the State Government, the State Government;”

25. The said definition clause has been enacted in view of two separate apex appellate bodies under the enactment, viz, the Central Information Commission and the State Information Commission. Appropriate government can mean Central Government or State Government as the case may be. These two terms have been defined in Section 3(8) and (60) of the General Clauses Act, 1897 in relation to anything done or to be done after the commencement of the Constitution to mean the President or the Governor, etc. as the case may be. The terms 'Central Government' and 'State Government' have to be understood in light of Article 77 or 166 of the Constitution. It refers to the Executive power of the State vested in the Central Government or the State government.

26. National Stock Exchange of India Limited, the petitioner herein, is a company limited, which were incorporated in Mumbai on 27<sup>th</sup> November, 1992. It is, therefore, established and created by as a company on the said date under the provisions of the Companies Act, 1956. Incorporation of a company under the Companies Act, 1956 may or may not result in establishment or constitution of a 'body', 'authority' or 'institution of self government' by a notification or order passed by the appropriate Government. It depends upon whether as a result of the order or notification by which a company was incorporated had the effect of constituting or establishing an 'authority', 'institution of self government' or 'body'- as defined above. In the absence of complete details regarding incorporation and findings of the Central Information Commission in this regard the question is left open and not decided. However, as per the Memorandum and Articles of Association of the petitioner the promoters and subscribers were public sector corporations or their representatives.

27. Memorandum and Articles of Association of the petitioner has been produced before me and placed on record. The petitioner, as per the Memorandum of Association, was incorporated with the main object to facilitate, promote, assess, regulate and manage in the public interest, dealings in securities of all kinds as defined under the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as Securities Act, for short) and all other instruments of any kind including money market instruments and to provide advanced and modern facilities for trading, clearing and settlement of securities in a transparent, fair and open manner. It was also incorporated to initiate, facilitate and undertake all such activities in relation to stock exchange, money markets, financial markets, securities markets,

capital markets, etc. The third principal object is to support, develop, promote and maintain healthy market in the best interest of the investor and the general public and economy. The objects incidental and ancillary to attain the main objects read as under:-

“4. To apply for and obtain from the Government of India, recognition of the Exchange as a recognize stock exchange for the purpose of managing the business of purchase, sale, dealings and transactions in the securities within the meaning of the Securities Contracts (Regulation) Act, 1956 and the Rules made thereunder.

5. To frame and enforce Rules, Bye-laws, and Regulations regulating the mode and manner, the conditions subject to which the business on the Stock Exchange shall be transacted and the rules of conduct of the members of the Exchange, including all aspects relating to membership, trading, settlement, constitution of committees, delegation of authority and general diverse matters pertaining to the Exchange and also including code of conduct and business ethics for the members and from time to time, to amend or alter such rules, bye-laws and regulations or any of them and to make any new amended or additional rules, bye-laws or regulations for the purpose aforesaid.

6. To settle disputes and to decide all questions of trading methods, practices, usage, custom or courtesy in the conduct of trade and business at the National Stock Exchange.

7. To fix, charge, recover, receive security deposits, admission fee, fund subscriptions, subscription form members of the exchange or the company in terms of the Articles of Association and rules and bye-laws of the Exchange and also to fix, charge and recover deposits, margins, penalties, ad hoc levies and other charges.

8. To regulate and fix the scale of commission and brokerage and other charges to be charged by the members of the Exchange.”

28. It is clear from the reading of the aforesaid objects that the petitioner was incorporated for the purpose of establishing a stock exchange for which it was necessary and required that they should be registered and/or recognized under the Securities Act. It is only after the registration or recognition under the Securities Act that the petitioner could carry out any of the functions or objects for which it was incorporated. Section 4 of the Securities Act deals with recognition and registration of the stock exchange and reads as under:-

**“4. Grant of recognition to stock exchanges.—**(1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require,—

(a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;

(b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and

(c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange;  
it may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.  
(2) The conditions which the Central Government may prescribe under clause (a) of sub-section (1) for the grant of recognition to the stock



exchanges may include, among other matters, conditions relating to,—

(i) the qualifications for membership of stock exchanges;

(ii) the manner in which contracts shall be entered into and enforced as between members;

(iii) the representation of the Central Government on each of the stock exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

(iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

(3) Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India.

(4) No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.

(5) No rules of a recognised stock exchange relating to any of the matters specified in sub-section (2) of Section 3 shall be amended except with the approval of the Central Government.”

29. Once a body or an institution has got its recognition/registration under the Securities Act, it can operate and function as a stock exchange and perform the said public functions. Registration or recognition under Section 4(3) of the Securities Act by the Central Government has the effect of constituting or establishing an ‘authority’ or an ‘institution of self-government’ as defined above. Admittedly, in the present case, notification or an order under Section 4(3) of the Securities Act has been issued for recognition of the petitioner as a stock exchange. The notification or an order under

Section 4(3) of the Securities Act has the effect of creating an 'authority' or an 'institution of self-government'. Incorporation of the petitioner as a Company may not establish or constitute an 'authority' or an 'institute of self government' but the notification/order under section 4(3) of the Securities Act had the said effect. Thus, first part of Section 2(h) of the Act is satisfied as the petitioner was 'established' or 'constituted' as an 'authority' or 'institution of self government' as a result of the notification/order under Section 4(3) of the Securities Act.

30. It is not possible to accept the contention of the petitioner that a notification or an order under Section 4(3) of the Securities Act is similar and same as an order passed by Registrar of Companies incorporating a company under the Companies Act, 1956 or an order under Section 11 of the Industries (Regulation and Development) Act 1951. An order allowing incorporation of a company or permitting setting up of an industry under Section 11 of the Industries (Regulation and Development) Act 1951, may not result in establishment or constitution of an 'authority' or an 'institution of self-government' or a 'body, which is owned, controlled or substantially financed directly or indirectly by Government funds'. Incorporation of a company or establishment of industry, a society or even a cooperative society by itself may not establish or create a 'public authority' as by recognition or registration, it does not become an 'authority or institution of self-government or a body of the nature which is owned, controlled or substantially financed directly or indirectly by the appropriate Government'.

31. The contention of the petitioner that in the present case there is no order or notification by appropriate Government but only an order passed by the Securities Exchange Board of India (SEBI, for short) under Section 4(3) and, therefore, requirements of condition (d) to Section

2(h) of the Act are not satisfied, is not correct. The term “appropriate Government” has been defined in Section 2(a) and the reason for incorporating the said term in Section 2(h) has been explained above. The object and purpose of using the term “appropriate Government” is to clarify the appellate avenue before whom appeals will lie. It cannot be read to water down and read down the scope of the expression “public authority” as defined in Section 2(h) of the Act. Central Government or the State Government refers to the Executive power of the State and will include their manifestations in various forms. The term “Central Government” and “State Government” have to be read and interpreted broadly and not in a restrictive manner.

32. Under Section 4(3) of the Securities Act, an order of registration/recognition is to be passed by the Central Government. Under Section 29 A of the Securities Act, Central Government has been authorized to delegate their powers to SEBI. In the present case, SEBI has granted recognition/ registration to the petitioner as a delegate and as authorised to act on behalf of the Central Government. The recognition granted is, therefore, treated as granted by the Central Government itself under Section 4(3). SEBI has exercised powers of the Central Government to grant recognition in terms of Section 29 A of the Securities Act.

33. Thus, the petitioner is an ‘authority or an institution of the self-Government’ established by a notification or an order passed by the Central Government and, therefore, is a “public authority”.

34. The petitioner also satisfies requirements of the second part of the Section 2(h) of the Act. It is a ‘body’ which is controlled by Central Government. It is not possible to accept that the control exercised is merely regulatory and is not a pervasive and deep

control. This question is no longer res integra and is squarely settled by a Division Bench decision of this Court in the case of **Delhi Stock Exchange versus K.C. Sharma** in LPA No. 331/1999 reported in 2002 Volume XCIII DLT 233. In the said judgment, the Division Bench of this Court had examined the provisions of the Securities Act and the effect thereof and whether it can be regarded as mere regulatory control or a pervasive and a deeper control. It has been observed that control of the Central Government under the Securities Act is not merely regulatory control but much wider and a pervasive control. It was held:-

“17. Let us consider as to whether the control of the Central Government in terms of the provisions of the 1956 Act, is so deep and pervasive so as to bring within the authority contained in Article 12 of the Constitution of India.

18. The 1956 Act was enacted to prevent undesirable transactions in securities by regulating the business of dealing therein by providing for certain other matters connected therewith. Stock exchange has been defined in Section 2 (j) to mean “any body of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.” Section 3 provides for an application for recognition to stock exchanges. Section 4 empowers the Central Government to grant recognition to stock exchanges subject to the conditions imposed upon it upon satisfying itself that it fulfills the criteria thereof. Sub-section (2) of Section 4 lays down the conditions “for the grant of recognition to the Stock exchange may include, among other matters, conditions relating to-

(i) the qualifications for membership of Stock Exchanges;

(ii) the manner in which contracts shall be entered into and enforced as between members;

(iii) the representation of the Central Government on each of the Stock Exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

(iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

19. Recognition of the Stock Exchange under the section is required to be published in the Gazette of India. The rules of the recognized stock exchanges can be amended only upon approval of the Central Government. Section 5 provides for withdrawal of recognition. Section 6 empowers the Central Government to call for periodical returns or direct enquiries to be made. Section 7 provides for annual reports to be furnished to the Central Government. Section 10, however, also empowers the Central Government to make or amend bye-laws of recognized stock exchange. Section 11 empowers the Central Government to supersede governing body of a recognized Stock Exchange. Section 12 empowers the Central Government to suspend business of recognized Stock Exchanges. Section 13 empowers the Central Government to declare contracts in notified areas illegal by notification in the Official Gazette. Section 19 prohibits any person to organize or assist in organizing or be a member of any Stock Exchange other than a recognized Stock Exchange for the purpose of assisting in, entering into or performing any contracts in securities. Section 21 provides that where securities are listed on the application of any person in any recognized Stock Exchange, such person shall comply with the conditions of the listing agreement with that Stock Exchange. Under Section 22, an appeal is maintainable

against an order passed by the Stock Exchange to list securities of public companies. Section 23 provides for penalties in relation to the matters specified therein. Section 29 of the Act is in the following terms:

*“Production of action taken in good faith-* No suit, prosecution or other legal proceeding whatsoever shall lie in any Court against the governing body or any member, office-bearer or servant of any recognized stock exchange or against any person or persons appointed under Sub-section (1) of Section 11 for anything which is in good faith done or intended to be done on pursuance of this Act or of any rules or bye-laws made thereunder.”

20. The provisions above-mentioned clearly go to show that not only Stock Exchanges perform an important function, its control by the Central Government/SEBI are deep and invasive. So invasive is control of the SEBI that even the writ petitioner against the impugned order preferred an appeal before SEBI and filed a representation before SEBI which was entertained. The appellant herein submitted, itself to the jurisdiction of SEBI without any demur whatsoever. The SEBI constituted an independent Committee and despite pendency of the writ petition before this Court arrived at its own finding. This also goes to show that not only the Central Government but also a statutory authority exercises deep and pervasive control of the Stock Exchange. It may be that it does not receive any financial assistance. But receiving the financial assistance is not the only criteria for holding that an instrumentality of the State would come within the purview of the definition of “other authorities”.

21. Although, it may not be of much relevance, but we may notice that in Delhi Stock Exchange Association Ltd. v. Commissioner of Income Tax, New Delhi, 1997(3)Scale 353, the Delhi Stock Exchange itself has given out that it is being

considered to be “other authorities” within the meaning of Article 12 of the Constitution of India. 22. Admittedly, its main source of revenue is from listing fees received from the listed companies. Its power to list companies flows from a statute. In doing so, it exercises a quasi judicial function and appeal lies against its order refusing to list companies.”

35. The Delhi High Court also made reference to the Securities and Exchange Board of India Act, 1992 (SEBI Act, for short) and has held that the said enactment support assertion that Central Government has deep and all pervasive control on the functioning of the stock exchanges. Referring to the said enactment, it has been observed:-

“28. Following are some of the important sections of SEBI Act which support the assertion that Central Government has deep and all pervasive close control on the functioning of all RSEs (Recognised Stock Exchanges):

- (1) Preamble of the SEBI Act which inter alia reads, “An Act to provide for the establishment of a Board to protect the interest of investors in securities and to promote the development of and to regulate the securities market and for matters connected therewith or incidental thereto.”
- (2) Section 11(1), which casts a duty upon SEBI to protect the interest of the investors and promote the development of and regulate the securities market.
- (3) Section 11(2)(a), specifically casts a duty upon SEBI to regulate, even the business (means regulation of even day-to-day business) and that is why it is under this section SEBI from time to time issues directions to RSEs about the nature, type, extent and percentage of margin money to be taken from the members of RSEs; nature,



organization structure and duties of Market Surveillance department etc.

- (4) Section 11(2)(j) requires SEBI to perform such functions and exercise such powers under SCRA, 1956, which may be delegated to it by the Central Government.

29. The Apex Court, again in Unni Krishnan J.P. v State of Andhra Pradesh, (supra), held that when a private body carries on public duty, as in the case of an institution whereby recognitions and affiliations are to be granted with conditions, Stock Exchanges are also recognized subject to various conditions. Unlike the companies registered under the Indian Companies Act, the bye-laws of a Stock Exchange can be amended. Even for amendment in bye-laws, the Stock Exchange requires approval of the Central Government. The Central Government, having regard to the provisions of the 1956 Act, as noticed hereinbefore, can interfere in the functions of the Stock Exchanges at every stage.

30. Section 29 of the 1956 Act is a pointer to show that it is an instrumentality of the State inasmuch as the protection of action taken in good faith has been extended to Stock Exchanges which are granted only to public servants. The Central Government even can delegate its power in favour of SEBI.

31. As would be noticed hereinafter, the history shows that various legislations had been enacted for safeguarding the interests of the investors and particularly small investors. Economy of the country, one way or the other, to a large extent would depend upon the dealings of the Stock Exchange.

32. The concept that all public sector undertakings incorporated under the Indian Companies Act or Societies Registration Act for being State must be financed by the Central



Government and under the deep and pervasive control thereof has undergone a sea change. The thrust, in our opinion, should be not upon the composition of the company but the duties and functions performed by it. Thus, whether the appellant is a body which exercises public function, is the primary question which should be raised and answered.”

36. The aforesaid judgment of the Delhi High Court has been upheld by the Supreme Court in ***K.C. Sharma versus Delhi Stock Exchange***, (2005) 4 SCC 4 observing interalia that the control of the Central Government over the Delhi Stock Exchange in view of the provisions of the Securities Act and the SEBI Act is all pervasive and deep. Thus the petitioner is a 'public authority' as per second part of section 2(h) of the Act.

37. Some arguments were addressed on the question whether the Central Government owns National Stock Exchange in view of the shareholding pattern. SEBI in their counter affidavit has stated that more than 50% of the shares of the petitioner stock exchanges are owned by Government of India or Government companies. The petitioner has disputed the said contention and factual statement. I am not going into this aspect as this factual dispute has not been dealt with and examined by the Central Information Commission and my findings recorded above. This question is left open and undecided.

38. In view of the aforesaid findings, it is held that the petitioner is a “public authority” as it is an ‘authority or institution of self-government’ constituted or established by notification or order issued by the appropriate Government. It is also held that the petitioner is controlled by the appropriate Government. The writ petition

accordingly has no merit and is dismissed. However, in the facts and circumstances of the case, there will be no order as to costs.

**(SANJIV KHANNA)**  
**JUDGE**

**APRIL 15, 2010.**  
**VKR/P**

**Equivalent Citation:** 2008(4)AWC3574

**IN THE HIGH COURT OF ALLAHABAD (LUCKNOW BENCH)**

Decided On: 01.07.2008

Appellants: **Public Information Officer, Chief Minister's Office, Civil Secretariat Govt. of U.P.**

**Vs.**

Respondent: **State Information Commission and Ors.**

**Hon'ble Judges:**

Pradeep Kant and Shri Narayan Shukla, JJ.

**Subject: Right to Information**

**Disposition:**

Petition dismissed

**JUDGMENT**

**Pradeep Kant, J.**

1. Following two questions arise for determination In the present writ petition:

(1) Whether the information disclosing the names of the persons including address and amount, who have received more than Rs. 1 lac from the Chief Minister Discretionary Fund, can be given to the information seeker or it is an information, which stands exempted under Section 8(i) of the Right to Information Act.

(2) Whether the Chief Information Commissioner while considering the complaints under Section 18 of the Right to Information Act, 2005 Is competent only to award the prescribed punishment, in case of failure of information being given as per the provisions of the Act or while dealing with the said complaints, any direction can also be issued for furnishing the information which has not been provided, though it is not found to be exempted under the provisions of the Act.

2. Right to Information Act. 2005 (referred to as the 'R.T.I. Act') enacted by the Parliament, received assent of the President on 15.6.2005, and which came into force w.e.f. 12.10.2005, is relatively a new legislation and, therefore, is having its teething problem giving rise to various Issues, which require consideration by the Court.

3. Needless to mention that the Act is not meant for creating a new type of litigation or a new forum of litigation between the information seeker and the information giver, but may be that some of the informations asked for, be inconvenient to the persons to whom it relates and, therefore, every effort would be made to refuse divulgence of such an Information and for that matter either to refuse the information by delaying the process or passing a specific order of

refusal, may be some time by taking shelter under the provisions of Sections [8](#) and [9](#) of the Act, which are the exemption clauses.

4. The information covered by the aforesaid provisions is either completely exempted or it has been given limited protection, i.e., though the Information is otherwise exempted but can be disclosed on the satisfaction of the Public Information Officer, if he is satisfied that the disclosure of such an information is in larger public interest.

5. Our Constitution establishes a democratic republic. 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. The 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, therefore, with a view to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal, the Parliament enacted the Act of 2005 to provide for furnishing certain information to citizens who desire to have it.

6. R.T.I. Act in fact, has been enacted 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.

7. 'Right to Information' is the right to obtain information from any public authority by means of, (i) inspection, taking of extracts and notes ; (ii) certified copies of any records of such public authority ; (iii) diskettes, floppies or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

8. Information in this context means any material in any form relating to the administration, operations or decisions of a public authority.

9. The Act provides for making information held by executive agencies of the State available to the public unless it comes within any one of the specific categories of matters exempt from public disclosure. Virtually all agencies of the executive branch of the Government are required by the Act to issue regulations to implement the provisions of the Act. These regulations inform the public where certain types of information may be readily obtained, however, other information may be obtained on request, and what internal agency appeals are available if a member of the public is refused the requested information.

10. The Right to Information Act is designed to prevent abuse of discretionary power of the Governmental agencies by requiring them to make public certain information about their working and work product.

11. Right to information or right to know is an integral part and basic tenet of the freedom of speech and expression, a fundamental right guaranteed under Article [19\(1\)\(a\)](#) of the Constitution. It also flows from Article [21](#) as enunciated by the Apex Court in the case of *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt Ltd.* and Ors. [MANU/SC/0412/1988](#). The Apex Court in this case while dealing with the issue of freedom of press and administration of justice, held that 'we must remember that the people at

large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article [21](#) of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform'.

12. It is thus, a fundamental right, which cannot be denied, unless of course it falls within the exemption clause or otherwise is protected by some statutory provisions.

13. The functioning of the State and its instrumentalities and functionaries under the cover of darkness leave the citizens ignorant about the reasons and rationale of any decision taken by the authorities or any policy made and the implications thereof, whereas the citizens have a guaranteed 'Right to Know'. The legal and consequential corollary of the aforesaid right will be that a person getting the required information may move for redressal of the wrong done or any action taken, order passed or policy made by approaching the appropriate forum, as may be permissible under law. The purpose and object of the Act is not only to provide information but to keep a check on corruption, and for that matter confers a right upon the citizens to have the necessary information, so that appropriate action may be initiated or taken against the erring officers and also against the arbitrary and illegal orders.

14. The Supreme Court even before the advent of the Right to Information Act, 2005 had stressed upon the importance of transparency in administration and governance of the country and for that matter time and again has entertained writ petitions requiring the State to disclose the information asked for.

15. Reference can be made to the case of State of U.P. v. Raj Narain [MANU/SC/0032/1975](#). A Constitution Bench of the Apex Court in this case, considered the plea of privilege of not disclosing the information with respect to the tour arrangement of Smt. Indira Nehru Gandhi for her tour programmes of Raebareilly and also the information disclosing any general order for security arrangement during the general elections alongwith disclosure of all correspondence between the Government of India and the State Government, and between the Chief Minister and the Prime Minister, and held unanimously that the informations asked for, are to be disclosed. The appeal against the judgment of the Allahabad High Court was allowed. His Lordship Justice Mathew, in a separate concurring judgment, in para 74 observed as under:

*"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. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."*

16. As a result of constant demand of disclosure of Information and to make the people know about the functioning of the Government, its authorities and functionaries and the manner in

which, decisions are taken or even policy made, including their implementation and to uproot corruption, redtapism and delay in functioning of the State functionaries, apart -from decisions taken in individual cases the central legislation in the shape of Right to Information Act, 2005 has been enacted, which prescribes the substantive as well as procedural provisions for securing the information by any person, who seeks that information, without requiring him to disclose the reason as to why this information is being asked for.

17. The Act obligates every public authority as defined in Section [2\(h\)](#) to designate as many officers, as Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or office under it as may be necessary to provide information to persons requesting for the information under Section [5](#) of the Act.

18. Section [2\(J\)](#) says that "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,' whereas Section [3](#) says that 'subject to the provisions of this Act, all citizens shall have the right to information.

19. Section [4\(1\)](#) obligates that:

(a) every public authority shall 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, designation and other particulars of the Public Information Officers;

(xvii) such other information as may be prescribed, and thereafter update these publications every year.

20. Apart from the informations aforesaid, the Act permits any person to seek information in the prescribed manner by moving an application to the Public Information Officer, giving the details of the information asked for and also depositing the requisite fee, as may be prescribed.

21. Section 6 of the Act says that a person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to:

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

Sub-clause (2) says that an applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

22. Section [7](#) of the Act provides the mode and manner of disposal of request made, seeking information, which prescribes a maximum period of thirty days for providing such information from the date of receipt of the application on payment of such fee, as may be prescribed. It also says that the application may either be accepted or may be rejected for the reasons specified in Sections [8](#) and/or [9](#).

23. The proviso annexed to Section [7\(1\)](#) says that where 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.

24. Sub-clause (2) says that if the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under Sub-clause (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

25. Section [7](#) in effect prescribes not only the procedure, which is to be adopted after receipt of the request of seeking information but also prescribes the time limit, in which such information is to be given, the payment of requisite fee and various other procedure, which may be required to be fulfilled while seeking and giving the information.

26. The present controversy does not relate to the prescription of fee and the manner in which additional fee can be asked for, but is confined to the questions, formulated in the opening part of this order. If the information is not given within the time period prescribed for giving information, it would be deemed to have been refused, even if information is not specifically refused or denied. The information can be refused only in case there exists any reason specified in Section [8](#) or Section [9](#). Sub-clause (8) of Section [7](#), makes it mandatory to communicate the person making the request ; (i) the reasons for such rejection ; (ii) the period within which an appeal against such rejection may be preferred : (iii) the particular of the appellate authority.

27. Section [8](#) provides exemption from disclosure of information and it categorically provides the specified informations, where disclosure of the information shall not be obligatory notwithstanding the provisions of the Act, 2005.

28. A perusal of the aforesaid provisions of Section [8](#), reveals that there are certain informations contained in Sub-clauses (a), (b), (c), (f), (g) and (h), for which there is no obligation for giving such an information to any citizen ; whereas informations protected under Sub-clauses (d), (e) and (J) are though protected informations, but on the discretion and satisfaction of the competent authority, that it would be in larger public interest to disclose such information, such information can be disclosed. These informations thus, are having limited protection, the disclosure of which is dependent upon the satisfaction of the competent authority that it would be in larger public interest as against the protected interest to disclose such information.

29. Sub-clause (i) protects the information with respect to cabinet papers including records or deliberations of the Council of Ministers, Secretaries and other officers, for a definite period after which protection umbrella stands eroded when the decision is 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.

30. There can be no quarrel or any dispute with respect to the information which are completely protected or to say totally exempted from being disclosed as no citizen can claim a right to have such an information, but the dispute arises where exemption is being claimed under any of the aforesaid provisions of Section [8](#), but the question arises as to whether information asked for is covered by any of the exemption detailed in the said section or not.

31. The controversy arises where exemption is claimed under limited protection provided under Sub-clauses (d), (e) and (j), and the information seeker requests for disclosure of the information, but the Public Information Officer refuses to supply such information on the ground that information stands exempted. In such cases, the role of the appellate authority or that of the Commission including that of the Chief Information Commissioner is very important, depending upon the jurisdiction exercised and the satisfaction arrived by such authority in deciding' as to whether ; (i) information asked for, at all stands exempted under any of the aforesaid provisions ; and (ii) even if it is exempted, should it be disclosed in larger public interest as against the protected interest of the individuals.

32. In case of third party information, the provisions of Section [11](#) are to be taken into account, which prescribe a procedure of affording opportunity to the third party to whom the information relates, or who has given the information and who has treated the said information in confidentiality, by giving him notice to have its views and, thereafter, it is to be decided as to whether the information should be disclosed or not, as per the satisfaction of the competent authority.

33. In case of refusal of information either by specific order by Public Information Officer or under the deeming provision of refusal, the matter can be taken up in appeal under Section [19](#), before the first appellate authority as may be prescribed and further in second appeal to the Central Information Commission or the State Information Commission, as the case may be.

34. The provision of appeal has been made for third party also under Sub-clause (2) of Section [19](#).

35. The period for deciding the first appeal is thirty days with total extended time of 45 days. The limitation for filing the appeal is also thirty days, but this period can be condoned on sufficient cause being shown by the appellant, by the appellate authority. The second appeal has to be filed within 90 days from the date on which the decision should have been made or was actually received. The Central Information Commission or 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. In appeal, reasonable opportunity is to be given to the third party also, if the matter relates to third party.

36. Sub-clause (7) of Section [19](#) says that the decision of the Central Information Commission or State Information Commission, as the case may, shall be binding, and Sub-clause (8) says that 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 a 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.

37. Section [19\(8\)](#) thus, authorises the Commission to require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act, and Sub-clause (c) also permits to impose any of the penalties provided under this Act. The penalty has been provided under Section [20](#) of the Act, which can be imposed in the given circumstances mentioned therein.

38. Sub-clause (1) of Section [20](#) gives the circumstance, under which the penalty can be imposed and it permits a penalty of Rs. 250 each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed Rs. 25,000. Sub-clause (2) of Section [20](#) gives power to recommend for disciplinary action against the Central Public Information Officer or a State Public Information Officer, as the case may be, under the service rules applicable to him, in case the Central Information Officer or the State Information Officer, as the case may be, has 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.

39. Section [18](#) is the provision for making complaint and lays down the procedure for entertaining a complaint and making enquiry.

Section [18](#) reads as under:

18. (1) Subject to the provisions of this Act, it shall be the duty of the Central Public 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 Public Information Officer or State Public Information Officer, 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 Public 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 Officer or State Information Commission, as the case may be, during inquiring 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 ground.

40. Section [18](#) thus is a provision which is a consciously introduced section, so as to exercise complete control over the functioning of the Public Information Officers, at the time of receiving application, and at the time of giving Information or during the appeal under the Act.

41. Any applicant who has not been given a response to a request for information or access to information within the time limit specified under the Act, or who has been required to pay an amount of fee which he or she considers unreasonable, or has been given false information, and in respect of any other matter relating to requesting or obtaining access to records under the Act, may approach the Commission, who would enquire into the complaint, and while making an enquiry, it has all the 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 matters enumerated therein.

42. The Commission under Sub-clause (4), which begins with a non obstante clause, during enquiry of any complaint under the Act, can examine any record to which this Act applies which is under the control of the public authority, and no such record shall be withheld from it on any ground.

43. In the light of the aforesaid provisions of the Act, the matter in issue requires consideration. Learned Counsel for the petitioner has argued that the information asked for, namely, names and details of all the persons who have received more than Rs. 1 lac from the Chief Minister's Discretionary Fund during the period 28.8.2003 upto 31.3.2007, cannot be provided as it stands exempted under Section [8\(i\)](#) of the Act.

44. The second argument is that the Commission while dealing with the complaints under Section [18](#), could not direct the Public Information Officer to supply the information within a specified time, regarding which complaint has been made, as under Section [20](#), it is only the penalty which can be imposed on the erring officer, but information cannot be directed to be given, as such a direction could be issued only in appeal, whether first or second and the present applicant having not preferred the second appeal, his prayer for disclosure of the information asked for, in proceeding under Section [20](#) could not have been entertained.

45. Section [8\(i\)](#) of the Act gives limited protection. The information asked for under the aforesaid clause, can stand protected, if it satisfies, either of the following conditions:

(i) it should be an information which relates to personal information, and the disclosure of such information has no relationship to any public activity or interest; and

(ii) or it would cause unwarranted invasion of the privacy of the individual.

46. The discretion, which has been given to the Central Public Information Officer or State Public Information Officer or the appellate authority, as the case may be, is to the effect that on their satisfaction that the larger public interest justifies the disclosure of such information, the same may be supplied. It means that though the information asked for is otherwise exempted from being supplied, but it can be disclosed if larger public interest justifies the disclosure of such information. Who will decide this larger public interest? It is not the applicant or the person against whom the information is asked for, but the information officer or the competent authority, as the case may be. Of course, while deciding the aforesaid question, the views of both the parties can be taken into account or so to say have to be taken into account by the concerned authority under the R.T.I. Act, for the reason that the person who is asking for the information,

would say it is in larger public interest to disclose the information, whereas the person against whom the information is being asked for shall dispute the aforesaid fact.

47. The information regarding the money advanced beyond Rs. 1 lac to any person from the Chief Minister's Discretionary Fund, apparently is not an information which could be said to be protected under the provisions of Section [8](#) and in particular Section [8\(j\)](#) of the Act.

48. The petitioner's case is that if such an information is disclosed, it would cause unwarranted invasion of the privacy of the individual. The individual means the person who is the beneficiary of such amount.

49. Elaborating the aforesaid plea, reliance has been placed upon the application/objections filed by the petitioner before the Commission, wherein it has been said that the persons who have received or would have received the discretionary fund of the Chief Minister also have a social status and self respect and if their names are disclosed,' that will be an unwarranted invasion in their privacy.

50. For testing the aforesaid plea, the nature of such grant has to be seen and it is also to be tested, whether the Chief Minister's Discretionary Fund is immune to any sort of scrutiny or audit or that such fund can be used or diverted in any manner, as the Chief Minister desires and that no limitation or restriction has been imposed under the scheme, under which this fund is to be provided or its disbursement stands protected under the provisions of Section [8](#).

51. A keen look upon the scheme of Chief Minister's Discretionary Fund, and the Rules which govern it, is necessary for dealing with the issue involved.

52. In supersession of the U.P. Chief Minister's Discretionary Fund Rules, 1989, Rules of 1999 were enforced by the Governor of the State in exercise of his powers under Article [283\(2\)](#) of the Constitution of India.

Article 283(1).....

53. Article [282](#) and [283](#), which fall under Chapter I, Part 12 of the Constitution dealing with finance, has been placed under the heading 'Miscellaneous Financial Provisions'.

54. Article [282](#) deals with the expenditure defrayable by the Union or a State out of its revenues, lays down as under:

The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

55. Article [283](#) is about the custody, etc, of Consolidated Funds, Contingency Funds and moneys credited to the public accounts, wherein Sub-clause (2) provides that : Consolidated Fund of the State and the Contingency Fund of the State and the custody of public money other than those credited to such funds received by or on behalf of the Government of the State, their payment into the public account of the State and withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature of the State, and, until provision in that behalf is so made, shall be regulated

by rules made by the Governor of the State'. It is in pursuance of the aforesaid power vested with the Governor, the Rules of 1989 and thereafter, the Rules of 1999 have been framed.

56. The Rules of 1999 were amended by notification issued on 22.11.2005, with respect to certain clauses and again vide notification dated 22.11.2006, issued by the Governor in exercise of his powers under Article [283\(2\)](#) of the Constitution of India.

57. Amendments/modifications made in the Rules of 1999 are only with respect to the entitlement category and the amount which can be awarded to the person entitled for such discretionary fund rest of the Rules of 1999 are still in force.

58. In the Rules of 1999, Rule 2 provides that the adequate or sufficient amount, with the sanction/ consent of the Legislature of the State (Rajya Vidhan Mandal), shall be placed in the Chief Minister's Discretionary Fund, which shall be granted to the individuals or to the institutions by the Chief Minister. The Explanation given therein deals with the situation when there is President's Rule in the State.

59. Rule 3, lays down the conditions under which the grant/payment from the Chief Minister's Discretionary Fund can be given.

60. Sub-clause (1) says that the grant shall be made to such persons or institutions, who are eligible for such a grant from the State fund.

61. Sub-clause (2) says that the grant shall not be recurring and it would not mean that it would be spent in any personal type of expenditure nor such an expenditure would be borne by the discretionary fund.

62. Sub-clause (3) of Rule 3, lays down the category of persons to whom the grant can be made and also the maximum amount which can be paid to such persons including the institutions.

63. Sub-clause (4) gives the discretion to the Chief Minister to award the amount in excess of the amount prescribed to any person in any special matter, as per his or her discretion, as the case may be, whereas Sub-clause (5) prescribes for audit of the discretionary fund by the Accountant General, making it obligatory for the Chief Minister's office, to forward him a copy of the order of grant made in favour of any person.

64. Sub-clause (6) (Ka) and (6) (Kha) confers power upon the Chief Minister or the officer nominated by him to make inspection of the record of the person, to whom the grant has been made, if it is a grant of more than Rs. 5,000.

65. Sub-clause (6) (Kha) says that the District Magistrate shall make verification and shall certify about the utilization of the grant made and he will make relevant records available at the time of audit. The District Magistrate shall also ensure that the grant has been made to the eligible persons.

66. Sub-clause (7) requires the beneficiary to give a certificate that he has not taken the benefit of any discretionary fund of any Minister and has not applied for any discretionary fund of any Minister and that in the relevant year, he is not a beneficiary of such a grant. It is only after giving such a certificate, the grant shall be disbursed.

67. Sub-clause (8) says that the beneficiary has to utilise the amount of grant from the Chief Minister's Discretionary Fund within the prescribed period and if he fails to do so, he will have to return the unused money in one go.

68. Sub-clause (9) obligates the District Magistrate to give utilization certificate of the amount paid to the beneficiary, and Sub-clause (10) says that the order of sanction form the discretionary fund and the account disbursed, shall be maintained in the Account Section of the Chief Minister's office.

69. Sub-clause (11) says that where the amount of such discretionary fund is more than Rs. 500, the beneficiary will have to give a stamp receipt in acknowledgment thereof.

70. By means of the amendment/modification by the notification dated 22.11.2005, Sub-clause (3) which deals with the category of persons entitled for the grant and the amount which can be given to a particular person including institutions has been amended, enhancing the said amount to certain extent and lastly by the amendment of 2006, amendments have been made in Sub-clauses (3), (4) and (6) to the same effect, i.e., the category of persons to whom the grant can be made from the discretionary fund of the Chief Minister and the maximum amount that can be paid to such persons, etc.

71. The Chief Minister's Discretionary Fund thus, is a part and parcel of the Consolidated Fund of the State, subject to all constitutional sanctions and statutory bindings. It is in fact the public money and, therefore, public has a right to know about it.

72. The Chief Minister's Discretionary Fund thus, is not and cannot be treated as personal fund of the Chief Minister, but it is the discretionary fund, which has to be disbursed, at his/her discretion, as the case may be, which disbursement again is governed by the Rules. The discretion has to be exercised in the manner as may be prescribed under the Rules.

73. The amount of Rs. 1 lac or more can be given to persons, who are enumerated in Rule 3(b) to 3(f).

Rule 3 read as under:

(3) This grant may be given by the Chief Minister to the persons upto the limit mentioned below according to his discretion:

(a) to helpless, Disabled, persons of poor classes or boys or widows : Not more than Rs. 1,00,000;

(b) to institutions involved into social and cultural activities (other than institution based on caste or religion) : Not more than Rs. 5,00,000;

(c) to poor persons suffering from illness : Not more than Rs. 5,00,000;

(d) to for the construction of building of non-Governmental educational institutions : Not more than Rs. 5,00,000;



(e) to poor families whose earning member is killed in a brutal murder/crime or died due to accident, snake bite or drowning of boat : Not more than Rs. 5,00,000;

(f) to persons suffering from massive fire breakout, land sliding, snowfall or other natural calamities : half of the loss occurred on general standards or Rs. 2,00,000 whichever is less;

(g) to person seriously injured in (one) accident and is in need of money : Not more than Rs. 1,00,000 ; and

(h) to needy person injured in (two) accidents : Not more than Rs. 25.000.

74. The rules aforesaid thus prescribed the category of persons, who are entitled for the benefit of discretionary fund of the Chief Minister with the maximum amount that can be given to them, of course subject to discretion of the Chief Minister, who is authorised to give an amount even in excess of the prescribed limit, but it does not lay down anywhere that the discretionary fund can be given to persons not entitled under the rules. Even supposing (though the Rules do not permit) that the Chief Minister has the power to extend the benefit of the discretionary fund to any class of person/persons with discretion of any such amount being paid, nonetheless, it is governed by the rules and, therefore, if any amount is paid to a person, as enumerated under the rule or that the amount has been paid in excess of the amount prescribed, the amount paid even then cannot be treated to be an action of the Chief Minister or the Chief Minister's Secretariat, which is not amenable to the public knowledge.

75. The discretion which is governed by the rule cannot be treated as insulated with immunity so as to cover it up and not to make it known to the person, who is asking for such an information. No rule or provision, either constitutional or statutory has been placed before us to draw a presumption of secrecy with respect to the amounts disbursed and the details of such person or in other words, with respect to the disbursement of the discretionary fund from the Chief Minister Secretariat, to the persons who are the beneficiary of such disbursement.

76. In the case of *Coimbatore District Central Coop. Bank v. Employees Assn.* [MANU/SC/2117/2007](#), the Court dealing with the doctrine of proportionality, a principle where the Court is concerned with the process, method or manner in which the decision maker has ordered his priorities, reached a conclusion or arrived at a decision, observed that the doctrine of proportionality has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the Government norms or unfairness, arbitrariness or unreasonableness. The very essence of decision making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise, the elaboration of a rule of permissible priorities. "Proportionality" involves "balancing test" and "necessity test", whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative.

77. The Chief Minister while distributing the amount to the persons entitled to have the benefit of the aforesaid public fund, has the discretion to make such grant to the eligible persons and while exercising the discretion, he/she as the case may be, has the discretion to enhance the amount as against the amount normally prescribed for each category, but the discretion to



whom the amount under the discretionary fund should be paid and what amount should be paid also has to be exercised with caution and care and on a reasonable basis, e.g., in any special matter where the amount specified is found to be very low, so as to meet the exigency for which the amount is to be paid, the Chief Minister would have the discretion to make a larger payment which means that the discretion of giving enhanced amount is also circumscribed by the requirement of it being a 'special matter'. For example, in case a poor person needs to have the medical expenses for kidney transplant, liver transplant, bypass surgery or any other disease like cancer etc. requiring huge expenditure in his treatment, the enhanced amount can be given. Illustrations aforesaid are not exhaustive, as there may be many more cases, under different entitlements, where the Chief Minister could exercise the discretion of providing any enhanced or increased amount as against the one prescribed. Whenever a discretion is vested with any authority to do or not to do a thing, it has to be done by exercise of sound discretion, as per the rules and guidelines given under the rules.

78. When the Rules themselves prescribe the categories of persons to whom the benefit can be extended with the eligibility criteria, the maximum amount which can be paid to such defined persons, there being requirement of making audit by the Accountant General, U.P., of the Chief Minister's Discretionary Fund with powers to the Chief Minister and District Magistrate to look into the records of the beneficiaries and verify that the amount has been received by the eligible persons, coupled with the fact that the beneficiary is also under the obligation to utilise the fund given to him within the prescribed period for the purpose it was given, failing which, unused amount has to be refunded in one go, it cannot be said that there can be any secrecy in the matter either with respect to the disbursement of the discretionary fund to any particular person or his/her entitlement for the same nor it would be a case of infringing any right of privacy of a person, to whom the benefit has been extended.

79. There appears to be no reason for not making such information known to the public or atleast not making it known to the persons, who asks for such information, when the disbursement is made under the Rules notified by the Governor. Extending the benefit to the eligible and deserving persons, is a laudable object and a highly appreciative function of the Chief Minister and, therefore, also the disclosure of such an information would not affect the credibility of the Chief Minister's Secretariat or its functioning, but would make the entire functioning transparent, which would enable the applicant to know that the discretionary funds have been properly utilized. In a democratic set up, every organ of the State including the Legislature and the executive is answerable and accountable to the public.

80. There cannot be a bar nor any impediment can be placed in disclosing such an information which relates to the benefits extended from the discretionary fund of the Chief Minister to the persons entitled to such benefit.

81. Chief Minister's Discretionary Fund is a name, but nonetheless it is a public fund and public money. The citizens have a right to know that in what manner, the said discretionary fund has been used and utilized. From the category of persons to whom this benefit can be extended, it is clear that it takes into account not only the destitute, disabled weaker section of people, widows, children, but it also prescribes the given amount for social and cultural organizations, poor person suffering from disease, for construction of the school building of any Non-Governmental Educational Institution etc. etc. That being so, there cannot be any plausible reason for not disclosing the information regarding disbursement of the discretionary fund to any person.

82. The plea that if such an information is disclosed, it would cause unwarranted invasion of the privacy of the person who is a beneficiary is concerned, the same is wholly untenable and devoid of substance. The person who is extended the benefit of discretionary fund does not compromise with his honour and prestige nor acceptance of such a benefit belittles his status.

The Chief Minister while extending the benefit of the given amount from the Chief Minister's Discretionary Fund, discharges his/her, as the case may be, social obligation, in consonance with the socio economic policy of the State to the person, who is entitled under the rules for having the said benefit. The extension of the economic assistance to the persons entitled, is a step towards discharging the functions of a welfare State by providing monetary help to the deserving under the Rules.

83. The benefit is supposed to be extended possibly to the maximum number of persons, who fall within the category of entitlement, which care has been taken by providing the maximum amount against each category of person, which can be normally provided. This has been done with a view to meet the economic capacity and the amount, available in the Chief Minister's Discretionary Fund. The amount appears to have been prescribed against each category, with a view to make the funds available to maximum possible number of people and not allowing the discretion to be exercised in a manner, so that it concentrates into the hands of few beneficiaries. • Of course, those who are not entitled for the discretionary fund, may not be allowed the money from the said fund, if the rule or the law otherwise does not permit.

84. The beneficiary of the discretionary fund cannot feel any inconvenience or discomfort, in case the information is given about the amount, that has been given to him under the said rule. Of course, if any undue advantage has been derived, it cannot stand protected by simply hiding or by not disclosing the information to the person, who asks for the same.

85. The plea that if such an information is given, it would cause unwarranted invasion of the privacy of the individual beneficiary is otherwise also not available to the petitioner or the Public Information Officer or the State nor to the department concerned, as it may be the individual defence, if at all available, to the beneficiary. The information asked for, is only to provide the information with respect to the discretion of the Chief Minister's Secretariat, where the funds have been released to the beneficiaries, and not the information from the beneficiaries, as to what they have done to the funds given to them. In case, any such information is asked for, which relates to third person, namely, the beneficiary, and if, he or she had claimed confidentiality of such an information, and if such an information can at all be treated as confidential, only in that case, provisions of Section 11 would apply, but it would also not mean that such an information would stand absolutely exempted from being disclosed.

86. It is to be noticed that when the beneficiary of the grant from the Chief Minister's discretionary Fund is under an obligation to use the money so paid for the same very purpose, for which, it has been paid with the obligation upon the beneficiary to return the unused money in one go, and that too within the prescribed period, for which utilization certificate has to be furnished by the District Magistrate after making necessary verification, it cannot be said that it is an information, which can seek confidentiality within the meaning of Section 11 of the Act of 2005 or can be treated as confidential by the beneficiary, treating it to be a third party information. One cannot forget, that the monetary assistance extended to the beneficiary is from the public fund.

87. In our considered opinion, the information asked for regarding the names and details of the persons, who have been paid an amount of more than Rs. 1 lac from the Chief Minister's

Discretionary Fund for the period in question, is not an information, which is covered under Section [8\(j\)](#) nor it stands exempted otherwise.

88. This takes us to the next question regarding the authority of the Commission/Chief Information Commission to direct the Public Information Officer to give the information asked for within a specified period, while dealing with a complaint under Section [18](#) of the Act.

89. The petitioner in support of his plea, that the Commission cannot direct for supply of the Information, in proceedings under Section [18](#), has relied upon the case of Reliance Industries Ltd. v. Gujarat State Information Commission and Ors. [MANU/GJ/7385/2007](#). A learned single Judge of the High Court of Gujarat in this case, while considering the effect of information asked for relating to third party, taking into account the provisions of Sections [11](#) and [19](#) of the Act, also had an occasion to consider the scope of Section [18](#) of the Act, wherein the Court observed that a third party information cannot be given unless the rules of natural justice are followed in the manner prescribed under the Act.

90. The legal proposition as enunciated by the Gujarat High Court with respect to affording of reasonable opportunity to the third party to whom either the information relates or who had supplied the information and which information is being treated as confidential by such a person, is not only the tenet of the principles of natural justice but it also flows from the statutory provisions of Section [11\(1\)](#) itself. In case where Section [11](#) applies, of course, due opportunity, as provided under the Act, has to be afforded to the third party and only after following its rules, the information can be supplied or refused and that too by giving reasons.

91. We, therefore, are in respectful agreement with the aforesaid view of following the rules of natural justice, expressed by the Gujarat High Court.

92. The view expressed otherwise in respect of locus standi of a person to seek an information and also on the scope of Section [18](#) of the Act, requires consideration.

93. The Gujarat High Court while dealing with the aforesaid proposition of law, took into consideration the judgment of the Apex Court in the case of Ashof Kumar Pandey v. State of West Bengal and Ors. [MANU/SC/0936/2003](#), for holding that care has to be taken that the information is not asked for by the persons, who seek the information with an intention to blackmail the person against whom the information is asked for and that the nature of the information asked for and the person who asked for information are the relevant considerations.

94. In regard to the observations of the Gujarat High Court, suffice would be to mention that the Court proceeded on the assumption that the right to seek information is like filing writ petition in the nature of public interest litigation. In a public interest litigation, care has to be taken that it is not a petition for settling the personal score or satisfying the personal vendetta or is not a publicity interest litigation or pecuniary interest litigation. The essence of the grievance raised and the bona fide of the person in bringing the issue to the Court, are such key factors, which play an important role in the public interest litigation.

95. The Supreme Court even in a petition of P.I.L. has held in the case of T. N. Godavarman Thirumulpad (98) v. Union of India and Ors. (2006) 5 SCC 28 : 2006 (5) AWC 5350 (SC) and Vishwanath Chaturuedi (3) v. Union of India and Ors. [MANU/SC/1058/2007](#), that even if the person bringing the cause to the Court has no locus standi to pursue the matter or he is not a bona fide person or a public spirited person or may have approached the Court with political

reasons but still in such a case the grievance raised can be looked into and if found genuine and worth being enquired into, the same can be entertained.

96. Under the Right to Information Act, the locus standi of the person is of no avail. Any citizen can ask for any information, which is not protected under the relevant clauses. of exemption. The Public Information Officer is under the legal duty to supply the information so asked for.

97. Sub-clause (2) of Section [6](#) itself says that an applicant making request for information shall not be required to give any reason for seeking the information or any other personal details except those that may be necessary for contacting him. This leaves no room of doubt that the information cannot be refused on the ground that the person asking for information is not a bona fide person and it cannot also be enquired from him as to why he is seeking the information.

98. The view, therefore, expressed by the Gujarat High Court in this regard without adverting to the scheme of the Act, 2005 and without noticing the provisions of Section [2\(i\)](#) and Section [3](#) of the Act, are contrary to law. Section [2\(i\)](#), says that the 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 Section [3](#), says that subject to the provisions of this Act, all citizens shall have the right to Information.

99. We thus find that the Gujarat High Court did not take into consideration the provisions of Section [2\(i\)](#) and Section [3](#) and also Sub-clause (2) of Section [6](#), which specifically prohibits from making any enquiry from the applicant for giving reasons for seeking the Information or any other personal details except his address, where he could be contacted.

100. Thus, the view expressed by the Gujarat High Court in respect of the locus standi of the applicant, asking for any information cannot be said to be a binding precedent.

101. We, therefore, with utmost regard to the learned Judge of the Gujarat High Court, are unable to subscribe to the said view.

102. Gujarat High Court also held that the information cannot be directed to be given under Section [18](#), but recourse can be taken in appeal for having the information, which has been either illegally withheld or has been specifically refused.

103. For finding out the true meaning, import and scope of Section [18](#), we have to make purposive interpretation of the provision, keeping in view the object and purpose of the Act.

104. On seeing the scheme of the Act, the relevant extracts of which, we have reproduced earlier, it is beyond doubt that the object and purpose of the Act is to provide information to the citizen (applicant), who makes a request for having such an information, which can be given under the Act and which does not stand exempted or so to say is not prohibited from being furnished under the provisions of the Act.

105. Normal rule of interpretation is, to give such meaning to the provisions of the Act, which furthers the object of the Act and does not restrict its applicability so as to defeat its very object and purpose. The intention in making a provision, the principle which guided for such an enactment and the mischief which is intended to be rectified cannot be lost sight of, while discovering the true meaning and import of the provisions of the Act.

106. While Interpreting any statute, normally a literal construction of the provision has to be made and if the language is clear, unambiguous and meaningful, which forwards the cause of enactment, the Court would restrain itself from making an effort to interpret the provisions in any different manner, which would have the effect of amending the rule or rewriting the provision. The literal rule of construction is the normal rule of interpretation, which does not infringe upon the statute or the statutory provision and carries forward the intention, object and purpose of the Act. Any hardship to any person or any lacuna in the Act can also not be filled in, unless of course the provision militates against the object and purpose for which it has been enacted or leads to absurdity.

107. In the case of A.N. Roy, Commissioner of Police and Anr. v. Suresh Sham Singh [MANU/SC/2946/2006](#), the Supreme Court observed as under:

It is now well-settled principle of law that the Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. The Courts should avoid a construction, which would reduce the legislation to futility. It is also well-settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions.

108. In the case of Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and E.T.I.O. [MANU/SC/2333/2007](#), held that only in case a literal interpretation gives rise to anomalous situation, purposive interpretation may be resorted to, and again in the case of S.B. Bhattacharjee v. S.D. Majumdar (2007) 10 SCC 513, it was said that for giving effect to the legislative intent in the face of draftsman's unskillfulness or ignorance of law, the Court must consider executive instructions or office memorandum as executive interpretation based on the doctrine of *contemporanea expositio*.

109. In the case of Raghunath Rai Bareja v. Punjab National Bank [MANU/SC/5456/2006](#), the Supreme Court held that the literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statutes as it is, without distorting or twisting its language. The literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the layman in his ordinary life. The meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean. The first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation, e.g., the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule. Even if the literal interpretation results in hardship or inconvenience, it has to be followed.

110. The Supreme Court had an occasion to consider the principle of purposive interpretation in the case of State of U.P. and Ors. v. Jeet S. Bisht and Anr. [MANU/SC/7702/2007](#), wherein two Hon'ble Judges have delivered the judgment separately, but the outcome of the petition is the same, though reference to larger Bench has been made, on the reasoning given by them.

In paragraphs 72 and 73, Justice S.B. Sinha, held as under:

72. With the advent of globalisation, we are witnessing a shift from formalism to a value-laden approach to law. In the contemporary scholarship, especially with the decimation of law as purely an autonomous discipline (with the emergence of cross-cutting realms such as Law and Economics, Law and Philosophy, Law and Society, I.P.R. et al), we see that laws embody a goal, which may have its provenance in sciences other than law as well. It is no more the black letter in the law which guides the interpretation but the goal which is embodied by the particular body of law, which may be termed as the rationality of law.

73. Law, in its value-laden conception, is not entirely endogenous in its meaning and purpose, the construction thereof also depends on the statement of purport and object. There is a spillover of the aforementioned shift in philosophy of law to statutory interpretation. Purposive interpretation, of lately, has gained considerable currency, which is relevant for the sake of maximising the efficiency in respect to the point behind the rule. There may be a situation when purposive interpretation is required even in the context of deciphering the constitutional mandate by invoking the notion of active liberty discovered by Justice Stephen Breyer of the American Supreme Court. This is the precise role which was exhorted by Bruce A. Ackerman in the famous Storrs Lecture.

111. Despite reference to larger Bench, the rule of purposive interpretation, can still be made applicable to understand the provisions in the instant case.

112. Section [18](#) of the Act is a provision, which allows the applicant who has been refused information or who believes that complete information has not been given, or who has been denied the information by simply delaying the information, to make a complaint to the Commission, Central or State, as the case may be, who would make an enquiry into the said complaint.

113. Section [19\(8\)\(a\)](#) is in general terms, which confers power upon the Commission, may be the Central or the State, to require the public authority to take any step as may be, necessary to secure compliance under the said Act including providing access in a particular form to the information asked for. This means that the Commission can direct for supplying the necessary information in such form, as may be required, therefore, there cannot be any dispute that in the appeal proceedings, the information which has not been given by the Public Information Officer can be directed to be supplied.

114. What would be the position, in case a complaint has been made under Section [18](#) of the Act, regarding refusal of information etc. is a matter which requires consideration.

115. Section [18](#) is a provision which gives a statutory avenue for vindicating the grievance of the persons, who asked for such information, but the same has not been given. To keep a check and control upon the functioning of the Public Information Officers, so that they may not go berserk and violate the statute, capriciously and arbitrarily, Section [18](#) has been enacted. In case the Commission finds that the concerned officer has violated the provisions of the Act, in discharging the duties under the Act and has illegally, wrongfully or malafidely refused the information, he can be subjected to a penalty, which may be, namely, Rs. 250 per day, till the information is provided or to a maximum of Rs. 25,000.

116. In case the intention of the provision of the aforesaid Act was only to punish the guilty information officer, there would have been no occasion under Section [18\(3\)](#) to confer powers upon the Commission, which are vested in a civil court while trying a suit under the Code of Civil



Procedure, 1908 (5 of 1908), requiring discovery and inspection of documents and requisitioning any public record or copies thereof from any Court or office, and for specifically providing under Sub-clause (4) of Section [18](#) that 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.

117. The obvious intention and the purpose of the aforesaid powers being vested with the Commission in the matter of enquiry is to confer all such powers upon the Commission, which can compel the erring officers to disclose and supply the information, which cannot be withheld for any reason whatsoever under the provisions of the Act. Of course, an enquiry on such a complaint naturally would mean to enquire as to whether the information was rightly refused, delayed or was incorrectly given, and for that matter, the power, as given in Sub-clauses (3) and (4) of Section [18](#) the Act, have to be used and on finding that the information was wrongly refused or illegally withheld or was incorrectly or mala fide refused, the Commission cannot be stopped from issuing direction for giving the necessary information.

118. The purpose of holding enquiry would be of no meaning if only punishment is given to the erring officer, as it would not serve the purpose of the Act and the power so conferred upon the Commission, requiring requisitioning of any public record or copies thereof from any Court or office, shall also have only a limited purpose to find out as to whether the punishment should be awarded to the erring officer or not. This is not the intention of the Act or the provisions of Section [18](#).

119. Section [20](#) which prescribes the penalties, takes into account both complaint and appeal, says that the Central Information Commission or the State Information Commission, as the case may be, while deciding any complaint or appeal, if satisfied that the application has wrongly been refused from being entertained or the information has not been given for the reasons given therein, impose the penalty as prescribed, meaning thereby that at the time of either deciding a complaint or an appeal, the Commission has the power to impose penalty and that this penalty would be imposed till the application is received or information is furnished. This clarifies that the penalty can be imposed by the Commission while deciding the complaint or while deciding the appeal. Such penalty can be imposed for such term, till the application is received or information sought for is given, as the case may be, @ Rs. 250 each day, subject to a maximum of Rs. 25,000.

120. So far the power to issue direction for receiving the application or for supplying the information is concerned, it is for one and the same purpose, i.e., for supplying the correct information to the applicant, if it does not stand exempted under the Act. In this regard, there can be no distinction, when the Commission enquires into a complaint or hears an appeal under the aforesaid power.

121. This view also stands fortified by the fact, that Section [20](#), which gives the consequence of enquiry being held under Section [18](#), on a complaint being received, says in Sub-clause (1) "..... It shall impose a penalty of Rs. 250 per day, till the information is provided or to a maximum of Rs. 25,000", meaning thereby that the penalty is to be imposed for compliance of the provisions of the Act.

122. The aforesaid clause in inverted commas, means beyond doubt that the Commission on being satisfied about the complaint and while deciding any complaint or appeal, if it is of the opinion that without any reasonable cause, the application was refused, or the necessary information has not been given or the same has not been furnished within time or has been mala, fide denied or the knowingly incorrect information has been given etc. etc., only then it shall impose the penalty aforesaid. Since the penalty of Rs. 250 per day is to be imposed till the application is received by the Public Information Officer, Central or State, as the case may be, if they had refused to accept application or the information asked for is furnished, it is apparent, that the very purpose of this penal provision is to make the officer concerned to supply the information.

123. In a given case, where a complaint has been made that the information has not been furnished, the penalty of Rs. 250 each day, shall be imposed till the information is furnished, to a maximum of Rs. 25,000, which means that even while dealing with the complaints, the Commission can ask for the disclosure of the information, otherwise, the provision would not have contained the phrase aforesaid, which prescribes the penalty of Rs. 250 each day, till application is received or information is furnished, as the case may be.

124. The intention of the provision is clear. The penalty is to be imposed for the period during which either the application is not received or the information is not given, but the moment, the application is accepted or information is given, as the case may be, the penalty cannot be imposed any further. Of course, the maximum limit of penalty is Rs. 25,000, but that does not in any way fetter the power of the Commission to issue a direction for furnishing the information. The maximum amount of penalty does not qualify the main substantive provision, which says that it shall be imposed till the information is given or the application is received, as the case may be.

125. In a given case where no appeal has been filed or even after first appeal, the information has not been given and if no second appeal has been filed, but a complaint has been made, it would be the discretion of the Commission to pass appropriate orders for furnishing of the information, in case the Commission is satisfied and if it is established from the record that the information was illegally refused or not given correctly etc. etc.

126. In the absence of any prohibition under Section 18 and there being no other provision, which puts any embargo or curtails the jurisdiction of the Commission to order for supply of the information not duly supplied, or to ask for receiving of the application, which has been wrongly refused from being entertained, the provisions of Section 18 has to be read in a manner, which does not have the effect of curtailing the jurisdiction of the Commission, which otherwise can be exercised under the provisions of the Act.

127. Section 18 is a substantive provision regarding lodging and enquiring into a complaint, whereas Section 20 is the consequence of such an enquiry.

128. The whole purpose of making an enquiry on a complaint being given by the affected person, shall stand defeated, if the two provisions are read in isolation or they are given a meaning which does not further the object of the Act. From a harmonious construction of the aforesaid provisions keeping in mind the purpose for which they have been enacted, it can be safely concluded that the powers of the Commission under Section 18 are not restricted only to make enquiry and award punishment, but they also extend for issuing direction for receiving the application or for giving the necessary information under the provisions of the Act. Any other



interpretation would not be in consonance with the scheme of the Act and shall also amount to restricting and curtailing the power of the Commission by judicial interpretation.

129. The Act contains two types of information ; first which is to be suo motu provided without even being asked for under Section [4](#) and the other information, which is to be given when asked for. Of course, there is a third classification, which exempts certain information from being disclosed and a corollary to the said exemption is such information, which though stands protected, but can be disclosed by the competent authority, if satisfied that it is in larger public interest to disclose such information.

130. Any interpretation to any of the provisions of the Act, if leads to absurdity or may lead to defeat the very purpose of the Act, has to be avoided. There is no attempt to twist the words or the phraseology used, but for correct interpretation of provision of Section [18](#), it cannot be read in isolation, but has to be seen in the light of the consequences of a complaint of Section [18](#), as given in Section [20](#) of the Act, besides also the purpose and object of the Act for which it has been enacted.

131. It shall be a futile exercise in case the enquiry as contemplated, on a complaint is made, but remains confined only to the award of punishment with no consequence of furthering the object of the Act, i.e., without requiring the Public Information Officer to supply the information asked for.

132. The meaning, intention and import, therefore, is clear that if a complaint is made and if the Commission is satisfied that the information has wrongly been withheld or has been refused, etc., then in addition to the penal actions prescribed it can also order for supply of such an information.

133. We, therefore, with deep respect are unable to concur with the view expressed by the Gujarat High Court to the contrary in the case of Reliance Industries Ltd. v. Gujarat State Information Commission and Ors. [MANU/GJ/7385/2007](#), with respect to the scope of Section [18](#).

134. In view of above, we are of the considered opinion that neither the information asked for regarding distribution of the discretionary fund viz. in the instant case, information regarding the details of the persons, who have been given an amount of more than Rs. 1 lac can be refused nor it stands exempted under Section [8\(i\)](#) of the Act.

135. We are also of the view that the Commission while enquiring into the complaint under Section [18](#), can issue necessary directions for supply/disclosure of the information asked for, in case the Commission is satisfied that the information has been wrongly withheld or has not been completely given or incorrect information has been given etc., which information otherwise is liable to be supplied under the provisions of the Act.

136. Before parting, we will also like to put on record that all the information regarding the Chief Minister's Discretionary Fund, including the information regarding the persons, who have been granted any amount from the discretionary fund with their category and the amount paid/disbursed, may be treated such an information, which requires to be made available to the public in terms of Section [4](#) of the Act. The public has a right to know about the disbursement of the Chief Minister's Discretionary Fund to the persons and the amount which has been paid with a further information that whether the amount has been properly utilized in the given time or not.

137. We, however, refrain ourselves from issuing any such directive, but we hope and trust that the State Government shall look into the matter and exercise its discretion, particularly when there are specific rules, duly formulated by the Governor, prescribing for audit by the Accountant General, U. Barathokey v. Chairman U.P. of the discretionary fund and also other provisions regarding the entitlement and utilization etc., which we have already discussed above.

138. We have been persuaded to make these observations in accordance with the provisions of the Rules of 1999, Sub-clause (xvii) of Section [4\(1\)\(b\)](#) and also Sub-clause (2) of Section [4](#) of the Right to Information Act, 2005, which says that 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) of Section [4](#), 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.

139. We, thus do not find any illegality in the impugned orders dated 12.12.2007, 18.1.2008 and 15.2.2008, contained in Annexures-1, 2 and 3 respectively to the writ petition, passed by the Commission nor we find any reason for the petitioner not to supply the information asked for.

140. The writ petition is devoid of merits and is dismissed.

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**Equivalent Citation:** AIR2007Kant136, 2008(1)KarLJ672

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

Writ Petition No. 7408/2006

Decided On: 30.03.2007

**Appellants: Poornaprajna House Building Cooperative Society Ltd., A Cooperative Society registered Under the provisions of the Karnataka Cooperative Societies Act, 1959 repled. by its President, Sri H. Hayagreevachar**

**Vs.**

**Respondent: Karnataka Information Commission, Sri S.R. Narayana Murthy, S/o late Sri S. Rama Rao and The Assistant Registrar of Cooperative Societies**

**Hon'bleJudges:**

S. Abdul Nazeer, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: N.N. Harish, Adv. for Aaren A/S

For Respondents/Defendant: B. Veerappa, AGA for R1 and 3 and Puttige R. Ramesh, Adv. for R2

**Subject: Right to Information**

**Acts/Rules/Orders:**

Karnataka Cooperative Societies Act, 1959; Right to Information Act, 2005 - Sections 2, 4, 6(1), 7(1), 15, 18, 19, 19(1), 19(3), 19(4), 19(5), 19(6), 19(7), 19(8), 19(9) and 19(10); Constitution of India - Articles 226 and 227; Civil Procedure Code (CPC)

**Cases Referred:**

Associated Cements Companies Ltd. v. B.N. Sharma and Anr. AIR 1965 SC 1595; Ahmedalli Abdulhusein Kaka and Anr. v. M.D. Lalkaka and Ors. AIR 1954 Bombay 33; Udit Narain Singh, Malpaharia v. Additional Member, Board of Revenue, Bihar and Anr. AIR 1963 SC 786; Savitri Devi v. District Judge, Gorakhpur AIR 1999 SC 976

**Disposition:**

Petition dismissed

## ORDER

**S. Abdul Nazeer, J.**

1. In this case, petitioner has assailed the validity and correctness of the order passed by the first respondent - the Karnataka Information Commission (for short 'the Commission') dated 10.05.2006 in Appeal No. KIC 16 APL 2006 (Annexure 'O') and for certain other reliefs.

2. Petitioner is a Cooperative Society registered under the provisions of the Karnataka Cooperative Societies Act, 1959. The second respondent is a member of the petitioner - Society. He had filed two applications dated 07.11.2005 and 17.11.2005 in Form A under Section 6(1) and 7(1) of the Right to Information Act, 2005 (for short 'RTI Act') seeking certain information and documents pertaining to the functioning of the Society including personal details of its members. The Society rejected the said application by the order dated 06.12.2005. Feeling aggrieved by the said order, the second respondent filed an appeal before the President of the petitioner - Society presuming that he is an appellate authority under Section 19(1) of the RTI Act. The appeal was rejected on the ground that the Society is not a public authority under Section 2(h) of the RTI Act. The 2nd respondent filed a second appeal to the Commission under Section 19(3) of the RTI Act. The Commission has issued notice to the Society and the Society has filed its objections. After hearing the parties, the Commission has passed the impugned order.

3. When the matter came up for orders on 09.06.2005, the learned Additional Government Advocate accepted notice on behalf of respondent Nos. 1 and 3 and emergent notice was issued to respondent No. 2. On 19.07.2006 when the matter was posted again for orders, the learned Additional Government Advocate made a submission that he has no instruction to appear for respondent No. 1 the Commission. Therefore, emergent notice was issued to respondent No. 1. In response to the notice, the Commission has sent a letter addressed to the Registrar of this Court on 07.08.2006 stating that the Commission should not be made a party to the writ petition filed against its orders on the ground that it is not an interested party. The Commission has requested this Court to drop its name from the list of the respondents.

4. Having heard the learned Counsel for the parties, the question that arises for consideration is whether the petitioner is justified in making the 'Commission' as a party (respondent) to this writ petition?

5. Right to Information Act, 2005 is an Act to provide for setting out the practical regime of right to information for 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, the constitution of a Central Information commission and State Information Commissions and for matters connected therewith or incidental thereto. Section 15 of the RTI Act provides for constitution of State Information Commission. It consists of State Chief Information Commissioner and such number of State Information Commissioners, not exceeding ten as may be deemed necessary.

6. Powers and functions of the Information Commission are enumerated in Section 18 of the RTI Act Sub-section (3) of Section 18 of the RTI Act states that the Central Information Commission or the State Information Commission while inquiring into the matter under that Section have the same power as are vested in the Civil Court while trying the suit under the Code of Civil Procedure. The said provision is as under:

(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.

7. A second appeal under Sub-section (3) of Section 19 of the RTI Act lies to the 'Commission' against the decision of the Information Commission passed under Sub-section (1) of Section 19 of the Act. It is as under:

(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 appellants was prevented by sufficient cause from filing the appeal in time.

8. Sub-section (4) of Section 19 of the RTI Act states that if the appeal preferred relates to information of a third party, the Commission shall give a reasonable opportunity of being heard to the third party. Sub-section (5) of Section 19 of the RTI Act states that in any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the State Public Information Officer, who denied the request. Sub-section (6) of Section 19 of the RTI Act prescribes the time limit within which the appeal should be disposed of by the Commission. Sub-section (7) of Section 19 of the RTI Act states that the decision of the Commission shall be binding. Sub-section (8) of Section 19 of the RTI Act states that the Commission has the following powers, namely.

(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.

Similarly, Sub-section (9) of Section 19 of the RTI Act states that the commission shall give notice of its decision including any right of appeal to the complainant and the public authority. Sub-section (10) of Section 19 of the RTI Act states that Commission shall decide the appeal in accordance with the procedure as may be prescribed.

9. Thus, it is clear that the Commission while exercising the power under Section 19(3) of the RTI Act is provided with the judicial powers to deal with the dispute between the parties and determine them on merits fairly and objectively. Judicial power is defined as the power to examine questions submitted for determination with a view to the pronouncement of an authoritative decision as to the rights and liabilities of one or more parties. **The Commission is a Tribunal entrusted with the task of adjudicating upon special matters and disputes between the parties. It is clear from the various provisions of RTI Act that the Commission is a tribunal vested with appellate power to decide the appeals. An appeal in legal parlance is held to mean the removal of cause from an inferior subordinate to a superior tribunal or forum in order to test and scrutinise the correctness of the impugned decision.**

10. In ***Associated Cements Companies Ltd. v. B.N. Sharma and Anr.*** [MANU/SC/0215/1964](#), the Apex Court has held that judicial functions and judicial powers are one of the essential attributes of a sovereign state, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures to transfer a part of the judicial powers and functions to the tribunals by entrusting to them the task of adjudicating upon special matters and disputes between the parties. The basic and the fundamental feature, which is common to both the Courts and Tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign state.

11. It is settled that any authority or body of persons constituted by law or having legal authority to adjudicate upon questions affecting the rights of a subject and enjoined with a duty to act judicially or quasi judicially is amenable to the certiorari jurisdiction of the High Court Similarly, Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to armed forces. Thus, the orders of the Commission are amenable to the jurisdiction of the High Court. But, the question is, whether in a writ in the nature of certiorari filed under Article 226 of the Constitution, the tribunal or authority which had made an order should be impleaded as a party?

12. It is well established that a necessary party is one without whom no order can be made effectively. A party whose interests are directly affected, is a necessary party. A proper party is one in whose absence an effective order can be made, but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

13. Certiorari lies to remove for the purpose of quashing the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions. Certiorari lies only in respect of judicial or quasi-judicial act as distinguished from an administrative act. A writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts. It follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it. In such proceedings, the Tribunal or the authority, which is permitted to transmit the records must be a party, because without giving notice to it, the record of the proceedings cannot be brought to the High Court. It is true that in an appeal against a decree of a subordinate court, the court that passed the decree need not be made a party. But, there is a distinction between an appeal against a decree of a subordinate court or a writ of certiorari to quash the order of a tribunal or authority. In the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds. In the case of a writ petition, a writ of certiorari is issued to quash the order of the tribunal, which is ordinarily outside the appellate or the revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. If such a tribunal or authority is not made a party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt.

14. In **Ahmedalli Abdulhusein Kaka and Anr. v. M.D. Lalkaka and Ors.** [MANU/MH/0002/1954](#), a Division Bench of Bombay High Court has held that as a rule of practice, whenever a writ is sought challenging the order of the Tribunal, the Tribunal must always be a necessary party to the petition. It has been held as under:

The question that has been raised at the bar is, what is the proper attitude that a Tribunal which is served with a rule in a petition filed should adopt, and what is the proper order for costs that the Court should make. I think we should lay down the rule of practice, that whenever a writ is sought challenging the order of a Tribunal, the Tribunal must always be a necessary party to the petition. It is difficult to understand how under any circumstances the Tribunal would not be a necessary party when the petitioner wants the order of the Tribunal to be quashed or to be called in question. It is equally clear that all parties affected by that order should also be necessary parties to the petition.

(emphasis supplied)

15. In **Udit Narain Singh, Malpaharia v. Additional Member, Board of Revenue, Bihar and Anr.** [MANU/SC/0045/1962](#), the Apex Court has held as under:

As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, ex hypothesi it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it. It is implicit in such a proceeding that a tribunal or authority which is directed to transmit the records must be a party in the writ proceedings, for, without giving notice to it, the record of proceedings cannot be brought to the High Court. It is said that in an appeal against the decree of a subordinate court, the court that passed the decree need not be made a party and on the same

parity of reasoning it is contended that a tribunal need not also be made a party in a writ proceedings. But there is an essential distinction between an appeal against a decree of a subordinate court and a writ or certiorari to quash the order of a tribunal or authority; in the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds, though sometimes wrongly or even illegally, but in the case of the latter, writ or certiorari is issued to quash the order of a tribunal which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is set aside on the ground that the tribunal or authority acted without or in excess of jurisdiction. If such a tribunal or authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for, not being a party, it will not be liable to contempt. In these circumstances, whoever else is a necessary party or not the authority or tribunal is certainly a necessary party to such a proceedings. In this case, the Board of Revenue and the Commissioner of Excise were rightly made parties in the writ petition.

In Paragraph 12 of the judgment, the Apex Court has categorically held that the tribunal or authority whose order is sought to be quashed is a necessary party. It is held as under:

To summarise, in a writ of certiorari, not only the tribunal or authority whose order is sought to be quashed, but also parties in whose favour the said order is issued are necessary parties.

(emphasis supplied)

16. It is no doubt true that the Apex Court in the case of **Savitri Devi v. District Judge, Gorakhpur** AIR 1999 SC 976 has held that there was no necessity for impleading the Judicial Offices who disposed of the matter in a civil proceedings when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the Special Leave Petition and describing them as contesting respondents.

17. The Commission cannot be equated to a civil court. The Commission is neither directly subordinate to the High Court nor its orders are subject to appellate or revisional jurisdiction of the High Court. The Commission is not even under the administrative control of the High Court. Therefore, I am of the view that the Commission is a necessary party to the proceedings because in its absence, an effective order cannot be made. The presence of the Commission is necessary for a complete and final decision on the question involved in the proceedings.

18. In the result, letter of the Commission dated 7.8.2006 seeking deletion of its name from the array of the parties in this writ petition is hereby rejected. I direct the registry to send a copy of this order to the Karnataka Information Commission the first respondent herein forthwith.

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

+ **WRIT PETITION (CIVIL) NO. 7265 OF 2007**

% **Reserved on : 15<sup>th</sup> September, 2009.**  
**Date of Decision : 25<sup>th</sup> 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 18<sup>th</sup> 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 30<sup>th</sup> 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 12<sup>th</sup> 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**

C.R. No. 1051 of 2001.

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

C.R. No. 1051 of 2001.

Date of Decision: 29.1.2006.

Punjab Public Service Commission

...Petitioner.

Versus

Rajiv Kumar Goyal.

...Respondent.

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Sanjeev Sharma, Additional Advocate General, Punjab.  
for the petitioner.

Shri Rakesh Garg, Advocate,  
for the respondent.

JUDGMENT

The challenge in the present revision petition is to the order passed by the learned trial Court on 24.1.2001, whereby the application filed by the plaintiff for production of record as per provisions of Order 11 Rule 14 CPC, was allowed, to enable the plaintiff to file replication to the written statement of the defendant effectively.

The plaintiff has filed a suit for declaration to the effect that he is duly qualified and selected for the post of Punjab Civil Service (Executive Branch) in the examination and interview for the post conducted by respondent no.3, the result for which was declined on 7.11.1994. The plaintiff has also sought consequential relief of appointment as member of PCS (Executive) along with seniority with effect from 7.11.1994 or with effect from such other date when other selected candidates were appointed.

In the said suit, the defendant filed a written statement, copy

of which has been attached as Annexure P.2 with the present revision petition. Before filing the replication, the plaintiff filed the application for production of record on the ground that the written statement is evasive. In reply to the said application, it was the stand of the Commission that the issues raised by the plaintiff relate to internal working of the Commission and that the internal procedure cannot be divulged publicly in the public interest. It is also pleaded that the maintainability of the Civil Suit is yet to be determined by the Court in as much as the Civil Suit is time barred and the Courts at Patiala have no territorial jurisdiction to entertain the Civil Suit. It has been further pleaded that the Public Service Commission is Constitutional Body as defined under Article 315 of the Constitution of India and the Constitutional obligation can only be determined by a Constitutional Bench. It was also submitted that complete record pertaining to the examination of the candidates has already been submitted before this Court in Civil Writ Petition No. 17490 of 1994 and that the Commission is not in possession of the record pertaining to selection of PCS (Executive) and other like services of the year 1994.

While admitting the present revision petition, this Court on 23.1.2004, passed an order permitting the plaintiff to move an application for inspection of the record. It was ordered that if an application is moved, the plaintiff shall be allowed to inspect the record in the meantime. The petitioner moved an application for recall of the said order. The said application was dismissed on 31.1.2005. Both the orders i.e. the order dated 23.1.2004 and that of 31.1.2005 are subject matter of challenge by the Public Service Commission in Special

Leave to Appeal (Civil) Nos. 8394 and 8396 of 2005, wherein the Hon'ble Supreme Court has issued notice in the Special Leave Petition and passed an order that the operation of the orders of the High Court permitting inspection shall remain stayed.

Earlier the present revision petition came up before me on 30.9.2005, when on an argument raised by the learned counsel for the petitioner, the hearing of the revision petition was deferred till the decision of the SLP. But the matter was listed before this Court on 4.1.2006 when it was pointed by the learned counsel for the plaintiff that SLP is only against an interim order passed by this Court, therefore, hearing of the revision petition need not be deferred. On the said date, it was ordered that it is not a fit case to stay the proceedings sine die. Learned counsel for the petitioner has, however, sought time to argue the matter on merits and to examine the effect of the Right to Information Act, 2005 (hereinafter referred to as 'the Act').

I have heard learned counsel for the parties at some length and I am of the opinion that de-hors of the provisions of Order 11 Rule 14 of the CPC, all citizens have been given right to information in terms of Section 3 of the Act. The information is defined under Section 2(f) of the Act to mean 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 4 of the Act contemplates the obligation of public

authorities to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act. Section 6 of the Act provides that a person, who desires to obtain any information under the Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed. Any applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him in terms of Sub Section 2 of Section 6 of the Act.

Therefore, in terms of the provisions of the Act, every citizen of the country has a right to seek information as defined under Section 2(f) of the Act from a public authority. Therefore, without going into the merits of the controversy raised in the suit, the plaintiff is entitled to seek information in terms of the Act.

Learned counsel for the petitioner has, however, raised two fold objections. Firstly, that the plaintiff has moved an application before the Civil Court and not to the Information Officer, appointed under the Act and, therefore, such information cannot be sought by the Civil Court. Secondly, it is pointed out that since the Hon'ble Supreme Court has passed an order in the SLP on 19.4.2005, the Commission is exempted from disclosing any information in terms of Section 8(1)(b) of the Act.

However, I am unable to agree with the argument raised by the learned counsel for the petitioner. It is correct that the application



has been moved by the plaintiff before the Civil Court, but it cannot be said that since the application has not been filed before the Information Officer, the plaintiff would not be entitled to the information. In terms of Section 6 of the Act, an applicant making request for information is not required to give any reason for requesting the information or the personal details. Therefore, mere fact that an application has been filed before the Civil Court, would not take away the right of the applicant to get information in terms of the Statute. It is the matter of fee, which may be claimed before any such information is supplied. But the information cannot be withheld only for the reason that the application has been filed before the Civil Court and not before the Information Officer.

The argument that the petitioner is exempt to furnish information in terms of the order passed by the Hon'ble Supreme Court, is again not tenable. The order dated 19.4.2005 passed by the Hon'ble Supreme Court reads as under:-

“Taken on board.

Issue notice in the special leave petitions as also on the prayer for grant of interim relief.

Until further orders, it is directed that the operation of the orders of the High Court permitting inspection shall remain stayed.”

The orders passed by this Court on 23.1.2004 and 31.1.2005, which are the subject matter of challenge before the Hon'ble Supreme Court, read as under:-

“Admitted.

To be heard within six months.

The respondent may move an application

C.R. No. 1051 of 2001.

(6)

for inspection of the record. If an application is moved, then the respondent shall be allowed to inspect the record in the meantime.

January 23, 2004

Sd/- (Ashutosh Mohunta)  
Judge ”

“The C.M. is frivolous.  
Dismissed.

31.1.2005.

Sd/- (Ashutosh Mohunta)  
Judge ”

A perusal of of the order passed by the Hon'ble Supreme Court would show that the Hon'ble Supreme Court has stayed operation of the aforesaid orders of this Court permitting inspection but there is no order of the Hon'ble Supreme Court which prohibits the Commission to furnish information under the Act. Consequently, there is no exemption available to the petitioner in terms of Section 8(1)(b) of the Act.

In view of the above, I do not find any merit in the revision petition. Hence, the present revision petition is dismissed.

However, it is directed that the information sought by the plaintiff vide Annexure P.4, except documents at Serial No. 8 thereof, be supplied to the plaintiff in terms of the provisions of the Act on soliciting the necessary fee in terms of the Act. The amount of fee shall be communicated to the plaintiff within one month from today.

29.3.2006  
ds

(Hemant Gupta)  
Judge

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

Special Civil Application Nos. 27225 and 27227 of 2006

Decided On: 09.07.2008

Appellants: **Prahladbhai Patel and Anr.**

**Vs.**

Respondent: **Gujarat State Information Commission thro' State Chief and 2 Ors.**

**Hon'ble Judges:**

Jayant Patel, J.

**Counsel:**

For Appellant/Petitioner/Plaintiff: Mehul Sharad Shah, Adv. for Petitioners 1-2

For Respondents/Defendant: Poojari, AGP for Respondents 1-2, N.V. Anjaria, Adv. for Respondent 1 and Tushar Mehta, Adv. for Respondent 3

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005

**Disposition:**

Petition allowed

**JUDGMENT**

**Jayant Patel, J.**

1. Rule. Mr. Anjaria, learned Counsel waives service of notice of Rule for respondent No. 1, Mr. Poojari, learned AGP appears for respondent No. 2 and waives service of notice of Rule, and Mr. V.K. Shah for Mr. Tushar Mehta, learned Counsel waives service of notice of Rule for respondent No. 3. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

2. The short facts of the case appear to be that respondent No. 3 applied for certain information, which as per respondent No. 3, was not supplied and, therefore, the complaint was made to the Commission for non-compliance of the provisions of Right to Information Act, 2005 (hereinafter referred to as 'the Act'). In response to the said complaint, as per the respondent No. 1 Commission, notice was issued to the petitioner and the petitioner did appear. It is the contention of respondent No. 1 that the opportunity was given, the written reply was considered, however, the opportunity of oral submissions by way of furtherance to the written submission was not availed of by the petitioner and as, on merits, the informations were not supplied and consequence of penalty has been provided under the Act and, therefore, the impugned order has been passed.

3. Whereas it is the contention of the petitioner that after the submission of written reply, in furtherance thereto, second reply/submission was also to be submitted, but when it was tendered to the Clerk/Public Sherestedar, the same was not accepted and the petitioner was asked to approach before the Commission and as the Commission was not available, the same could not be submitted and thereafter the petitioner received the impugned order of imposition of the punishment. It is under these circumstances, the petitioner has preferred the present petition.

4. Heard Mr. Shah, learned Counsel for the petitioner, Mr. Anjaria, learned Counsel for the respondent No. 1, Mr. Poojari, learned AGP for the respondent State Authority and Mr. Shah for Mr. Mehta, learned Counsel for respondent No. 3.

5. It appears that on the ground of opportunity of hearing to the petitioner, there are rival submissions made by the learned Counsel appearing for the respective sides, however, it does appear from the record that opportunity of hearing was given to the petitioner, but it was not fully availed of well in time, whereas as per the petitioner, before they could resort to such opportunity fully, the order has been passed.

6. Mr. Shah, learned Counsel appearing for the petitioner also declared before the Court that if the matter is remanded to the Commission for reconsideration, the petitioners are ready to pay reasonable cost for the present litigation.

7. Under these peculiar circumstances, it appears that since the petitioner has not been able to fully utilize the opportunity given, may be on the ground that the written submissions were tendered and not accepted by the Clerk or that the Commission was not available or otherwise, it would be just and proper if the Commission is directed to give opportunity of hearing to the petitioner and the matter is decided afresh after considering the submissions, which may be made on behalf of the petitioner.

8. The learned Counsel appearing for the petitioner did submit that considering the facts and circumstances, the Commission ought to have imposed the penalty, whereas it was the submission of the respondent No. 1 that as per the Scheme of the Act, if the information is not supplied within the prescribed period, penalty would be as of course and, therefore, the power is rightly exercised on the merits of the matter.

9. In my view such aspects may not be required to be examined and adjudicated at this stage, since ultimately the matter is to be reconsidered by the Commission and a fresh decision is to be arrived at after considering the submissions of the petitioner.

10. Mr. Shah, learned Counsel appearing for the petitioner, however, submitted that pending the petition, recovery of the fine is already effected, but under protest of the petitioner and, therefore, in the event this Court is inclined to remand the matter to the Commission for rehearing, the fine which is already recovered of Rs. 25,000/- from the petitioner may be ordered to be refunded.

11. It appears that since the matter is yet to be reconsidered by the Commission, if the amount which is already recovered is ordered to be kept as deposit until fresh decision is taken by the Commission, the same would not seriously prejudice the rights of the petitioner and ultimately such amount can be appropriated as per the fresh order, which may be passed by the Commission as ordered hereinafter.

12. In view of the above, the following directions shall meet with the ends of justice:

(a) The impugned order Annexure 'A' passed by the Commission is quashed and set aside on condition that the petitioner pays an amount of Rs. 2,500/- being the cost of this litigation to respondent No. 1 within a period of two weeks from today. It is further ordered and directed that the complaint No. 79 of 2006 and 80 of 2006 shall stand restored to the file of the Commission and the Commission shall give opportunity of hearing to the petitioner and the petitioner shall positively remain present with submissions, if any, to be made before the Commission on the date, which may be fixed by the Commission and the Commission shall pass a fresh order in accordance with law, preferably within a period of three months from the date of deposit of the cost by the petitioner with the Commission.

(b) Until a fresh order is passed by the Commission, the amount of Rs. 25,000/- already recovered as penalty pursuant to the impugned order shall remain as deposit and the amount shall be adjusted and/or refunded as per the fresh order, which may be passed by the Commission.

13. The petitions are allowed to the aforesaid extent. Rule made absolute accordingly.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.4839 OF 2007

Prakash R. Shenai ...Petitioner

v/s

Union of India and others ...Respondents

Mr Prakash R. Shenai, petitioner in person present.

Mr N.V. Masurkar for Respondents.

**CORAM : D.K. DESHMUKH AND R.Y. GANOO JJ.**

**DATE : 9TH JUNE 2008.**

P.C.

:-

1. There is already an order made by the Central Information Commissioner. It is for that office to execute the order impugned. This Court cannot be made to act as executing Court of that officer. Petition is rejected.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Private Secretary of the Court.

. Certified copy expedited.

( D.K. DESHMUKH J.)

( R.Y. GANOO J.)

No. AA :CPIO :09  
Dated: 02.08.09

To,

Shri Bharat Bhushan  
C/o Dr. S. R. Madan  
B-8/194, Sector-3,  
Rohini,  
**New Delhi-110085**

**In the matter of Shri Bharat Bhushan, C/o Dr. S. R. Madan, B-8/194, Sector-3, Rohini, New Delhi-110085**

Sir,

We have received an application under RTI Act dated 1.8.09 on 4.8.09 from Shri Bharat Bhushan, C/o Dr. S. R. Madan, B-8/194, Sector-3, Rohini, New Delhi-110085.

**Preamble**

Shri Bharat Bhushan in his application has enclosed a large number of documents related to his **marital discord** case. Further, in his application, he has narrated a lot of irrelevant material necessitating CPIO, BHEL, New Delhi to painstaking sift through the whole application to make out the specific information sought by the applicant. There also appears to be no larger Public Interest involved in the matter.

Finally, CPIO, BHEL, New Delhi has discerned that the applicant has sought the following in Sl. No (i), (ii) & (iii), whereas for Sl. No. (iv) he has merely stated his opinion:

(i) *Confirm me the present status of Department Proceedings against Shri S. K. Malhotra.*

On review of the matter, the disciplinary authority has found no case for initiating disciplinary action under BHEL, Conduct Discipline & Appeal Rules.

(ii & iii) *Provide me leave details of Shri S. K. Malhotra*

CPIO, BHEL, New Delhi in his decision dated 16.2.09 has clearly mentioned that leave records/particulars of an official is personal information disclosure of which has no relation to any Public Activity & would cause unwarranted invasion of privacy of the individual, therefore exempt from revelation under section 8 (1) (j) of RTI Act. Shri Bharat Bhushan is repeatedly trying to seek an exempt information.

(iv) Shri Bharat Bhushan has not sought any information as defined under section 2 (f) of RTI Act instead has merely stated his opinion on which we have no comments to offer.

Thanking you,

Yours sincerely,

Central Public Information Officer



**Equivalent Citation:** AIR2008Cal118

**IN THE HIGH COURT OF CALCUTTA**

W.P. No. 22176 of 2007

Decided On: 28.03.2008

Appellants: **Pritam Rooj**  
**Vs.**

Respondent: **University of Calcutta and Ors.**

**Hon'ble Judges:**

Sanjib Banerjee, J.

**Counsel:**

For Appellant/Petitioner/Plaintiff: Satdal Chatterjee, Adv.

For Respondents/Defendant: Sambudha Chakraborti, Sutanu Kumar Patra and Rajib Kumar Basak, Advs.

**Subject: Right to Information**

**Acts/Rules/Orders:**

Criminal Procedure Code (CrPC) - Sections 162 and 172; Constitution of India - Articles 19, 19(1), 19(2), 21, 32, 38, 41, 141, 142 and 226; Income Tax Act, 1952 - Section 271(1); Right to Information Act, 2005 - Sections 2, 3, 6, 7, 7(8), 8, 8(1), 10, 12 to 14, 18, 19(1), 19(5), 20, 22, 23 and 24; Medical Council of India Act; Contempt of Courts Act, 1971 - Section 7(1); Freedom of Information Act, 2002 - Sections 30 and 31; Medical Council of India Regulations - Regulations 2.2, 7.14 and 104

**ORDER**

**Sanjib Banerjee, J.**

1. An examinee has come a knocking imploring that he be granted another look at his answered paper, citing a statute standing on the bedrock of a right ordained unto every citizen by the Constitution. The only question, one of some importance, that is raised in the present petition under Article [226](#) of the Constitution is whether an examinee has access to his evaluated answerscript under the Right to Information Act, 2005.

2. The petitioner appears to be a reasonably meritorious student. He obtained 91.6 per cent in his Madhyamik (Class X) Examinations and 80.8 per cent in his Higher Secondary (Class XII) Examinations, he enrolled for the mathematics honours course of the Calcutta University in Presidency College where admission itself is an acknowledgment of merit. In 2006, the petitioner took his Part I Bachelor's degree examinations and secured a somewhat modest 52 per cent score. In the following year he appeared for his Part II Examinations and secured 208 marks out of a maximum of 400. The petitioner was particularly aggrieved by his being awarded 28 out of 100 in the fifth paper.

3. The petitioner applied for a post publication scrutiny, seeking re-evaluation of his answerscripts in the fifth and sixth papers in accordance with the rules prescribed by the University. On view, the marks awarded to him in the fifth paper increased by four and a fresh, corrected mark sheet was issued to him.

4. The petitioner claims that he was called for an interview for the integrated Ph.D. programme in mathematics at the Tata Institute of Fundamental Research, Bangalore Centre after clearing the written examination there for. He claims that his poor marks in the second leg of his Bachelor's course led to his exclusion from the final list. The petitioner avers that the poor marks stand in the way of his obtaining admission for the master's programme in any of the better universities. The petitioner cleared the written examination for the integrated doctoral programme in mathematical sciences at the Indian Institute of Science, Bangalore and following the interview, was placed eighth on the merit list. The petitioner's provisional application fell through as he failed to obtain a first class in his Bachelor's course.

5. On August 14, 2007 the petitioner made a request to obtain his University answerscript in appropriate format to the State Public Information Officer under the Right to Information Act, 2005 (hereinafter referred to as the said Act). Such officer rejected the application by a writing of September 17, 2007 which is the subject matter of the challenge in the present proceedings. The said officer's cryptic rejection runs as follows:

Re.: Your Application Dt. 14-8-2007 Under R.T.I. Act, 2005.

Dear Sir,

In response to your above application I am to inform you that it has been decided that henceforth no inspection of any answer script of any examination conducted by the University shall be allowed to any applicant under the Right to Information Act, 2005.

Thus we cannot entertain your application and the same is rejected.

Thanking you,

Yours faithfully,

Sd/-

State Public Information Officer

And

Registrar.

6. The letter appears to be on a printed format where there is a blank left for the date at the top; there is a space left for the examinee's name and address being inserted; an, the date of the application is also left open to be filled up. The officer has used his pen to fill up the date of the letter, the name and address of the examinee, the date of the application and has inserted the word "been" as there is an obvious mistake in the printed form. The officer acknowledged the receipt of an application under the said Act but did not deal with the application in the manner provided by the said Act and it is such action and the stereo typed decision evident from the letter of rejection that has prompted the writ petition to be entertained rather than requiring the petitioner to exhaust the alternative remedy ordinarily available under the said Act.

7. The respondent University has mentioned the point of alternative remedy in passing without really insisting thereon. The University has, in effect, invited a decision on merits on a matter of public importance and throughout the hearing the matter has been conducted on behalf of the University with commendable impartiality and a degree of desirable dispassion.

8. Section [7](#) of the said Act lays down the manner of disposal of a request for obtaining information received under the said Act. Sub-section (8) of Section [7](#) stipulates that where a request has been rejected under Sub-section (1), the relevant officer shall communicate to the person making the request, the reasons for such rejection; the period within which an appeal against such rejection may be preferred; and, the particulars of the appellate authority. The letter of rejection of September 17, 2007 is lacking on all three counts. It does not convey any reason for the rejection. It does not inform the petitioner of his right to appellate authority. In its assertion that, "it has been decided", the State Public Information Officer appears not to make a decision but merely to convey a fiat whether imposed on him or that he seeks to impose on any examinee seeking to obtain his or her answerscript. The rejection is, in the manner that it has been made, wholly without jurisdiction and in not conveying any reasons it is in contravention of the mandate under Section [7\(8\)](#) of the said Act and per se contrary to the principles of natural justice. When the order is assessed to be of such poor quality that it fails to comply with the statutory requirements, a petition challenging the order may be received under Article [226](#) of the Constitution.

9. The alternative remedy that would otherwise have been available to the petitioner herein is, in the present case, an illusory right. In not furnishing the particulars of the appellate authority, the Public Information Officer has acted in derogation of the command of Section [7\(8\)\(iii\)](#). It is not as if in every case that there is a fixed appellate forum that a person aggrieved by the manner of disposal of his request may otherwise be aware of. Section [19\(1\)](#) of the said Act provides that an appeal will lie to such officer who is senior in rank in the public authority to the Public Information Officer who disposed of the request. The appellate authority would vary with each public authority and it is for such purpose that Section [7\(8\)\(iii\)](#) has been engrafted and assumes more significance than being a routine matter where there is a general appellate forum to receive appeals from all disposals of requests.

10. There is a further factor. The expression, "it has been decided" betrays a general acceptance by the public authority (here, the University) of the principle that answerscripts do not fall within the description of information for any request to obtain them being entertained from an examinee. There is an element of intransigent conviction that the refusal conveys: that the matter is closed and not open to any question being entertained. To thereafter subject an examinee to the usual process of appeal and second appeal, however time bound such steps may have been made under the said Act, would be an exercise in futility in view of a decision of the Central Information Commission which, if not binding on the ultimate appellate forum available to the petitioner, can be seen to be of such persuasive value that would render the right of appeal and second appeal, meaningless.

11. The University has referred to the judgments reported at [MANU/SC/0140/2006](#) (Uttaranchal Forest Development Corporation v. Jabar Singh) and [MANU/SC/0541/2003](#) (P.K. Rangarajan v. Government of Tamil Nadu) where, according to the University, there has been a departure from the Whirlpool principle [MANU/SC/0664/1998](#) in the Supreme Court holding that unless exceptional circumstances are made out to knock at the High Court doors, without availing the effective alternative remedy available a petition under

Article [226](#) of the Constitution should not be accepted. In the present case, the petitioner has not even been made aware of the appellate authority; he has received an unexceptional order of rejection singularly lacking in content, that does not comply with the requirements under Section [7\(8\)](#) of the Act and, if he is left to work out his alternative remedy, he will, more likely than not, be doomed to fail by reason of the Central Information Commission order holding the field. The University has rightly not urged that the bar under Section [23](#) of the said Act would apply to the present proceedings.

12. The University has indicated that save the fact that its regulations do not permit evaluated answerscripts being opened to examinees, it has no material to rely on that would warrant the use of an affidavit. To wit, the University cannot supplement the order of rejection of the request by furnishing reasons that did not find place in the order. The matter has been taken up without any affidavit being called for, or being insisted upon by the University, to decide the issue in principle. The fair stand taken by the University in not delaying the matter by seeking to unnecessarily use an affidavit should not be taken to be an admission of any of the averments in the petition save the matters of record.

13. To begin with, the University supports the order of rejection on the ground that the Central Information Commission addressed the same question that falls for consideration here, and by a judgment running into some 24 pages held that in regard to public examinations conducted by institutions established by the Constitution or institutions established by any enactment which have an established system and by their own rules prohibit disclosure of evaluated answer-sheets or where such disclosure would result in rendering the system unworkable in practice, a citizen cannot seek disclosure of the answer-sheets under the said Act. It is submitted on behalf of the University that it is such decision which has been conveyed to the present examinee by the State Public Information Officer, albeit the letter of rejection not specifically referring thereto and the reasons given by the Central Information Commission not being forwarded to this examinee. The University asserts that the Central Information Commission being a superior authority, its decision is binding on the State Public Information Officer and the letter of rejection did not convey any decision imposed on such officer but merely reflected the decision made on contest by the Central Information Commission on April 24, 2007.

14. It is, in effect, the basis of the order made by the Central Information Commission that is in question in these proceedings, as to the desirability of answerscripts being made available to examinees upon a request being made for obtaining information under Section [6](#) of the said Act.

15. The petitioner suggests that there is no jugglery of interpretation that is called for in the present context. He says that the inclusive definition of "information" appearing in Section [2\(f\)](#) of the said Act would accommodate an answerscript within its fold and if the other expressions therein would not admit of an answerscript being included, an answerscript would certainly be a record within the meaning of Section [2\(i\)](#) of the Act. It is urged that the definitions of both "information" and "record" are inclusive and the substantive right in Section [3](#) of the Act cannot be whittled down by any constrictive reading of what would amount to information. The relevant provisions need to be noticed to gauge the scope of the present exercise:

2. Definitions.-...

(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;

...

(i) "record" includes-

(i) any document, manuscript and file;

(ii) any microfilm, microfiche and facsimile copy of a document;

(iii) any reproduction of image or images embodied in such microfilm whether enlarged or not; and

(iv) any other material produced by a computer or any other device;

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

16. The petitioner insists that once it is recognised that the definition of "information", which is what is required to be made accessible to a person seeking it, is of widest import, no other consideration comes into play. A literal construction of a provision is the first tool available and only upon such literal construction running into any difficulty can the other tools of construction and interpretation be brought out.

17. More than the petitioner being required to show that he is entitled to receive his answer pursuant to a request being made therefore under Section 6 of the said Act, in keeping with the tenor of the Act it is the public authority which has been required to justify the denial of the request. Though the provision strictly applies to an appeal, Section 19(5) of the said Act stipulates that in an appeal from a decision of the State Public Information Officer, the onus to prove that the denial of the request was justified shall be on the Public Information Officer who denied the request.

18. The University urges that an answerscript of an examinee cannot be information within the meaning of the Act that the examinee can seek by way of a request under Section 6. The University says that the examinee is expected to be aware of the paper he wrote and he cannot seek inspection of the document that he submitted as the contents thereof would not be unknown to him. The real purpose, the University alleges, is to find out how the paper was evaluated and it is beyond question that an examinee cannot be involved in the process of evaluation of his examination. At the highest, says the University, an examinee is entitled to information as to the marks allotted to the examinee in respect of every question that the examinee had answered; and such information the University is agreeable to be made over without the University being required to furnish the corrected answerscript. The fundamental basis of the University's argument is that it accepts that it is liable to give a break-up of the marks awarded to an examinee, but it should not be compelled to make over the corrected answerscript to an examinee under the said Act.

19. The University seeks to address the larger question of what it is that the examinee ultimately seeks. According to the University, the petition suggests that the examinee is disappointed with the marks he obtained, whether it be disappointment at the petitioner's

own shortcoming or a grievance as to the manner of assessment. The University argues that since the petitioner ought to be aware of how he answered each question, he should be satisfied with information being supplied under the said Act as to the marks allotted to each answer, rather than the entire answerscript being opened to inspection.

20. The point that the University makes is that the additional material that the answerscript takes is the marking and assessment, and as long as the individual marks are disclosed, an examinee can have no need for any further information. As a corollary, it is submitted on behalf of the University that individual examiners have their peculiarities and way of putting pen on the answerscript in course of evaluation thereof. There cannot be a standard guideline given by a Board or University nor would the individual idiosyncrasies permit such a rigid guideline being met. It is equally possible as the University says that one examiner may go through an entire question without betraying any impression reflected in any sign, except for assigning the marks thereof, while another may underline here and encircle there, put a tick mark against a point that appeals or a cross against something that the examiner finds disagreeable. The University says that it would vary from one individual examiner to another even in respect of answerscripts relating to the same question paper and, in the absence of any acceptable norms in that regard, the possible expression of an examiner's impression reflected in his etchings on an answerscript can be of no interest to an examinee and will certainly not be information that a citizen can seek under Section 6 of the Act.

21. If a principle is to be decided, the University suggests then all possible situations that could arise have to be taken into consideration. If it is not necessary that an examiner points out what is correct in one part of an answer and what is incorrect in another part; that a particular examiner chooses to express his process of evaluation when another may not, would not show the one examiner in poor light for being too demanding or the other in equally poor light for his apparent indifference. There is merit in the point. If there are no rules as to how an examiner is to put his pen to the paper that he assesses, that one is generous with his ink and the other is not, is of no consequence. And, in the absence of any rules, the nature of etchings by an examiner on the paper is no information for want of a sequitur.

22. It is equally true that some answerscripts have to be left unmarked by rule. An example of this kind would be in case of a thesis or dissertation which ordinarily is evaluated by more than one examiner, and sometimes by an external examiner. The paper is required to be left in the form it is received so that any etchings left on an evaluated paper albeit the marks awarded not being indicated--do not influence the subsequent assessor. But this discussion is slightly removed from the right that the petitioner asserts under a statute.

23. The University claims that in making answerscripts available to examinees, it would be exposing its examiners who the University ought to protect. It is a point which is noticed in the Central Information Commission order of April 24, 2007 and one that, in the ultimate analysis, did not count with the Commission. Again, the duty to protect that the University asserts has to be tested against the right of a citizen that the said Act ordains.

24. It is the next point that the University makes is one that weighed with the Central Information Commission. The University says that it is one of the primary functions of any University or educational institution to conduct examinations and assess answerscripts. It is human nature for every candidate to think that his best endeavour reflected in his paper merited more than the marks ultimately allotted, be he the first-placed in the examination or a failed student. If answerscripts were made available to each examinee, argues the

University, it would open a floodgate of requests and lead to an unworkable situation and an undesirable lack of finality and timeliness upon the possible protests for half marks being missed out here and there.

25. The last substantial ground urged by the University is one under Section [8\(1\)\(b\)](#) of the said Act which provides that there shall be no obligation to furnish any information which has been expressly forbidden to be published by any Court of law or tribunal or the disclosure of which may constitute contempt of Court. The University argues that in the many pronouncements of the Supreme Court, there are observations that answerscripts should ordinarily not be made available to examinees and observations to the effect that examinees cannot be associated with the process of evaluation of their answerscripts. The University says that such judgments of the Supreme Court have, in any event, binding effect on all Courts under Article [141](#) of the Constitution.

26. The parties have referred to several judgments on propositions ranging from the need to have an informed citizenry, to the desirability of answerscripts being called upon by Courts for assessment and examinees being given the slightest say in the process of the evaluation of their papers.

27. While the petitioner refers to the judgment reported at [MANU/SC/0246/1995](#) (Secy. Ministry of Information & Broadcasting v. Cricket Association of Bengal) to emphasise the virtues of information percolating to the least privileged citizen and the recognition therein of the liberty of circulation and the liberty of publication being adjuncts to the freedom of speech and expression, the University cautions against the principle being twisted out of context to render the said Act unworkable by making as exacting a demand for all answerscripts to be potentially made available to all examinees.

28. So that the exercise here may remain on track and not fall prey to passion or populism or stray into any disagreeable bylane of adventurism, the University reminds of the fundamental principles of construction; of the grammatical meaning having necessarily to be harnessed in the context of the purpose of the legislation. [MANU/SC/0048/1955](#) (Tirath Singh v. Bachittar Singh) is placed for its enunciation of law in the following passage at paragraph 7 of the report:

7. ...It is argued that if the language of the enactment is interpreted in its literal and grammatical sense, there could be no escape from the conclusion that parties to the petition are also entitled to notice under the proviso. But it is a rule of interpretation well-established that, "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence." (Maxwell's Interpretation of Statutes, 10th Ed. page 229).

29. The judgment reported at [MANU/SC/0353/1962](#) (New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar) is relied on to show that in every case it is the object of the legislation which has to be assessed and the wider or the narrower, or even the apparently improbable, construction arrived at in harmony with the avowed intent of the enactment. The principle laid down at paragraph 8 of the report is emphasised:

8. ...Attributing a literal meaning to the words used would amount to imputing to the Legislature an intention deliberately to transgress the restrictions imposed by the Constitution Act upon the Provincial Legislative authority. It is a recognised rule of



interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of Its powers invalid. If the narrow and technical concept sale is discarded and it be assumed that the Legislature sought to use the expression sale in a wider sense as including transactions in which property was transferred for consideration from one person to another without any previous contract of sale, it would be attributing to the Legislature an intention to enact legislation beyond its competence. In interpreting a statute the Court cannot ignore its aim and object....

30. In the judgment of State of H.P. v. Kailash Chand Mahajan reported at [MANU/SC/0239/1992](#), the Supreme Court quoted with approval from Francis Bennion's Statutory Interpretation (1984 Ed.) as to the distinction between the purpose or object of an enactment and the legislative intention governing it. The former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment. Paragraph 82 of the report is the essence of the judgment:

82 Thus there is a great distinction between the two. While the object of legislation is to provide a remedy for the malady, on the contrary, the legislative intention relates to the meaning from the exposition of the remedy as enacted. For determining the purpose of legislation, indeed, it is permissible to look into the circumstances which were prevalent at that time when the law was enacted and which necessitated the passing of that enactment. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation it is open to the Court to look into the statement of 'Objects and Reasons' of the Bill which accentuated the statement to provide a remedy for the then existing malady. In the case of State of W.B. v. Union of India [MANU/SC/0086/1962](#) this Court ruled that the 'Statement of Objects and Reasons' accompanying a Bill when introduced in Parliament can be used for the limited purpose of understanding the background and state of affairs leading up to the legislation.

31. In the case of Reserve Bank of India v. Peerless General Finance & Investment Co. Limited reported at [MANU/SC/0073/1987](#), the fundamentals of contextual interpretation have been emphasised. It is both the reason for the statute and the text of the statute that have to be seen while assessing its scope. At paragraph 33 of the report, the Supreme Court held as follows:

33. Interpretation must depend on the text and the context. They are the basis of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.



32. The petitioner relies on passages from Maxwell's Interpretation of Statutes (12th Ed.) to assert that there is no reason why a request for inspection of an answerscript should be declined when a plain reading of the definition of "information" and "record" would permit answerscripts to form part of information and being a record within the meaning of the Act. The petitioner says that to hold that answerscripts would not fall within "information" or "record" would entail a construction which would leave without effect a part of the language of the statute and would, thus, be impermissible. The following passages from Maxwell have been relied upon:

It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which is omitted to express.(Para 33)

In dealing with matters relating to the general public, statutes are presumed to use words in their popular, rather than their narrowly legal or technical sense : "Loquitur ut vulgus, that is, according to the common understanding and acceptation of the terms." If an "Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language." "I do not think," said Diplock L.J., "that anywhere, except in a Court of law, it would be argued with gravity that a Dutch barn or grain and fodder stores or any ordinary farm buildings are properly described as repositories. A Gloucestershire farmer would say they were farm buildings and would laugh at their being called 'repositories.'" In the same spirit, Stamp J. rejected the argument that the carrying on of the business of a crematorium involved the "subjection of goods or materials to any process" within Section 271(1)(c) of the Income-tax Act, 1952 as "a distortion of the English language.... I protest against subjecting the English language, and more particularly a simple English phrase, to this kind of process of philology and semasiology.(Pages 81-82).

33. The decision next relied upon by the University--one closer to home in the present context of examinations — is reported at [MANU/SC/0055/1984](#) (Maharashtra State Board of S.H.S.E. v. Paritosh Bhupeshkumar Sheth) which the University holds on to as its sheet-anchor in furtherance of its argument under Section [8\(1\)\(b\)](#) of the said Act read with Article [141](#) of the Constitution. The opening lines of the judgment catch the spirit of insatiable expectations of a candidate from his answerscript, as if in a dream it would conjure more worthy answers and better marks than what the author scripted. The significance which the University attaches to this judgment requires the context of the judgment to be appreciated in detail.

34. Two clauses of a regulation of the Maharashtra State Board of Secondary and Higher Secondary Education fell for consideration. The first clause provided that a candidate who had appeared at the Higher Secondary Certificate examination could apply for verification of marks in any particular subject whereupon the verification would be restricted to checking whether all the answers had been examined and that there was no mistake in totalling the marks and transcribing the marks correctly. The clause stipulated that there could be no evaluation of the answerbook. The other clause spelt out that no candidate could claim, or be entitled to re-evaluation of his answers or disclosure or inspection of the answerbook or other documents as" those were treated as most confidential.

35. Before the Bombay High Court the writ petitioner in that case challenged the two clauses on three grounds : that the impugned clauses were violative of the principles of natural justice; that both clauses were ultra vires and void on the ground of their being in excess of the regulation making powers of the Board conferred under statute; and, that the

provisions were highly unreasonable. The Bombay High Court did not accept the challenge on the ground of the clauses being in violation of the principles of natural justice. The related argument that every adverse verification resulted in a condemnation of the examinee behind the examinee's back did not also find favour with the High Court. In affirming the High Court view repelling the challenge on the ground of violation of the principles of natural justice, the Supreme Court opined at paragraph 12:

12...The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determining whether there has been a proper and fair valuation of the answers by the examiners. As succinctly put by Mathew, J. in his judgment in the Union of India v. Mohan Lal Kapoor AIR 1994 SC 87 it is not expedient to extend the horizon of natural justice involved in the audi alteram partem rule to the twilight zone of mere expectations, however great they might be. (SCC para 56, p. 863 : SCC (L & S) p. 31). The challenge levelled against the validity of Clause (3) of Regulation 104 based on the plea of violation of natural justice, was therefore, rightly rejected by the High Court.

The Supreme Court also rejected the other challenges to the impugned clauses, which had been accepted by the High Court, for reasons that are not relevant for the present purpose.

36. The University refers to a judgment reported at (2007) 1 SCC 603 (President, Board of Secondary Education v. D. Suvankar) where the Supreme Court cautioned against inspection and re-verification of the answerscript being allowed upon writ petitions challenging examination results being entertained. Paragraph 5 of the report has been placed by the University:

5. The Board is in appeal against the cost imposed. As observed by this Court in Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth [MANU/SC/0055/1984](#), it is in the public interest that the results of public examinations when published should have some finality attached to them. If inspection, verification in the presence of the candidates and re-evaluation are to be allowed as of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking, etc. of the candidates, besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It would be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to pragmatic one was to be propounded.

37. In a recent judgment reported at [MANU/SC/7960/2007](#) (Secy. W.B. Council of Higher Secondary Education v. Ayan Das), the Supreme Court frowned upon an examinee's prayer for reassessment of a paper made by way of an application under Article [226](#) of the Constitution and held that such re-evaluation should normally not be allowed unless the examinee showed that a part of the paper had not been evaluated or that the evaluation was done contrary to norms fixed by the examining body. A student filed a writ petition

seeking a direction on the Higher Secondary Council to produce his answerscripts in several papers. The answerscripts were required to be produced upon a deposit being made. Counsel for the writ petitioner was permitted to inspect the answerscripts and the council was directed to issue a fresh marks-sheet incorporating additional marks to the examinee. A single Judge of this Court directed that one of the papers be reassessed by another examiner. In appeal the council argued that no specific error in assessment was pointed out by the writ petitioner and there was no provision in any statute permitting inspection of the answerscript. The appeal failed. The Supreme Court granted special leave to appeal and, allowing the appeal, held:

10. The Courts normally should not direct the production of answer scripts to be inspected by the writ petitioners unless a case is made out to show that either some questions has not been evaluated or that the evaluation has been done contrary to the norms fixed by the examining body. For example, in certain cases examining body can provide model answers to the questions. In such cases the examinees satisfy the Court that model answer is different from what has been adopted by the Board. Then only can the Court ask for the production of answer scripts to allow inspection of the answer scripts by the examinee.

38. The Ayan Das case, and the Supreme Court accepting the appellant's argument therein that there was no provision in any statute permitting an examinee to inspect his answerscripts, is sought to be used by the University as its principal ammunition for its submission that the request made by the petitioner herein could not be entertained in view of Section [8\(1\)\(b\)](#) of the said Act. The petitioner attempts to counter the salvo by referring to the similar provision in Section [7\(1\)\(b\)](#) of the Contempt of Courts Act, 1971, which also relates to information, though of a different kind:

7. Publication of information relating to proceedings in chambers or in camera not contempt except in certain cases.--1) Notwithstanding anything contained in this Act, a person shall not be guilty of contempt of Court for publishing a fair and accurate report of a judicial proceedings before any Court sitting in chambers or in camera except in the following cases, that is to say,--

(a) ...

(b) where the Court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of the information of the description which is published;

39. Both sides have relied on a Division Bench judgment reported at [MANU/MH/0170/2007](#) (Surupsingh Hrya Naik v. State of Maharashtra). The writ petitioner in that case was a member of the State Legislative Assembly against whom the Supreme Court imposed a punishment of imprisonment for a month in contempt proceedings by an order dated May 10, 2006. The petitioner in that case surrendered before the police authorities on May 12, 2006 and was taken in custody. On May 14, 2006, the petitioner was shifted to a hospital for suspected heart and blood pressure problems and low blood sugar level. The petitioner claimed that he underwent treatment at the hospital for 21 days and was discharged on June 5, 2006. He served the remaining tenure of the sentence in jail and was released on June 11, 2006. A private citizen sought the medical reports of the writ petitioner on May 27, 2006, from the Public Information Officer of the hospital under Section [6](#) of the said Act. The Public Information Officer sought opinion from the general administration of the hospital as to the propriety of the request made under the said Act. The Public Information Officer received a reply that since the said Act was a Central Act any clarification on any doubt as

to interpretation would have to be sought from the Central Government. The general administration of the hospital addressed a letter to the writ petitioner that information about the petitioner's hospitalisation had been sought and required the petitioner to respond to such notice.

40. As the Public Information Officer did not furnish the necessary information within the time stipulated, the citizen who made the request preferred an appeal which was rejected on the technical ground that the appeal papers were not signed by the would be appellant. The citizen preferred another appeal under Section [19\(1\)](#) of the Act which was rejected, following which he preferred a second appeal. The second appeal was allowed and the Public Information Officer of the hospital was directed to furnish the information as sought by the citizen. The writ petitioner thereafter submitted a letter to the Dean of the hospital with a request that the information relating to his hospitalisation should not be disclosed and sought a copy of the request made by the citizen and the order passed in the second appeal. The petitioner suggested that disclosing the information sought would be an invasion of his privacy. The writ petition was filed challenging the order made in the citizen's second appeal.

41. On such facts the Bombay High Court expressed its opinion on the procedural safeguards being required to be met before divulging third party information and on the effect of proviso appearing in Section [8\(1\)](#) of the said Act. Paragraphs 10, 13 and 15 of the report are apposite:

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 (sic, a) person convicted for Contempt of Court. Do (sic, can) such a person during the period of incarceration, claim privilege or confidentiality 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 public's right in such case, it is submitted, 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.

13. The right to privacy now forms a part of right to life. It would, therefore, be apparent on a reading of Regulations 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.

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 Legislature 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 withheld 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.

42. Despite the acknowledgment that disclosure of information, even to a third party, was the rule, the writ petitioner legislator succeeded in dislodging the order passed In the citizen's second appeal on the ground that the second appellate authority did not a'fford the recuperating legislator a chance to present his case. A citizen's right under Article [19](#) of the Constitution as enlarged by the said Act came up short against another citizen's claim to privacy protected by Article [21](#) of the Constitution, at least in the recognition that the two had to be pitted more fairly against each other before a call could be taken. The man in public life was afforded an opportunity to canvass that the state of his health and the reports as to the condition of his heart were matters he was entitled to keep close to his chest without every passing citizen and his neighbour being offered a peek into them.

43. Though the Bombay judgment was rendered in a different context and the right to privacy was recognised as a facet of the right to life, it is the sanctity attached to the provisions of the said Act which is of importance. The Bombay High Court concluded that

the object of the said Act is to make public authorities accountable and their actions open. That information obtained may be misused is considered to be of no consequence. A judgment reported at [MANU/GJ/7385/2007](#) (Reliance Industries Ltd. v. Gujarat State Information Commission) has also been placed, again a matter relating to third party information. In the Gujarat case it was held that the State Information Commission had no jurisdiction to pass an order directing a Public Information Officer to part with information relating to third party.

44. The petitioner relies on a judgment reported at [MANU/SC/0394/2002](#) (Union of India v. Asson. for Democratic Rights) where the Supreme Court held that in a democratic form of Government voters are of utmost importance and voters have a right to know the antecedents of a candidate. Relying on the International Covenant on Civil and Political Rights the Supreme Court held at paragraph 46(5) of the report as follows:

46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

...

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article [19](#)(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and Impart information and Ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

45. The Supreme Court expressed the view that if it appeared that a field meant for legislature and executive was left unoccupied in a manner detrimental to public interest, the Supreme Court would have to fill in, deriving its authority under Article [32](#) read with Articles [141](#) and [142](#) of the Constitution to issue necessary directions to the executive to subserve public interest. What was found to be of paramount importance was that, "the little man may think over before making his choice of electing lawbreakers as law-makers."

46. As to how precedents should influence the decision or the decision-making process In a matter, the following passage from the judgment reported at [MANU/SC/0336/1973](#) (Katikara Chintamanl Dora v. Guntreddi Annamanaidu) Is placed:

Precedents should not be petrified nor Judicial dicta divorced from the socio-economic mores of the age. Judges are not prophets and only interpret laws in the light of the contemporary ethos. To regard them otherwise is unscientific. My thesis is that while applying the policy of statutory construction we should not forget the conditions and concepts which moved the judges whose rulings are cited nor be obsessed by respect at the expense of reason.

47. The petitioner also suggests that the argument made by the University and one that found favour in the judgment of the Central Information Commission as to the opening of a flood-gate if answer scripts were found to be liable to be produced under the said Act,



should be disregarded. Paragraph 19 of the judgment reported at [MANU/SC/7307/2007](#) (Coal India Ltd. v. Saroj Kumar Mishra) is cited for the purpose:

19. The floodgate argument also does not appeal to us. The same appears to be an argument of desperation. Only because there is a possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This Court is bound to determine the respective rights of the parties. (See Zee Telefilms Ltd. v. Union of India [MANU/SC/0074/2005](#) and Guruvayoor Devaswom Managing Committee v. C.K. Rajan AIR 2004 SC 561.)

48. And then there is the Central Information Commission's judgment of April 23, 2004. In addressing a question whether answer scripts should be furnished following a request to obtain information made under the said Act, the Commission framed two main questions. The first was as to whether the disclosure of evaluated answer scripts was exempted under Section [8\(1\)\(e\)](#) of the said Act; and the second as to whether such disclosure was exempted under Section [8\(1\)\(g\)](#) of the Act. Section [8\(1\)\(e\)](#) exempts the disclosure of any information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. Section [8\(1\)\(g\)](#) exempts the disclosure of any Information 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.

49. In dealing with such questions, the Commission noticed the argument made on behalf of the public authorities before it that an examining body is obliged to not disclose the identity of the examiners as such disclosure would be in breach of the fiduciary duty said to be owed by the examining body to the examiners. The connected argument was also noticed, that upon the identity of the examiners being revealed their lives and physical safety may be at risk. It is not necessary to go into the reasons as to why the Commission found that neither Section [8\(1\)\(e\)](#) nor Section [8\(1\)\(g\)](#) exempted disclosure of the evaluated answer scripts as the Commission held that only the disclosure as to the identity of the examiners was exempted. It is the argument as to the unworkability of the right to inspect answer scripts that ultimately weighed with the Commission. In the words of the Commission.

...it is matter of common knowledge that the parents and the students are never satisfied with their assessment. Every University and Board has a mechanism for re-evaluation which can be made use of by those who have genuine apprehensions about the fairness of the system. The disclosure, therefore, of the evaluated answer sheets may be taken recourse in rare cases but it cannot have an en-bono application, unless the University or the Board as the case may be introduces a system where the giving back of the evaluated answer sheets becomes or is made a regular practice, which this Commission hereby recommends.

50. The Commission thereafter noticed the Paritosh Bhupeshkumar Sheth case, a Constitution Bench judgment in Fateh Chand Himmatlal v. State of Maharashtra reported as [MANU/SC/0041/1977](#) and the Suvankar case to conclude that the Supreme Court pronouncements negating an examinee's right to demand disclosure and personal inspection of his answer script, were based on larger public interest which the Commission also found to be the basis of the said Act. The Commission thereafter proceeded to make a distinction between public examinations conducted by institutions established by the Constitution or by any enactment like the Union Public Service Commission or Universities or the Central Board of Secondary Education and examinations conducted by other public authorities whose principal function is not of conducting examinations but who hold examinations for filling up posts either by promotion or by recruitment. The Commission held that for public authorities

designed to conduct examinations, a citizen cannot seek disclosure of the evaluated answer script under the said Act. But for other public authorities incidentally conducting examinations, "the disclosure of the answer sheets shall be the general rule but' each case may have to be examined individually to see as to whether disclosure of evaluated answer sheets would render the system unworkable in practice." The Commission added a rider to the case of public authorities incidentally conducting examinations : the identity of the examiner, supervisor or other person associated with the process of examination should not be disclosed so as to endanger their lives or physical safety, and if it was not possible to make over the information without concealing the identities of the connected persons, the public authority could decline the disclosure of the evaluated answer scripts under Section [8\(1\)\(g\)](#) of the said Act. In case of departmental examinees, the Commission took a view that disclosure of proceedings and disclosure of answer scripts, not only of the examinees but also of other candidates, was necessary to bring in fairness and neutrality for the system to be more transparent and accountable.

51. In effect, the Commission discovered an exemption not expressly provided for in the statute to deny information despite accepting that the words used in the said Act could not be read to be a bar to the right asserted thereunder. But, more on the Commission's opinion later.

52. In Its long title the said Act proclaims to set about a practical regime of right to Information for citizens. The preamble opens with a reference to the Constitution having established a democratic republic and the need, therefore, for an informed citizenry. The preamble reveals that the legislature was mindful of the likely conflict between revelation of information and efficient operation of the Governments; of optimum use of resources; and, most significantly, the need to preserve the paramount virtue of the democratic ideal:

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 government;

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

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

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.

53. If it is the preamble that has to be looked into for the reason for, or the spirit of, the statute as a key to open the minds of the makers of the Act and the mischief they intended to redress, the makers appear to have been alive to the likely difficulties of the executive to live up to the Act.

54. The said Act is arranged in six chapters containing 31 sections and has two schedules appended to it. The first, preliminary chapter contains the short title, extent and commencement section and the definitions, The second chapter spells out the right to



information and the obligations of public authorities. There is the essence of the enactment in its third section. The next eight sections in the second chapter provide for the duties of public authorities and of Public Information Officers; the procedure for receipt and disposal of requests for obtaining information; the limited exemptions from disclosure; the severability of that part of the Information that is exempt from disclosure from the other part that is not; and third party information. Chapter III spread over Sections [12](#) to [14](#) relates to the constitution, terms of office and removal of the Central Information Commission and its officers. Chapter IV is the mirror image of the previous chapter and governs the State Information Commissions. Chapter V lays down the powers and functions of the Information Commissions, appeal provisions and penalties covering Sections [18](#) through [20](#). The miscellaneous final chapter contains eleven sections, including Section [22](#) that provides that the said Act would have overriding effect; Section [23](#) that bars Jurisdiction of Courts; Section [24](#) that provides that the Act would not apply to certain organisations; the transitional provision of the power to remove difficulties in Section [30](#); and the repeal of the Freedom of Information Act, 2002 in Section [31](#).

55. At the heart of the said Act is Section [3](#), which includes the word that is apparently left unsaid in it. Every previous word in the statute builds up to an absolute right to know and each word following the section cements the right amid the sundry exemptions to its exercise, the manner of attainment of the right and the body of procedure set up there for. Through every pore of its 31 sections, the Act celebrates the spirit of knowledge.

56. Knowledge is the plinth on which a polity is built and which it draws from for its sustenance. Access to information is at the foundation of a democracy, for what is a choice if it is uninformed. Education is part of the process of empowerment that the Constitution mandates the State to strive for. The freedom of speech and expression that the Constitution guarantees unto all citizens is considerably larger than the words used in Article [19\(1\)\(a\)](#). The promise held out in Article [38](#) is for a social order to be brought in, in which Justice, social, economic and political shall inform all the institutions of national life. The State, the Constitution directs, shall strive to eliminate inequalities in status, facilities and opportunities.

57. From the first days of its taking upon the burden of balancing, the Supreme Court has read a word into what is expressly recognised in Article [19\(1\)\(a\)](#) of the Constitution. Beginning the judgment in the Rornesh Thappar case 1950 SCR 594 : AIR 1950 SC 124, delivered some four, months into the constitutional era, the Supreme Court found the freedom of discussion to be included in Article [19\(1\)\(a\)](#) and the freedom of press to be an aspect of the freedom of discussion so that members of a democratic society should be sufficiently informed to "be able to form their own beliefs and communicate them freely the fundamental principle...is the people's right to know".

58. This right to know has been seen to be at the base of the democratic process and in the cases of Sakal Papers (P) Ltd. 1962 (3) SCR 842 : AIR 1962 SC 305, Bennett Coleman and Co. 1972) 2 SCC 788 : AIR 1973 SC 106 and Indian Express Newspapers (Bombay) P. Ltd. (1985) 1 SCC 641 : AIR 1986 SC 515. the view first expressed in the Romesh Thappar judgment has been echoed and amplified. Be it the case of a magazine being banned in a locality or in quality newsprint being made more difficult to obtain or in Government advertisements being released in more favoured publications, Courts have discerned in several executive actions an attempt to stifle the press; and unmuzzled the right of expression on the touchstone of the larger societal interest to inform and to be kept informed. It is now beyond question that the community has a right to be supplied with information; and the Government has a duty to educate the people within the limits of its

resources (Bennett Coleman). Such right and the corresponding obligation is found in Article [41](#) of the Constitution. Secrecy in Government functioning has been deprecated by Court for the "veil of secrecy is not in the interest of public and can seldom be legitimately desired." (State of U.P. v. Raj Narain, [MANU/SC/0032/1975](#) Officials need must explain and justify their acts as that is the chief safeguard against oppression and corruption.

59. The voice in support of expression has reverberated through the judgments in Maneka Gandhi v. Union of India [MANU/SC/0133/1978](#) and the Bhagalpur custodial Windings cases where the privilege claimed under Sections [162](#) and [172](#) of the Criminal Procedure Code was brushed aside in the wake of the powers exercised under Articles [32](#) and [226](#) of the Constitution (Khatri (IV) v. State of Bihar [MANU/SC/0163/1981](#)). In the same vein the right of the press to interview prisoners whose clemency petitions had failed, has been recognised (Prabha Dutt v. Union of India [MANU/SC/0087/1981](#) and in the case of S.P. Gupta v. Union of India [MANU/SC/0080/1981](#) it was held that exposure to public gaze and scrutiny is one of the surest means of achieving clean and healthy administration for it ensures effective participatory democracy and "a popular government without popular information or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both".

60. In the more recent cases of Dinesh Trivedi v. Union of India [MANU/SC/1138/1997](#) and Vineet Narain v. Union of India [MANU/SC/0827/1998](#): [MANU/SC/0827/1998](#), a citizen's right to know of the affairs of the State has been talked of whether in the context of a report submitted by a committee or as to the background of a candidate at the hustings.

61. The said Act declares in its statement of objects and reasons that it is to ensure better and more effective access to information that it has been enacted for providing "an effective framework for effectuating the right of information recognised under Article [19](#) of the Constitution of India". The right, therefore, is acknowledged to have been in existence and the Act is only the means to effectuate it. The Act replaced the Freedom of Information Act, 2002 which proclaimed to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration. The right to information defined in Section [2\(j\)](#) of the said Act includes the right to inspection of work, documents, records; taking notes, extracts of certified copies of documents or records; taking certified samples of material; obtaining information in the form of diskettes, floppies, tapes, video cassettes or any other electronic mode or through printouts where such information is stored in a computer or in any other device. Such definition, apart from its wider import in it being illustrative, is an expansion on the definition of "freedom of information" under Section [2\(c\)](#) of the predecessor statute. Freedom of information under the Act of 2002 meant the right to obtain information from any public authority by means of inspection, taking of extracts and notes; certified copies of any records of such public authority, diskettes, floppies or in any other electronic mode or through printouts where such information was stored in a computer or in any other device.

62. The object or policy of the said Act. the growing openness of the society and the immediate history leading up to the enactment are good guides to the assessment of the sweep of the legislation. Most of what is apparent in the said Act is what was already available to the Indian citizen under Article [19](#) of the Constitution. If the Act attempted to abridge what the citizen was already guaranteed it would have fallen foul of the Constitution, but if it opens new vistas to progress and development and ushers in transparency, it can hardly be faulted for carrying a constitutional thought to its contemporary progression.

63. The lucid words in the definitions and the empowering provision of the said Act do not admit of any restriction of its operation, but the object or policy of the legislation may afford an answer, subject to the ground of inconvenience urged, as to whether answer scripts would be amenable to disclosure under the said Act.

64. One must tread with caution. Maxwell (supra, 12th Ed. page 87) reminds of a limited meaning being given to the expression "every inhabitant" in an act that required churchwardens and overseers formerly making clandestine rates to publish their rates for inspection. Inspection of the rate was refused to one of the church-wardens who was also an inhabitant of the parish. It was held that since the object of the Act was to protect such inhabitants who had previously no access to the rates, the meaning of the term "inhabitants" was limited and not applied to the complaining church warden as he had previous access to the rates (Wethered v. Calculi. (1842) 4 Man & G 566).

65. The word "piracy" was given an unusual meaning in the context of a statute that was passed to give the executive powers for effecting a treaty of 1842 between Britain and the United States, that provided that either State would, on the requisition of the other, deliver up to justice all persons charged with murder, piracy or other specified crimes committed within the jurisdiction of either State. The Court of the Queen's Bench held that the word "piracy" was confined to those acts which were declared piracy by the municipal law of either country, such as slave-trading, but did not include such other acts which amounted to piracy in the primary sense of the word, that is, jure gentium (Re Ternan, (1864) 33 LJM 201).

66. Right to information jure gentium has to be understood on the communis opinio, that is the evidence of what the law is, on the basis of how courts have interpreted the right under Article [19](#) of the Constitution. As the said Act is of recent vintage, the principle of contemporanea expositio is not available for the opinion of the Central Information Commission, to the extent of its understanding that there is no express bar in the said Act to answer scripts being otherwise made available, to be relied upon. Yet such Commission is a body that deals with matters under the said Act and reads the words of the statute on a regular basis to direct or refuse the disclosure of information. The Commission answered the two questions directly raised on the provisions of the said Act against the public authorities and yet found the hardship factor--call it inconvenience or unworkability -which is not expressly included in the statute as a ground for exemption, to be standing in the way of the answer scripts being made available to their authors. But though the examinees failed before the Central Information Commission there is a pious wish recorded in the order for their benefit, recommending making over of answer scripts to examinees upon a regular procedure being set down in that regard.

67. On a plain reading of the right amplified under the said Act. the question that it ought to stimulate upon a request being received is not why, but why not. If information has to be supplied unless it is exempted, the reason for refusal has to be found in Section [8](#) or not at all.

68. Since three of the ten clauses of Section [8\(1\)](#) of the said Act have already been referred to, the other seven may be seen. Clause (a) of Sub-section (1) of Section [8](#) deals with information that would compromise the sovereignty or integrity of the country and like matter; Clause (c) covers such matters which would cause a breach of privilege of the Parliament or the State Legislatures; Clause (d) protects Information of commercial nature and trade secrets and their ilk; Clause (f) prevents information being disseminated if it is received in confidence from any foreign government; Clause (h) bars access to such

information which would impede the process of investigation or apprehension or prosecution of offenders; Clause (1) forbids records and papers relating to deliberations of ministers and officers of the executive being made available, subject to a proviso; and, Clause (j) prohibits disclosure of personal information unless there is an element of public interest involved. The proviso at the foot of Clause (j) appears to cover the entirety of Section [8\(1\)](#), notwithstanding the view taken by the Division Bench of the Bombay High Court. The manner in which the exceptions to the rule have been carved out in Section [8](#) and the proviso which appears to govern all the cases covered by Section [8\(1\)](#) of the said Act, makes the exemption section exhaustive.

69. Construction of a statute on the grounds of hardship or inconvenience or injustice or absurdity or anomaly arises if the statute presents a choice. The said Act does not appear to present one. For the rule of mischief to come into play there have to be material words that are capable of bearing two or more constructions. The rule of purposive construction or the mischief rule as enunciated in the Heydon case has been accepted by the Supreme Court in the case of Bengal Immunity Co. Ltd. v. State of Bihar reported at [MANU/SC/0083/1955](#).

23. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case (3 Co. Rep 7a; 76 ER 637) was decided that--

...for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act,

2nd. What was the mischief and defect for which the common Law did not provide.

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and

4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bona publico.

70. Even if the Heydon questions were to arise in the present case, the answers to them would not permit the disclosure of answer scripts being resisted. There is no discernible change of law attempted by the said Act, it has fuelled the burgeoning aspiration of a people for a transparent governance. If there is any mischief that the said Act seeks to address, it is to make the right guaranteed by the Constitution more explicit. The remedy that the Parliament has prescribed is to cure the malaise of clandestine, cloak-and-dagger functioning of any public authority. The true reason of the remedy is to ensure a level playing field.

71. If then there is hardship in its implementation or in the fructification of the aspirations recognised therein, it is not for the Court to rein in the desirable curiosity that the Act has unleashed, but for other measures to be adopted to pave the way for its operation. If the Central Information Commission could have recognised the spirit of the Act to have recommended the return of answer scripts to examinees, that there is an immediate hardship or harsh consequence is of no relevance.

72. The Act provides a right to receive information and the consequence of the making over of such information is immaterial in the matter of construction of its provisions. As to whether an examinee would use the information received on inspection of his answer script to undo the finality of the process of examination is not an argument that can be considered to curb the operation of the statute. The Act begins with a citizen's right to obtain information and ends with the information being made available to him or his request being justly rejected on the grounds recognised by the Act: what happens before and what may be the consequence of the information being made available or rightfully denied is a matter beyond the operation of the Act.

73. The University's first challenge (and it is, indeed the University's challenge as the onus is on the rejection being required to be justified) that what an examinee seeks in asking for inspection of his answer script is not information at all cannot be accepted. In the stricter sense, if such answer script answers to the description of information, whether such information is of the examinee's creation, counts for little. In the broader perspective, if a document submitted takes on any marking it becomes a new document. The University's offer of making the marks allotted to each individual question available to all candidates is fair and laudable, but not if it comes with the rider that the answer scripts should then be exempted from being divulged. Notwithstanding the principle of severability contained in Section [10](#) of the said Act, the answered paper with or without an examiner's etchings thereon is not information exempted under any of the limbs of Section [8](#).

74. As a matter of principle, if answer scripts cannot be opened up for inspection it should hold good for all or even most cases. Since the said Act permits a request for third party information, subject to the consideration as to desirability in every case, a third party answer script may, theoretically, be sought and obtained. The University's first argument would then not hold good for a third party answer script would be information beyond the knowledge of its seeker.

75. There is an understandable attempt on the University's part to not so much as protect the self and property of the examiner, but to keep the examiner's identity concealed. The argument made on behalf of the public authorities before the Central Information Commission has, thankfully, not been put forward in this case. This University has not cited the fiduciary duty that it may owe to its examiners or the need to keep answer scripts out of bounds for examinees so that the examiners are not threatened. A ground founded on apprehended lawlessness may not stultify the natural operation of a statute, but in the University's eagerness here to not divulge the identity of its examiners there is a desirable and worthy motive--to ensure impartiality in the process. But a procedure may be evolved such that the identity of the examiner is not apparent on the face of the evaluated answer script. The severability could be applied by the coversheet that is left blank by an examinee or later attached by the University to be detached from the answer script made over to the examinee following a request under Section [6](#) of the Act. It will require an effort on the public authority's part and for a system to be put in place but the lack of effort or the failure in any workable system being devised will not tell upon the impact of the wide words of the Act or its ubiquitous operation.

76. Whether or not an examiner puts his pen to the answer script that he proceeds to evaluate would not rob the answer script of retaining its virtue as information within the meaning of the said Act, even if it is made available for inspection in the same form as it was received from the examinee. The etchings on an answer script may be additional information for a seeker, but the answer script all along remains a document liable to be sought and obtained following a request under Section [6](#) of the Act. That the etchings may

be pointless or that they may be arbitrary or whimsical in the absence of any guidelines, makes little difference.

77. Education is more than just reading prescribed texts and taking examinations in a given format, it is more than a garnering of degrees, certificates and diplomas. Any real education requires the amassing of knowledge that may or may not be in the prescription for an examination. An educated human being may also strive to create a new body of knowledge that is outside the purview of prescriptions. There can be no education if limits are imposed on the amount and type of knowledge an individual may gather or create. A democracy can only be functional in all its aspects, extents and senses when there is an informed citizenry.

78. The right to information is the most basic empowerment of the individual--the right of an individual to the source of any knowledge required for him to educate himself in any area he may choose.

79. An examining authority may not tell a student that he must learn how to answer questions in the format the examining authority desires, yet leave the examinee uninformed of the manner of evaluation. The examining authority cannot be exacting in its demand for transparency and clarity in answers to its questions, and yet remain inscrutable and veiled in its methods of evaluation. An examining authority has every right to judge the student's knowledge and expression of that knowledge, but it cannot take away the examinee's right to know the methodology of and the criteria for its evaluation. But again this is straying into the zone of the consequence of information of the subject kind being made available.

80. An examinee who has written hurried answers and solved problems under examination conditions sometimes several months before he gets the marksheet does not really "know" his answers. His memory of what he wrote will not be complete or accurate. He may not even have a clear recollection of what he has recorded in his answers. Alternatively, he may feel that he has written something that he actually has not. His silly mistakes, graphical or grammatical errors and oversights may not be obvious to him. A look at his evaluated answer script can serve the wonderful purpose of pointing out his mistakes — whether or not the evaluated paper marks such mistakes -- clarifying his doubts and helping him to know once and for all, what he wrote and what he did not.

81. If inspection of answer scripts is denied to the examinee, the spirit of the Constitutional right to expression and information may be lost. The knowledge-builder's -the University's bid to perpetuate the draconian, elitist, one-sided right to know and judge and rule without being open to question or accountable to the examinee cannot be encouraged. For a system to foster meaningful proliferation of knowledge, it must itself be crystal clear to its core.

82. In the University's zeal to limit the scope of the request for information under the said Act, one may get a whiff of its inertia: its innate resistance to change, almost a sublime refusal to perceive or acknowledge how all around it has moved along. History and tradition may be cherished and preserved. But evolution cannot be impeded as it is a means for survival. If there is no infrastructure to receive the change, the need to change cannot be negated. It is possible that public authorities as the University do not desire accountability as it is a demanding taskmaster and it is difficult to shrug off old habits. It is equally likely that while public examining bodies make an ostensible show of concern for the examiners, there is a realisation that a more open scrutiny of evaluated answer scripts will require more care and caution than the low remuneration--and that is a notorious fact--to examiners can command.



83. Access to answer scripts may have the desirable side-effect of ensuring that there is no loss of any of the papers. It is not unknown for answer scripts of Board and other examinations to have been found in dishonourable places that they should never have reached, and the awareness that there may potentially be a request for furnishing every answer script may result in its better preservation. In a sense, the despair that has driven many a student to take his life in recent times may be addressed if students have access to their evaluated answer scripts.

84. The University's final shield is, ironically, the Court. It seeks to tuck the answer scripts behind the apparently insurmountable wall of Supreme Court judgments. Apart from the fact that Section [8\(1\)\(b\)](#) of the said Act has to be read in the light of the overriding effect of the said Act sanctioned under Section [22](#), the argument on such score is as much a show of desperation as the floodgate theory.

85. There are two parts to Section [8\(1\)\(b\)](#) of the Act: information that has been expressly forbidden to be published by any Court of law or Tribunal or the disclosure of which may constitute contempt of Court. It is a disjunctive "or" after the word "tribunal". It is trite that an act may not be expressly forbidden by a Court and yet its commission would amount to contempt of Court. In the first limb of the clause, the expression "expressly forbidden" operates on the word "information". It necessarily implies that, that which is sought by way of a request has to be a matter that is expressly forbidden to be made available. The judicial embargo has to be explicit and a general observation may not be cited as a bar. An express prohibition has to be more specific than what the University brings by way of Supreme Court judgments, even if its best arguable case is taken. It does not appear that the University here has stressed much on the second arm of the clause. Even the latest Ayan Das case has not altogether forbidden answer scripts being offered for inspection by a Court to an examinee. The Suvankar case spoke of the ills of court-sanctioned interventions in the process of evaluation that may rob it of its timely finality. The Suvankar case deals with the consequence of information being furnished and cannot be seen as an impediment to the information in the form of answer scripts being made available. It is a matter that comes into play, as noticed above, in the zone beyond where the said Act operates.

86. The Supreme Court's reference in the Paritosh Bhupeshkumar Sheth case to the *audi alteram partem* rule not operating in the twilight zone of expectations has to be read in the background of the immediate *lis* and the more general rule that was laid down. The challenge in that case was to two clauses of one of the regulations of the Secondary and Higher Secondary Council that barred reassessment and prohibited inspection of answer scripts. The restrictions were found to be reasonable. The matter was not considered in the light of the enactment which is the subject-matter of the present proceedings, even if it is accepted that the said Act only elucidates on the right originally guaranteed by the Constitution. There is no evil in a right born in the Constitution being enlarged by subsequent legislation nor any doubt as to the legislative competence to do so. If the right already existed under the Constitution, Parliament may widen its sweep and operation. A privilege granted under Part III of the Constitution can be legitimately magnified in keeping with the Constitutional vision in Part IV, abreast with the changing times when the said Act's avowed purpose is to bring about transparency and curb corruption.

87. Judicial discipline demands deference to precedents not only of the hierarchical superior but also of a forum of coordinate jurisdiction but it does not command a fawning obeisance in the deification of any precedent. As society progresses and aspirations rise, it shakes off the shackles that it invented in its infancy or adolescence. Marvels of yesterday become relics of today. If the Central Information Commission can rightfully aspire for a day when

answer scripts would accompany the mark sheets, that there is no facility there for today would not lead to the natural words and import of the said Act to be constricted by any concern for the immediate hardship and inconvenience. The umbra of exemptions must be kept confined to the specific provisions in that regard and no penumbra of a further body of exceptions may be conjured up by any strained device of construction. In a constitutional democracy, every limb and digit of governance is ultimately answerable to the government.

88. Up until the Ayan Das case and down the ages when the Paritosh Bhupeshkumar Sheth and Suvankar cases were decided, the issues were not tested against the provisions of the said Act. Subject to the legislation being within the bounds of constitutional propriety, the legislature may bring an enactment to undo a view expressed by Court, for notwithstanding the crntemporary fading demarcations of the functions of the several organs of State, the Court may have to yield to the legislature in the business of law-making as it is the vocation of the one and the subject of scrutiny and application of the other.

89. The aspirations that the said Act addresses, the hope that it kindles and the direction that it gives to a right ordained under the Constitution, hardly permit an answer script to slip out of its refreshingly agreeable sweep. The sand in the hourglass has run out on all forms of feudal practice and the inglorious vestiges of its overstaying relics need to be ruthlessly torn down in the land belonging to the Constitution. The old order that the University seeks to preserve must yield to the mores of the times.

90. As much as an examining body may owe an obligation to its set of examiners, it owes a greater fiduciary duty to its examinees. The examinees are at the heart of a system to cater to whom is brought the examining body and its examiners. If it is the right of a voter, for the little man to have the curriculum vitae of the candidates who seek his insignificant vote, the right of the examinee is no less to seek inspection of his answer script.

91. Whether it is on the anvil of the legal holy trinity of justice, equity and good conscience, or on the test of openness and transparency being inherent in human rights, or by the myriad tools of construction, or even by the Wednesbury yardstick of reasonableness, the State Public Information Officer's rejection of the writ petitioner's request to obtain his answer script cannot be sustained. The University will proceed to immediately offer inspection of the paper that the petitioner seeks. A Writ of Mandamus in that regard must issue. The order of September 17, 2007 is set aside.

92. The parties shall pay and bear their own costs.

Urgent certified photostat copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

Later;

93. The University seeks a stay of opera-lion of the order. Considering the gravity of the matter and the onerous candour demanded of the University, the order shall remain stayed for a period of a fortnight.



**Equivalent Citation:** (2006)143PLR444

**IN THE HIGH COURT OF PUNJAB AND HARYANA**

Civil Revision No. 1051 of 2001

Decided On: 29.01.2006

Appellants: **Punjab Public Service Commission**

**Vs.**

Respondent: **Rajiv Kumar Goyal**

**Hon'bleJudges:**

Hemant Gupta, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Sanjeev Sharma, Additional Adv. General

For Respondents/Defendant: Rakesh Garg, Adv.

**Subject: Civil**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 2, 3, 4, 6, 6(2) and 8(1); Constitution of India - Article 315; Civil Procedure Code (CPC), 1908 - Order 11, Rule 14

**Disposition:**

Petition dismissed

**JUDGMENT**

**Hemant Gupta, J.**

1. The challenge in the present revision petition is to the order passed by the learned trial Court on 24.1.2001, whereby the application filed by the plaintiff for production of record as per provisions of Order 11 Rule 14 CPC, was allowed, to enable the plaintiff to file replication to the written statement of the defendant effectively.

2. The plaintiff has filed a suit for declaration to the effect that he is duly qualified and selected for the post of Punjab Civil Service (Executive Branch) in the examination and interview for the post conducted by respondent No. 3, the result for which was declared on 7.11.1994. The plaintiff has also sought consequential relief of appointment as member of PCS (Executive) along with seniority with effect from 7.11.1994 or with effect from such other date when other selected candidates were appointed.

3. In the said suit, the defendant filed a written statement, copy of which has been attached as Annexure P.2 with the present revision petition. Before filing the replication, the plaintiff filed the application for production of record on the ground that the written statement is evasive. In reply to the said application, it was the stand of the Commission that the issues raised by the plaintiff relate to internal working of the Commission and that the internal procedure cannot be divulged publicly in the public interest. It is also pleaded that the maintainability of the Civil Suit is yet to be determined by the Court in as much as the Civil Suit is time barred and the Courts at Patiala have no territorial jurisdiction to entertain the Civil Suit. It has been further pleaded that the Public Service Commission is Constitutional Body as defined under Article 315 of the Constitution of India and the Constitutional obligation can only be determined by a Constitutional Bench. It was also submitted that complete record pertaining to the examination of the candidates has already been submitted before this Court in Civil Writ Petition No. 17490 of 1994 and that the Commission is not in possession of the record pertaining to selection of PCS (Executive) and other like services of the year 1994.

4. While admitting the present revision petition, this Court on 23.1.2004, passed an order permitting the plaintiff to move an application for inspection of the record. It was ordered that if an application is moved, the plaintiff shall be allowed to inspect the record in the meantime. The petitioner moved an application for recall of the said order. The said application was dismissed on 31.1.2005. Both the orders i.e. the order dated 23.1.2004 and that of 31.1.2005 are subject matter of challenge by the Public Service Commission in Special Leave to Appeal (Civil) Nos. 8394 and 8396 of 2005, wherein the Hon'ble Supreme Court has issued notice in the Special Leave Petition and passed an order that the operation of the orders of the High Court permitting inspection shall remain stayed.

5. Earlier the present revision petition came up before me on 30.9.2005, when on an argument raised by the learned Counsel for the petitioner, the hearing of the revision petition was deferred till the decision of the SLP. But the matter was listed before this Court on 4.1.2006 when it was pointed by the learned Counsel for the plaintiff that SLP is only against an interim order passed by this Court, therefore, hearing of the revision petition need not be deferred. On the said date, it was ordered that it is not a fit case to stay the proceedings sine die. Learned Counsel for the petitioner has, however, sought time to argue the matter on merits and to examine the effect of the Right to Information Act, 2005 (hereinafter referred to as 'the Act').

6. I have heard learned Counsel for the parties at some length and I am of the opinion that de-hors of the provisions of Order 11 Rule 14 of the C.P.C., all citizens have been given right to information in terms of Section 3 of the Act. The information is defined under Section 2(f) of the Act to mean any material in any form, including record, documents, memos, e-mails, opinions, advices, press releases, circulars, order, 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. Section 4 of the Act contemplates the obligation of public authorities to maintain all its record duly cataloged and indexed in a manner and the form which facilitates the right to information under the Act. Section 6 of the Act provides that a person, who desires to obtain any information under the act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed. Any applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him in terms of Sub Section 2 of Section 6 of the Act.

8. Therefore, in terms of the provisions of the Act, every citizen of the country has a right to seek information as defined under Section 2(f) of the Act from a public authority. Therefore, without going into the merits of the controversy raised in the suit, the plaintiff is entitled to seek information in terms of the Act.

9. Learned Counsel for the petitioner has, however, raised two fold objections. Firstly, the plaintiff has moved an application before the civil Court and not to the Information Officer, appointed under the Act and, therefore, such information cannot be sought by the Civil Court. Secondly, it is pointed out that since the Hon'ble Supreme Court has passed an order in the S.L.P. on 19.4.2005, the Commission is exempted from disclosing any information in terms of Section 8(1)(b) of the Act.

10. However, I am unable to agree with the argument raised by the learned Counsel for the petitioner. It is correct that the application has been moved by the plaintiff before the Civil court, but it cannot be said that since the application has not been filed before the Information Officer, the plaintiff would not be entitled to the information. In terms of Section 6 of the Act, an applicant making request for information is not required to give any reason for requesting the information or the personal details. Therefore, mere fact that an application has been filed before the Civil court, would not take away the right of the applicant to get information in terms of the Statute. It is the matter of fee, which may be claimed before any such information is supplied. But the information cannot be withheld only for the reason that the application has been filed before the Civil Court and not before the Information Officer.

11. The argument that the petitioner is exempt to furnish information in terms of the order passed by the Hon'ble Supreme Court, is again not tenable. The order dated 19.4.2005 passed by the Hon'ble Supreme Court reads as under:-

Taken on board.

Issue notice in the special leave petitions as also on the prayer for grant of interim relief.

Until further orders, it is directed that the operation of the orders of the High Court permitting inspection shall remain stayed.

The orders passed by this Court on 23.1.2004 and 31.1.2005, which are the subject matter of challenge before the Hon'ble Supreme Court, read as under:

Admitted.

To be heard within six months.

The respondent may move an application for inspection of the record. If an application is moved, then the respondent shall be allowed to inspect the record in the meantime.

January 23, 2004

Sd/- (Ashutosh Mohunta)  
Judge

The C.M. is frivolous.  
Dismissed.

31.1.2005

Sd/- (Ashutosh Mohunta)  
Judge

12. A perusal of the order passed by the Hon'ble Supreme Court would show that the Hon'ble Supreme Court has stayed operation of the aforesaid orders of this Court which prohibits the Commission to furnish information under the Act. Consequently, there is no exemption available to the petitioner in terms of Section 8(1)(b) of the Act.

13. In view of the above, I do not find any merit in the revision petition. Hence, the present revision petition is dismissed.

14. However, it is directed that the information sought by the plaintiff vide Annexure P.4, except documents at Serial No. 8 thereof, be supplied to the plaintiff in terms of the provisions of the Act on soliciting the necessary fee in terms of the Act. The amount of fee shall be communicated to the plaintiff.

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

**W.P. (C) 7072/2009, C.M. No.2584/2009**

**RAJEEV VERMA ..... Petitioner  
Through: Mr. Pradeep Jain with  
Ms. Diksha Bhutani, Advocates.**

**versus**

**UOI and ANR. .... Respondents  
Through: Mr. S.K. Dubey with  
Mr. Deepak Kumar, Advocate for UOI.  
Mr. K.K. Nigam, Advocate for CIC.**

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

**ORDER  
24.02.2009**

**Learned counsel for the respondents pointed out that the petitioner did not prefer an appeal and straightaway approached the Central Information Commissioner contrary to the provisions of the Right to Information Act, 2005. Counsel for the petitioner sought liberty to withdraw the Writ Petition and approach the first appellate authority constituted under the Act. He requested that the appeal should be considered on its merits and that the petitioner/applicant should be given appropriate opportunity of being heard. Counsel also contended that the show cause notice dated 24.12.2004 issued by the Directorate of Revenue Intelligence could be relied upon to say that the class of information sought for does not fall within the exemption under Section 8 or is not classified under Schedule 2, Section 24 of the Act. Leave and liberty sought for is granted. In case the petitioner approaches the first appellate authority within four weeks, his appeal shall be considered on its merits after giving appropriate opportunity of hearing, to**

**present his case, to the petitioner. The first appellate authority shall consider the merits of the submission made on the basis of the materials placed before it and shall not be constrained by the previous discussion of the Central Information Commission in this case.**

**All rights and contentions of the parties are kept open.**

**Writ Petition is permitted to be withdrawn but in the above terms.**

**Order dasti to the parties.**

**S. RAVINDRA BHAT, J**

**FEBRUARY 24, 2009**

**/vd/**

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

**W.P. (C) 5469/2008**

**COL. RAJENDRA SINGH ..... Petitioner  
Through: Mr. Sanjay Kr. Singh, Advocate.**

**versus**

**THE CENTRAL INFORMATION COMMISSIONER  
and ANR ..... Respondents  
Through: Nemo.**

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

**ORDER  
20.03.2009**

**Heard the petitioners counsel.**

**In view of the order recorded on 18.12.2008, the Court is of the view that the matter can be decided in the absence of the second respondent. On that day, second respondent had pointed to a letter written by the CIC on 16.3.207 stating that he had no objection to the dropping of proceedings by the CIC. The petitioner is aggrieved by an order dated 2.7.207 whereby CIC directed recovery of penalty of Rs.25,000/- in two installments for delayed supply of information to the second respondent (hereinafter called the applicant).**

**Briefly the facts are that the applicant sought for some information in August, 2006 before the Ministry of Human Resources and Development. Since the information was not held primarily by the said Department, the application was forwarded under Section 6 to the Indian Institute of Technology (IIT). The petitioner who was the designated Public Information Officer (PIO), contends having received the application on 9.10.2007 and duly forwarded it to the various agencies. He has produced a copy of the application; it runs into ten pages and pertains to various categories of information relating to the service records and issues concerning voluntary retirement of the applicant. The applicant was aggrieved by what he perceived to be withholding of relevant information and eventually appealed to the Central Information Commission. By the order dated 5.3.2007, the CIC disposed of the appeal. It recorded, inter**

alia, that there were some delay in furnishing of information and that it showed the callous attitude of the department concerned. The Commission granted time up to 31.3.2007 to the IIT by which time other records were to be produced or a certificate given to the effect that the records have been weeded out. It may be mentioned that the IIT has stated that some of the information and documents sought were weeded out pursuant to the policy decision taken on 28.1.2000. It is a matter of record evidenced by the letter dated 15.7.2007 issued by the petitioner as PIO to the applicant that information was in fact furnished. The petitioner has also relied upon a copy of another letter dated 20.3.2007 for the purpose.

In these circumstances, the applicant addressed a letter to the Chief Information Commissioner on 16.3.2007; the same reads as follows: - Appreciating the difficulty of the Registrar IIT Delhi, the Commission may kindly drop the show cause notice in view of the assurance given by the Registrar/PIO of IIT Delhi that he will supply rest of the information in due course.

By the impugned order, the CIC negated the petitioner's contentions in relation to the show cause notice issued earlier proposing penal action under Section 20. The Commission held that the desire of the applicant to have the proceedings dropped would not bind it and that the penalty order issued on 31.5.2007 would bind the petitioner.

This Court has considered the materials and submissions.

Primarily the order by which the applicant's appeal was disposed of dated 5.3.2007 proceeds on assumption that the information application was made on 25.7.2006 and followed up by remainders. This assumption facially was incorrect, since the application though forwarded to the IIT by the Central Government was received by the petitioner on 9.10.2006. Furthermore, the petitioner clearly relied upon the weeding out of records policy decision taken on 28.1.2000. The applicant's request runs into ten pages. In these circumstances, after the primary order of 5.3.2007, the applicant was satisfied that the information furnished to him was adequate. He has in fact said so in the letter dated 16.3.2007.

Section 20, no doubt empowers the CIC to take penal action and direct payment of such compensation or penalty as is warranted. Yet the Commission has to be satisfied that the delay occurred was without reasonable cause or that there the refusal to receive application or the request was denied malafidely.

This much is evident from the provision itself. The provision within Section 20

(1) reads as follows: -

20

(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.**

**The preceding discussion shows that at least in the opinion of this Court, there are no allegations to establish that the information was withheld malafide or unduly delayed so as to lead to an inference that petitioner was responsible for unreasonably withholding it. Furthermore, the applicant was satisfied about the information furnished to him in March, 2007, it is within time frame granted by the CIC, i.e., before 31.3.2007. The applicant appeared before this Court and also supported this version as recorded in the order dated 18.12.2008.**

**In view of the above, this Court is satisfied that the petition is entitled to succeed. It is accordingly allowed. The impugned orders dated 31.5.2007 and 2.7.2007 are hereby quashed. Consequentially, the petitioner is entitled to refund of the amount; the CIC shall ensure that same is repaid or reimbursed within four weeks from today.**

**S. RAVINDRA BHAT, J  
MARCH 20, 2009  
/vd/**



**IN THE HIGH COURT OF PUNJAB AND HARYANA**

Decided On: 08.02.2008

Appellants: **Ramesh Sharma and Anr.**

**Vs.**

Respondent: **The State Information Commission and Ors.**

**Hon'ble Judges:**

M.M. Kumar and T.P.S. Mann, JJ.

**Subject: Right to Information**

**Disposition:**

Petition dismissed

**JUDGMENT**

**M.M. Kumar, J.**

1. The short question raised in the instant petition is whether a State Information Commission could impose penalty under Section [20\(1\)](#) of the Right to Information Act, 2005 (for brevity, 'the Act'). The instant petition is directed against order dated 16.10.2007 (P-1) passed by the State Information Commission, Haryana (for brevity, 'the Commission'), imposing a penalty of Rs. 19,250/- by invoking the provisions of Section [20\(1\)](#) of the Act for 77 delay in furnishing the information in accordance with mandatory provisions of Sub-section (1) of Section [7](#) of the Act.

2. Brief facts of the case are that applicant-respondent No. 3 made an application dated 16.10.2006 for seeking specified information from the petitioner. However, information was not furnished to the respondent No. 3. On 1.2.2007 only a part of information was given and the supplementary information was made available to him on 14.2.2007. After waiting for some time, applicant-respondent No. 3 had filed an appeal before the Commission on 1.12.2006, who relegated him to file an appeal before the First Appellate Authority prior to approaching the Commission. Accordingly, he filed the first appeal on 2.1.2007 before the Vice-Chancellor of the University with the grievance that he was not supplied the required information. The University had constituted the First Appellate Authority on 2.3.2007 under the Act. Consequently, the applicant-respondent No. 3 approached the Second Appellate Authority again on 20.2.2007. The petitioner filed the reply before the Second Appellate Authority on 23.7.2007' (P-2) raising preliminary objection that applicant-respondent No. 3 should have approached the First Appellate Authority in the first instance, eventually the Commission 'allowed the appeal filed by applicant-respondent No. 3 vide order dated 1.8.2007 and issued direction to the petitioners to allow applicant-respondent No. 3 to inspect the record. The needful was done by the petitioners as per the direction issued. It was thereafter the Commission issued a show-cause notice (P-3) to the petitioner, asking the petitioner as to why a

penalty @ Rs. 250/- for each day of delay subject to maximum of Rs. 25,000/- in supplying the information be not imposed. The Commission initiated proceeding's under Section [20\(1\)](#) of the Act. The petitioner filed his reply dated 1.10.2007 (P-4) to the show-cause notice. The Commission after detailed examination recorded the finding imposing penalty on the petitioner, the operative part of the order dated 16.10.2007 reads thus:

After hearing the respondent and perusal of the record, it is held that respondent has not been able to show that he had acted diligently or delay occurred due to reasonable cause. In fact, SPIO has acted in most casual manner in processing the application with the result that there has been a delay of 77 days in furnishing the information. A perusal of the record show that the application was sent by SPIO in original to the concerned branch without any instructions for obtaining the information from them. SPIO took no notice of the fact no information had been sent by the concerned branch till 4.12.2006. Even after the receipt of information on 4.12.2006, it was only on 1.02.2007 that partial information was furnished to the appellant where the information was due to be furnished latest by 16.11.2006 under Sub-section (1) of Section [7](#) of the Act. Thus, there has been delay of 77 days in furnishing the information. Respondent has not been able to show any reasonable cause for this delay. Therefore, in exercise of powers conferred under Section [20\(1\)](#) of the RTI Act, a penalty of Rs. 19,250/- for 77 days delay in furnishing the information in terms of Sub-section (1) of Section [7](#) is imposed on the respondent'. He shall deposit the penalty amount in the Commission's head of Account 0070-Administrative Services-60-Other receipts, DDO Code-0049 within 20 days of the receipt of this order under information to the Commission.

Announced. To be communicated.

3. Dr. Balram Gupta, learned Senior Advocate has made three submissions before us. Firstly, he has submitted that Sub-section (2) of Section [20](#) of the Act would not apply unless findings are recorded that the petitioner has been persistently delaying the supply of information and that too without any reasonable cause. According to learned Counsel, it is not that in every case of delay, penalty could be imposed by placing reliance on Sub-section 2 of Section [20](#) of the Act. Secondly, he has submitted that the Commission could not have proceeded against the petitioners without firstly training the public authority like the petitioners as envisaged by Section [26](#) of the Act. According to learned Counsel it was incumbent upon the State Government to train the petitioner by encouraging their participation in the development and organisation of programmes as envisaged by Section [26\(1\)\(a\)](#) of the Act. Learned counsel has insisted that in the absence of any such programmes, having been organised to train the Public Information Officer like the petitioner, the Commission should have taken a lenient view by sparing the petitioner from imposition of such a penalty. Learned counsel has lastly submitted that no second appeal was maintainable without first filing. The first appeal before the authority constituted by the Kurukshetra University.

4. We have thoughtfully considered the respective submissions made by the learned Counsel and are unable to accept the same. It would be appropriate to refer to the provisions of Sub-section (1) of Section [20](#) of the Act which reads thus:

20(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.

5. A plain reading of Sub-section (1) of Section [20](#). of the Act makes' it obvious that the Commission could impose the penalty for the simple reasons of delay in furnishing' the information within the period specified by Sub-section (1) of Section [7](#) of the Act. According to Sub-section (1) of Section [7](#) of the Act, a period of 30 days has been provided for furnishing of information. If the information is not furnished within the time specified by 'Sub-section (1) of Section [7](#) of the Act then under Sub-section (1) of Section [20](#) of the Act, public authorities failing in furnishing the requisite information could be penalised. It is true that in cases of intentional delay, the same provision could be invoked but in cases where there is simple delay the Commission has been clothed with adequate power. Therefore, the first argument that the penalty under Sub-section (1) of Section [20](#) of the Act could be imposed, only in Cases where there is repeated failure to furnish the information and that too without any reasonable cause, is liable to be rejected. The Commission is empowered under Sub-section (2) of Section [20](#) of-the Act to recommend disciplinary action against such State/Central Public Information Officer under the service rules applicable to such officers. However, the present is hot the case of that nature because the Commission has not been invoked under Sub-section (2) of Section [20](#) of the Act. Hence, the argument raised is wholly misconceived and is hereby rejected.

6. The second submission that lenient view should have been taken on account of failure of the Government to organise any programme to train public authorities as envisaged by Section [26](#) of the Act is equally without merit. The Act has come in force in the year 2005 and the petitioners were required to constitute the Public Information Officer to the appropriate authorities. The petitioners could constitute the First Appellate Authority only on 2.3.2007, which resulted in filing of second appeal before the Commission. The petitioner has completely ignored the provisions of the Act and appears to have awoken only after the applicant-respondent No. 3 has asked for information and filed the first,

appeal. The petitioners cannot avoid the mandatory provisions of Sub-section 1 of Section [20](#) of the Act on the excuse that any training programme as envisaged by Sub-section (1)(a) of Section [26](#) of the Act has not been organised by the Government encouraging participation of the petitioners in the development and organisation of programmes. Therefore, we do not find any merit in the second contention raised by the learned Counsel.

7. The last contention that second appeal cannot be filed, does not require any detailed consideration because a perusal of Section [19\(3\)](#) of the Act shows that after waiting for a period of 90 days, the applicant seeking information is entitled to invoke the power of Second Appellate Authority.

8. It has come on record that applicant-respondent No. 3 had originally filed application for obtaining information on 16.10.2006 before the petitioner. The information was required to be furnished to him within a period of 30 days as per the provisions of Section [7\(1\)](#) of the Act. The information was not furnished to him and accordingly he filed an appeal before the Commission which was Second Appellate Authority on 1.2.2006 apparently for the reason that the First Appellate Authority was not constituted. However, the Commission relegated the applicant-respondent No. 3 to the First Appellate Authority and the First Appellate Authority could not furnish information within 30 days and consequently he preferred further appeal. The First Appellate Authority itself was constituted on 2.3.2007 and no first appeal was competent. Moreover, the appeal was filed before the Commission on 20.2.2007 after awaiting period of 30 days from the date of filing the application on 16.10.2006. Even if the period of 90 days is applied which is prescribed for second appeal, the appeal was within limitation.

9. Therefore, the argument raised by the learned Counsel cannot, thus be sustained and the same is also rejected. In view of the above, there is no merit in the instant, petition and the same is hereby dismissed.

\* **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](http://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 bypass 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 offices 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 recorded 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, 6<sup>th</sup> 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 3<sup>rd</sup> 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 paramountcy 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 lose 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 posteriores 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 posteriores priores contrarias 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 12<sup>th</sup> 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 extent, 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*

**Equivalent Citation:** AIR2007Guj203, (2008)2GLR1559

**IN THE HIGH COURT OF GUJARAT**

Spl. Civil Appln. Nos. 16073 and 17067 of 2007

Decided On: 16.08.2007

Appellants: **Reliance Industries Ltd.**

**Vs.**

Respondent: **Gujarat State Information Commission and Ors.**

**Hon'ble Judges:**

D.N. Patel, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Mihir Thakore, Sr. Counsel and D.C. Dave, Adv.

For Respondents/Defendant: N.V. Anjaria, Asstt. Govt. Pleader, S.B. Vakil, Sr. Counsel, Navin K. Pahwa, Adv. and Tanuja N. Kachchi, Asst. Govt. Pleader

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 2, 4(1), 5, 6, 6(3), 7, 7(1), 7(2), 7(3), 7(7), 8, 9, 11, 11(1), 11(2), 11(3), 11(4), 18, 18(1), 18(2), 18(3), 19, 19(1), 19(2), 19(3), 19(4) and 20; Constitution of India - Article 14; Gujarat Right to Information Rules, 2005 - Rule 6 and 6(4); Civil Procedure Code (CPC)

**Cases Referred:**

Indian National Congress v. Institute of Social Welfare AIR 2002 SC 2158; Rashlal Yadav v. State of Bihar and Ors. (1994) 5 SCC 267 : 1994 AIR SCW 3329; Ashok Kumar Pandey v. State of West Bengal and Ors. AIR 2004. SC 280

**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 party 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 18 of 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 18 of 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 Mardia.

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 complaints, 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 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, 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 reported in [MANU/SC/0451/2002](#), 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 aforesaid 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 20 of 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. reported in [MANU/SC/0792/1994](#), 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 this 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 not 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. reported in [MANU/SC/0936/2003](#), 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 credentials 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 meddling 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 20 are 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 Jamnagar 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 complaints. 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.

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**IN THE HIGH COURT OF GAUHATI**

Decided On: 05.06.2009

**Appellants: Shree Ganesh Trading Company represented by its Proprietor Namely Sri Sushil Kumar Khandelia, S/o Late Gangadhar Khandelia**

**Vs.**

**Respondent: Hindustan Paper Coporation Ltd. (Unit- Nagaon Paper Mill , a Govt. of India Enterprise) representee by its Chairman-cum-Managing Director, The Chief Executive, Nagaon Paper Mill ( a unit of HPCL), The Deputy General Manager, (TS/EMCC), Nagaon Paper Mill and Shiva Enterprise**

**Hon'ble Judges:**

H.N. Sarma, J.

**Subject: Contract**

**Disposition:**

Petition dismissed

**JUDGMENT**

**H.N. Sarma, J.**

1. The legality, validity and justifiability of the decision of Hindustan Paper Corporation Limited, Unit-Nagaon Paper Mill to cancel the tender No. NPM/EMCC/FOR/08-09/01 dated 16/2/08 in respect of the job/work for unloading of bamboo/wagon from the wagon and shifting the same to the bamboo yardstick and thereby not opening the price bid offered by the petitioner, is the subject matter of scrutiny in this writ petition, as agitated by the writ petitioner.

2. I have heard Mr. HK Mitra, learned Counsel for the petitioner and Mr. BK Chatterjee, learned Standing Counsel, Hindustan Paper Corporation Ltd. and Mr. R. Dubey, learned Counsel for Respondent No. 4.

3. The facts necessary for the purpose of disposal of this writ petition may be summarized below:

The respondent Corporation published a notice on 16/2/08 inviting sealed tender in two-bid tender system from reputed and experienced contractors for allotting the job of unloading of bamboo/wood from wagons and shifting of bamboo/wood from railways side to bamboo/wood yard fixing 11/3/08, which however, was subsequently extended till 17/7/08. In response to the aforesaid tender notice, altogether 5 tenderers including the petitioner and respondent No. 4 submitted their respective tenders. After scrutiny of the technical bids and after processing them through various stages, the petitioner's tender was decided to be accepted by the Corporation. Subsequently, however, on further scrutiny, it was found that the petitioner has not complied with certain requirements as per NIT and also on the objection of internal audit department, the Corporation ultimately decided to invite fresh tender for allotment of the job.

It is alleged that the tender committee having found the petitioner suitable for opening its price bid at one stage, it was not permissible for the Corporation to further scrutinize the legality or otherwise of the tender submitted by the petitioner including scrutiny of the documents submitted by the petitioner.

4. The stand of the Corporation is that the petitioner has no legal right to agitate such grievances in a writ proceeding under Article 226 on the facts alleged in the writ petition and the Corporation having reserved its right to accept or reject any tender or to restrict the number of contractors or to cancel the tender without assigning any reason whatsoever, the corporation is empowered to ask for issuance of fresh tender.

Further stand of the respondent is that the Corporation has rightly taken the decision to issue fresh tender for the job and the tender of the petitioner being incomplete and invalid, the action proposed to be taken by the Corporation is not entitled to be challenged by the petitioner by resorting to the extra-ordinary jurisdiction of this Court and in exercise of the power under Article 226 of the Constitution.

5. Learned Counsel for both sides have argued in support of their respective pleas on the basis of the materials available on record. The Corporation also placed the relevant case records. It is pertinent to note herein that the petitioner has annexed various notes from the notesheet of the related file of the Corporation which is taken as exception by the learned Counsel for the Corporation. It is contended on behalf of the Corporation that although the petitioner obtained some information resorting to the provision of the **Right to Information** Act, but he was never supplied with a copy of any note sheet by the Corporation and it is strange that how confidential note sheets could be obtained and annexed in the proceeding and how he could have excess to such documents.

6. Submissions of the learned Counsels led me to go through the records produced by the Corporation. Scrutiny of the NIT disclosed that provides a good number of clauses mentioning the rights and obligations of the tenderer or power of the Corporation, out of which the following are relevant for the purpose of adjudication of the dispute raised in this writ petition:

At Clause-12.4 of the NIT it is provided that the Corporation reserves its right to accept or reject any/all tender(s) without assigning any reason whatsoever. It is also contained in Clause-1, interalia, that the participating tenderers are advised to read the tender documents carefully and fill-up the tender as instructed in the documents and any deviation or incomplete information shall lead disqualification of such tender. Clause 1.6.2 provides that the Techno Commercial Bid is to contain all the requisite documents and bids without such documents would be cancelled. As regards signing of the tender, Clause 7.0 of the NIT provides that the tender documents must be duly signed on each page with the name, designation of the signatory and the seal of the firm and shall be stamped. Clause 7.1 provides that the tender should signed by the tenderer himself. The list of documents to be furnished along with the Techno Commercial Bid as has been mentioned in Clause.9.

7. The petitioner claims to be a reputed proprietorial firm and submitted its tender in terms of the aforesaid NIT. After opening the tender documents, the concerned authority prepared a comparative statement of the Techno Commercial Bids and forwarded the same for technical scrutiny. The tender committee scrutinized the tenders of all the 5 tenderers and after such scrutiny, technical recommendation was accorded in favour of the petitioner as well as respondent No. 4 and was placed for further deliberation. The matter was, thereafter, referred to finance department to consider the financial soundness of the tenderers and in turn it recommended to open the price bid of both the petitioner and respondent No. 4 as per its note dated 13/5/08. The matter was, thereafter, further placed before the Internal Audit department of the Corporation. The Internal Audit department, however, not having found applied the same yardstick as regards the consideration of the related tenders submitted by both the tenderers, they were asked to follow the same vide note dated 10/6/08. After consideration in details by the Internal Audit department, it was noticed that there were some deviation in the tender submitted by the petitioner which may lead to its disqualification and the Internal Audit department opined that the Techno Commercial Bid of both the petitioner and respondent No. 4 were found to be disqualified, but by the same note it also intimated for obtaining necessary legal opinion.

In terms of the said note, legal opinion was sought for in respect of acceptability of the tender of the petitioner. The said opinion so furnished disclose that the respondent No. 4 has not fulfilled the NIT conditions and submitted the bid without complying with Clause-9 of the general terms and conditions of

the contract. So far the deviation in respect of the petitioner is concerned it was pointed out that in the documents submitted by the petitioner along with the tender it endorsed a stamp of M/s Shivam Syndicate wherein the petitioner was also a partner and he did not put the required stamp in all the pages. It was opined by the legal expert that the intention of the Bidder appears to be clear, but the deviation was there and taking into consideration of the matters in its entirety, the deviation is stated to be a minor one. Being minor deviation was appeared in the tender; the legal opinion was given in favour of the petitioner.

It is to be noted herein that in view of the deviation noticed in the tender submitted by the petitioner, a show cause notice dated 14/8/08, was issued to the petitioner asking such clarification and in its reply dated 19/8/08, the petitioner has admitted such deviation with certain explanation. Thereafter, the matter was finally placed before the Chief Executive of the Corporation. Referring to the aforesaid anomalies in respect of the tender submitted inasmuch as the tender committee could not arrive in any final decision in view of the conflicting opinion relating to the suitability of the tender submitted by the respondent No. 4 as provided by the Internal Audit department as well as that of the legal expert. Thereafter, the Chief Executive, Nagaon Paper Mill referred the matter to the CHQ vide note dated 30/7/08.

8. The note dated 20.12.2008 in the notesheet disclose that the Corporation could not finalise the tender process even after nine months from the opening of the Techno Commercial Bid and upon consideration of the views of Internal Audit Department, legal opinion and numerous cross notings and comments noted against the tenderers, the Committee recommended for issuing fresh NIT with clear and unambiguous tenders without having any scope for deviation in finalizing the tender process. By the said note, the Technical Committee was asked to deliberate and put up suitable recommendation within a week.

9. From the notes which have also been annexed by the writ petitioner in the writ petition, it is clearly disclosed that the Corporation could not made up its mind nor could arrived at a conclusive decision for opening the price bid offered by the petitioner and the respondent No. 4, and in view of deficiency in their tenders and taking into account the opinion of the Internal Audit department and legal expert, the authority decided to issue the fresh NIT.

10. The leaned counsel for the petitioner referring to different office notes assailed the decision to issue fresh NIT submitting that such issuance of fresh NIT infringes valuable rights accrued upon the petitioner. Learned Counsel has referred to the following decisions in support of his arguments

(i) (1994) 6 SCC 651 Tata Cellular v. Union of India.

(ii) [MANU/SC/0610/2005](#) Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai and Ors.

11. In Tata Cellular case(supra), the Apex Court held inter-alia that if the mistake is in relation to a non-essential, peripheral or collateral matter and there was every intention to comply with the terms of the bid and for an accidental omission the tenderer cannot be disqualified. But in the instant case, the facts disclose that the present petitioner does not fall in such a category. In the tender notice, it is specifically provided that in case of any violation regarding furnishing complete information including violation of the requirement of Clause-7 and submission of the tender without any signature and seal duly reflected in each page, the tender may be liable to be rejected the tender. It is specifically provided in Clause-1 that any deviation or incomplete information lead to disqualification of the tender.

12. The facts of the case as indicated hereinabove does not attract the aforesaid principles of law, inasmuch as, there are ample reasons recorded in the notesheet disclosing as to why the Corporation proposed to proceed with fresh NIT for allotment of the contract in question.

13. From overall consideration of the materials as disclosed from records, it is found that the different Departments of the Corporation themselves were not unanimous as regards the acceptability of the tender of the petitioner. Admittedly, there was deviation in fulfilling the conditions of the tender notice and

on such consideration, accepting the views of the Internal Audit Department, the Corporation proposed to issue fresh NIT.

Judicial review of the administrative action of respondent Corporation has been sought for in the instant petition based on the notes from the related departmental file, annexed in this petition. It is strange, as submitted by the learned Counsel for the Corporation, as to how the petitioner could get access to the copies of such official notes. Necessary information as requested by the petitioner under the RTI Act though has been furnished to him, but no copy of the note were provided to him. However, it also cannot be denied that without active cooperation of certain employees of the Corporation, it would not be possible for the petitioner to have access upon such confidential papers. It is open for the Corporation to take appropriate action, if they so desire, against such employees who might be found responsible for supplying such documents to the petitioner without any authority. I leave that part of the matter to be dealt with by the Corporation in its administrative side.

14. The notings in a note of a file do not provide an enforceable right upon a person. Such notings are only expression of feeling by the concerned officer on the subject under review. A mere expression of a view in notes file cannot be the sole basis for action even in a contempt case. (Reference- [MANU/SC/0166/1987](#), State of Bihar v. Kripalu Shankar). Again in the case of Bachittar Singh v. State of Punjab and Anr. reported in [MANU/SC/0366/1962](#), a constitution Bench of the Apex Court, relying on Article 166 of the Constitution, held that the order of a Minister would not amount to an order unless it was expressed in the name of Raj Pramukh and was then communicated to the party concerned. The final decision of the Corporation based on the finding of the Internal Audit Department of the Corporation at no point of time communicated to the petitioner.

15. In the matter of allotment of contract of such nature the authority is required to consider various aspects, and at various level, the tender documents are required to be scrutinized in the light of the conditions mentioned in the NIT. Unless and until a final decision in this regard is taken by the authority, it does not bar or prohibit the authority from further scrutinizing the matter at appropriate level. Upon such scrutiny, in the instant case, the authority in view of the defects in the tenders submitted by the respective parties decided to re-issue fresh NIT for allotment of the work in question. Although at some point of time certain notings were made in the notesheet in favour of the petitioner but those were not final and conclusive conferring indefeasible right upon the petitioner.

16. In view of what have been discussed above, in my considered opinion, the judicial review of administrative action in the case in hand against the action proposed by the Corporation is not permissible in the manner as alleged in this petition. It is always open for the authority to resile from the tender process on legitimate ground and in the instant case such ground for issuing re-tender having been ex-facie recorded, the same cannot be faulted with at the instance of a tenderer more so when such decision appears to have taken for better public interest.

17. In view of the aforesaid discussion, I do not find any merit in this writ petition and the same is dismissed. Interim order passed earlier stands vacated.

18. No costs.

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

**W.P. (C) 6226/2007**

**S.M.LAMBA .....**

**Petitioner**

**Through Ms. Girija Krishan Varma, Advocate**

**versus**

**S.C. GUTPA and ANR .....**

**Respondents**

**Through Ms. Kittu Bajaj, Advocate for R-1 and 2**

**CORAM: JUSTICE S. MURALIDHAR**

**ORDER**

**04.05.2010**

**1. There were three specific pieces of information sought by the Petitioner:**

**(i) Sanction for prosecution in respect of S.M. Lamba issued in connection with case RC:SIA-2003-E-0001 dated 30th June 2003 registered in CBI/SIU(X)/BSandFC), New Delhi.**

**(ii) The request sent by the CBI in the said case to the Oriental Bank of Commerce seeking sanction of prosecution of S.M. Lamba along with enclosures.**

**(iii) Relevant copies of the office notings on the basis of which the said prosecution was issued.**

**2. The information at (i) was provided by the Central Public Information Officer (CPIO) of the Respondent Bank.**

**3. The information at (ii) was declined because the Central Bureau of Investigation (CBI) had itself treated the said document as confidential. Section 11 of the Right to Information Act 2005 (RTI Act) was invoked by the Respondent Bank to decline the request.**

4. As regards the aforesaid document, learned counsel for the Petitioner points out that in the criminal case a charge sheet has been filed and an order framing charges has also been passed. She submits that there is no justification for withholding this document any longer.

5. This Court would like to observe that under the Code of Criminal Procedure 1973 (CrPC) once the stage of an order framing charges has been crossed, it would be open to the accused to make an appropriate application before the learned trial court to summon the above document in accordance with law.

6. As far as the Respondent Bank is concerned, this Court finds that no error has been committed by it by taking recourse to Section 11 of the RTI Act.

7. The document at (iii) was referred to be given by the Respondent Bank is citing Section 8 (1) (h) of the RTI Act. The reason given was that the prosecution was in progress in the CBI Court at Ambala against the Petitioner.

8. A perusal of Section 8 (1) (h) of the RTI Act shows that information can be withheld which would impede the process of investigation or apprehension or prosecution of offenders. In the present case the charge sheet having been filed upon completion of investigation, there can be no apprehension that the disclosure would impede the progress of the investigation. It would also not impede the trial which is already in progress.

9. In that view of the matter, there is no justification in withholding the information sought by the Petitioner at (iii) above. Consequently, the impugned order of the Central Information Commission is modified to the extent that the Respondent Bank is directed to make available to the Petitioner the information at (iii) above within two weeks from today. It will be open to the Respondent Bank while furnishing the above information, to conceal the names of any of the other officers whose names may be reflected.

10. The petition is disposed of. Order be given dasti to learned counsel for the parties.

**S. MURALIDHAR, J**

**MAY 04, 2010**



**Equivalent Citation:** AIR2009P&H53, (2008)152PLR557

**IN THE HIGH COURT OF PUNJAB AND HARYANA**

Decided On: 17.10.2008

Appellants: **S.P. Arora, State Public Information Officer-Cum-Estate Officer, HUDA**

**Vs.**

Respondent: **State Information Commission and Ors.**

**Hon'ble Judges:**

Hemant Gupta and Kanwaljit Singh Ahluwalia, JJ.

**Subject: Right to Information**

**Disposition:**

Petition allowed

**JUDGMENT**

**Hemant Gupta, J.**

1. The challenge in the present writ petition is to the order dated 23.8.2007 (Annexure P. 13), whereby the State Information Commission, Haryana, has imposed a penalty of Rs. 10,000/- on the petitioner for the lapse on his part, to be recovered in four monthly installments. The Commission has also imposed a costs of Rs. 2,000/- on account of considerable harassment meted out to respondent No. 3.

2. Respondent No. 3 sought certain information in respect of plot No. 609, Sector 8, Panchkula. The said application was received in the Estate Officer on 29.1.2007. The information sought was in respect of the steps taken for transfer of the aforesaid plot in the name of Rajiv Arora (hereinafter referred to as 'the applicant'); Sandeep Arora and Anurag Arora. The aforesaid plot No. 609, Sector 8, Panchkula was originally allotted to one Shri Madan Lal. A Power of Attorney was executed by Shri Madan Lal in favour of Shri Ram Sarup, father of the applicant on 31.1.1990. The said Power of Attorney was cancelled on 15.11.1996 and a fresh General Power of Attorney was executed in favour of one B.R. Verma. The cancellation of the Power of Attorney in favour of father of the applicant was alleged to be an act of fraud. Shri Madan Lal was informed by the Estate Office that the plot cannot be transferred in the name of Shri B.R. Verma. Shri Madan Lal filed a civil suit on 20.7.1998, challenging the action of the Estate Officer, refusing to transfer plot in favour of B.R. Verma. The said civil suit was dismissed on 8.2.2006. The first appeal was dismissed on 15.6.2006. Madan Lal filed a second appeal, the information of which was given to the Estate Office by Shri Madan Lal on 14.2.2007.

3. As per the petitioner, the office file of plot No. 609, Sector 8, Panchkula, was with the ICICI Bank in relation to the project of computerization of the official record of the office of Estate Office. 20,000 files, including the file of the plot in question were sent for computerization on 18.12.2006. The files were in the office of ICICI Bank from 18.12.2006 to 22.2.2007 and from



13.3.2007 to 30.3.2007. The information sought by the applicant was supplied on 10.4.2007 after the files were finally returned on 30.3.2007.

4. The applicant filed an appeal to the Chief Administrator, HUDA, against the inaction of the Estate Officer on 21.3.2007. The said appeal was fixed for hearing on 17.4.2007 after notice to the present petitioner. The said appeal was disposed of on 17.4.2007 in the absence of respondent No. 3, when it was stated that the information sought for has been supplied to the applicant on 10.4.2007. An application was filed by the applicant that he had not received any notice of the hearing of the appeal. The Chief Administrator of the HUDA, the Appellate Authority, under the Right to Information Act disposed of the appeal on 11.6.2007 on the ground that the information has already been supplied and that the applicant is satisfied with the information provided.

5. The applicant has filed an appeal dated 15.4.2008 under Section 19(1) of the Act, the notice of which was issued on 17.4.2007. The grievance of the applicant was that no reply has been received from the Public Information Officer or from the Appellate Authority within one month. It was the said appeal, which was decided by the State Information Commission on 12.7.2007, holding that the state of affairs as noticed is a sorry reflection on the functioning of the Estate Officer and supervision being exercised in the matter of information given by the Administrator, HUDA.

6. It was also found that the matter is being deliberately delayed and excuses are being offered for not taking action on the application submitted by the applicant. After returning such finding, a notice under Section 20(1) of the Act was issued to the present petitioner to show cause as to why the penalty @ Rs. 250/- for each day of delay, should not be imposed upon him. A notice was also issued under Section 19(8)(b) of die Act as to why the applicant should not be compensated suitably for the harassment caused to him. The record pertaining to the transfer was also called for perusal of the State Information Commission. After considering the reply filed, the impugned order has been passed by the Chief Information Commissioner on 23.8.2007. It has been found that the excuses of litigation pending before the High Court was made to justify the inaction on the transfer application submitted on the basis of the decree passed by the Sessions Judge.

7. The Commission also found that letter dated 1.6.2007 was not disclosed to have been issued in the hearing before the Commission on 12.7.2007, which was considered to be a deliberate and willful concealment of facts. It was found that though the decision was taken for transfer of the plot subject to payment of the deposit of the extension charges, but the Estate Officer continued to harp on the alleged litigation pending before the High Court. It was also found that the Estate Officer assured the Commission in many earlier cases about not repeating delays in future but none of these assurances has been acted upon.

8. The present writ petition has been contested by the State Information Commission, but not by the applicant.

9. Learned Counsel for the petitioner has argued that the State Information Commission is a Statutory Body created under the Act. Such Statutory Authority has no lis with the petitioner which can be defended by such authority before this Court. It is contended that the Commission has been impleaded as respondent for any adversarial litigation between the parties, but for the reason that for issuance of a writ of Certiorari, the records are to be produced by such authority. It is further contended that having passed an order, the statutory authority is not engaged in an

adversarial litigation, but was required only to produce the record. It is argued that the record of the plot in question was with the ICICI Bank for the purpose of computerization and remained in the custody of the Bank from 10.12.2006 to 22.2.2007 and 13.3.2007 to 30.3.2007, It is, thus, contended that if the time during which the file was with the Bank is excluded, then the information was given within 30 days.

10. It is further contended that appeal before the Administrator came to be decided in the presence of the applicant on 11.6.2007, wherein it has been categorically recorded that the applicant is satisfied with the information supplied. Still further, the applicant has filed appeal under Section 19 of the Act on 15.4.2007 raising a grievance that neither the Public Information Officer nor the Appellate Authority has responded, even though the information was supplied on 10.4.2007. The applicant has not disputed the satisfaction recorded by the Appellate Authority in its order dated 11.6.2007 and therefore, the order of penalty and compensation are unjustified. It is further contended that the penalties under Section 20 of the Act could be imposed upon the petitioner if the petitioner has without any reasonable cause has not furnished the information within the time specified under Section 7(1) of the Act, or denied the request for information or knowingly given incorrect or misleading information in a mala fide manner. It is contended that since the record of plot in question was with the Bank for digitalization purposes, therefore, such is a reasonable cause, which prevented the petitioner from furnishing the information within one month. In any case, it is contended that the penalty could not be imposed in the facts and circumstances of the present case.

11. The sequence of events would show that the information was sought on 29.1.2007, when the file of the plot in question was lying with the Bank. The file was received back on 22.2.2007, but again sent to the Bank on 13.3.2007. The same was received on 30.8.2007 the information was supplied on 10.4.2007. The penalty can be imposed only if there is no reasonable cause for not furnishing the information within the period of 30 days. The word 'reasonable' has to be examined in the manner, which a normal person would consider it to be reasonable. The right to seek information is not to be extended to the extent that even if the file is not available for the good reasons, still steps are required to be taken by the office to procure the file and to supply information. The information is required to be supplied within 30 days only if the record is available with the office. The inference cannot be drawn of the absence of reasonable cause, for the reason that file could have been requisitioned back from the Bank. Since file was not available with the office, the inference drawn does not seem to be justified.

12. Still further, in an order passed on 11.6.2007 as an appeal before the State Public Information Officer, a finding has been recorded that the applicant was satisfied with the information provided. The appeal before the Appellate Authority under the Act, was filed on 15.3.2007 i.e. within a period of six weeks after filing an application for requisite information. The applicant filed an appeal under Section 19 of the Act on 15.4.2007 even though the first appeal itself was filed on 15.3.2007.

13. In our opinion, once the Appellate Authority has recorded satisfaction of the applicant in respect of supply of the information, it was not open to the applicant to continue with the appeal pending before the State Information Commission. Instead of refusing to entertain the appeal under Section 19 of the Act on the ground of satisfaction, the State Information Commission has proceeded ahead to decide the appeal and also imposed penalty on the petitioner. It appears that the State Information Commission has made hill out of the mole.

14. Still further, the previous orders relied upon by the State Information in its reply before this Court cannot be considered, once they were not made part of the show cause notice.

15. In view thereof, we are of the opinion that the order of imposing penalty on the petitioner not sustainable in law. Consequently, the writ petition is allowed. The impugned order passed by the State Public Information Commission, is set aside.

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

W.P. No. 11034 of 2008

Decided On: 24.10.2008

Appellants: **Sri H.S. Satish Babu Public Information Officer**  
**Vs.**

Respondent: **Sri K.L. Srinivasan and The State Information Commission rep. by its State  
Chief Information Commissioner**

**Hon'ble Judges:**

N.K. Patil, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: R. Kothwal, Adv.

For Respondents/Defendant: H.T. Narendra Prasad, HCGP for Respondent No. 2

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 18(1) and 20(1)

**ORDER**

**N.K. Patil, J.**

1. The petitioner, assailing the correctness of the order dated 17.6.2008 passed by the Karnataka State information Commissioner, in proceeding No. KIC:257:COM:2008, vide Annexure-B, has presented this writ petition. Further, petitioner has sought to direct the respondent not to deduct the penalty amount of Rs. 25,000/- from the petitioner's salary.

2. The first respondent herein has submitted a complaint against the petitioner before the second respondent under Section 18(1) of the Right to Information Act, 2005 stating that, he has sought for the certified copy of the saguvali chit in respect of Sy. No. 25, Maiigundanahalli, Kengeri granted to Sri. Hanumappa from 1997 to 1999 and copy of sanction order file and inspite of making sincere efforts, petitioner has not considered the request made by first respondent for supply of the certified copies as sought in his representation and therefore, he was constrained to file the said complaint. The said complaint filed by first respondent had come up for consideration before the second respondent on 17<sup>th</sup> June 2008. The second respondent has disposed of the complaint filed by first respondent, vide Annexure-B. However, it has been specifically observed by the second respondent that, inspite of giving sufficient time of more than five months to the petitioner for providing the required information, he has failed to submit the required information. Second respondent has specifically referred about the dates and events and also the conduct of the petitioner which has compelled the second respondent to

issue show cause notice not once but more than twice referring specifically, as to why penalty should not be levied on him, as provided under Section 20(1) of the Act, and inspite of that, petitioner has not cared for the same or submitted his explanation. Keeping in view of these factors and the conduct of the petitioner, the second respondent has imposed penalty of Rs. 25,000/- exercising his power under Section 20(1) of the Right to Information Act, 2005 and directed the petitioner to pay the said amount either in one lump sum with the Government Treasury under the Head of Account "0070-60-118-0-03" penalties under the Act" or by deduction from his salary beginning from the salary for the month of July 2008 payable in August 2008 at the rate of Rs. 5,000/- for next five months and credit the deducted amount to the above Government Head of account. Being aggrieved by this portion of the directions issued by foe second respondent in his order vide Annexure-B, petitioner herein felt necessitated to present this writ petition.

3. I have heard learned Counsel appearing for petitioner and learned Government Pleader appearing for second respondent.

4. After careful perusal of the relevant material available on file, including the impugned order passed by the second respondent, I do not find any error of law, much less mis carriage of justice, as such, committed by the second respondent in passing the impugned order, imposing penalty of Rs. 25,000/- on petitioner, taking into consideration the nature of the post held by him, including his conduct, it is specifically referred that, the Commissioner has also issued the show cause notice to the petitioner not once but twice, as to why penalty as envisaged under Section 20(1) of the Act, should not be levied upon him, but he has failed to submit his explanation and there has been a delay of more than five months in providing the required information and therefore, opined that, maximum penalty is leviable in the case as provided under Section 20(1) of the Right to Information Act. A reference has been made in the order regarding the conduct of the petitioner, he being the Tahsildar-cum-Execute Magistrate of the Taluk, he is duty bound to submit the required information and inspite of giving sufficient opportunity, he has not mend his attitude nor made any sincere efforts to appear personally and explain the difficulties and there is no intentional or deliberate delay on his part for furnishing the required information. But consistently, petitioner has failed to assist and comply the directions issued by the Commissioner and he has compelled the Commissioner to invoke Section 20(1) of the Right to Information Act, and therefore, there is no other option for the Commissioner to take such a stringent action which is mandatory in nature, under Section 20(1) of the Act, and accordingly, he has passed the order vide Annexure-B imposing penalty on the petitioner with directions. I do not find any error of law or illegality, as such, committed by the second respondent in imposing penalty of Rs. 25,000/- on the petitioner for dereliction of duty and not providing necessary required information.

5. Hence, interference by this Court is not justifiable. Nor I find any good grounds, as such, made out by petitioner to entertain the prayers sought for by him. However, in the interest of justice, the petitioner has filed his personal affidavit dated 16<sup>th</sup> October 2008 on 17<sup>th</sup> October 2008, specifically stating in para-4 that " I am herewith-tendering sincere/unconditional apology for not appearing before the respondent No. 2 even though the non-appearance was not deliberate or intentional one, it is due to above bonafide/genuine reasons". The said unconditional apology tendered by the petitioner in para-4 of the affidavit dated 16<sup>th</sup> October 2008 is placed on record. Keeping in view the unconditional apology tendered by petitioner as referred above and having regard to the facts and circumstances of the case and after accepting the unconditional apology tendered by the petitioner, it is hereby clarified that, the penalty imposed by second respondent in the impugned order on the petitioner will not be a

stigma for his future services and it will not come in the way for considering the petitioner's case for promotion or any other benefits for which he is entitled under the relevant Rules. The concerned authorities have to consider the case of the petitioner and take appropriate decision on merits of the case, without being influenced by the directions issued by the second respondent as referred above and confirmed by this Court.

6. With these observations, the writ petition filed by petitioner stands disposed of.

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**IN THE HIGH COURT OF GAUHATI (IMPHAL BENCH)**

Decided On: 23.05.2008

Appellants: **State of Manipur and Ors.**

**Vs.**

Respondent: **Chief Information Commissioner and Anr.**

**Hon'ble Judges:**

T. Nandakumar Singh, J.

**Subject: Right to information**

**Disposition:**

Petition dismissed

**JUDGMENT**

**T. Nandakumar Singh, J.**

1. The challenge in the present writ petition is to the order of the State Chief Information Commissioner, Manipur dated 14.1.2008 wherein and where under the State Chief Information Commissioner, Manipur ordered that:

i) The information sought by the petitioner (respondent No. 2 herein) which is more fully described in para. 1 request to provided a Photostat copy of his answer script in written test as well as the marks awarded to him separately in the viva-voce, personality test by the DPC members in the recruitment of SI/ Jamadar in Manipur Police Department during November and December, 2006 after concealing the identity of signature of the examiner, incase if it is recorded in that script and the members to be provided by the SPIO within fifteen days from the date of receipt of this order, all free of cost under intimation to this Commission. The personal appearance of the petitioner in the office of SPIO is not required.

ii) The appellant can approach this Commission again in case of any grievance within three weeks from the date of this order.

2. Heard Mr. N. Kotiswar, learned Advocate General assisted by Mr. Viscount, learned Counsel appearing for the petitioners.

3. After hearing the submissions of learned Advocate General at some length and also taking into consideration of the relief sought for in the present writ petition, this Court is of the considered view that this writ petition could be disposed of at the motion stage. Accordingly, this writ petition has been taken up for disposal after giving the opportunity of submitting the case of the writ petitioners by the learned Advocate General.

4. The fact in the present writ petition is short and simple and accordingly a brief fact of the case leading to the filing of the present writ petition is noticed hereunder.

5. The Selection Committee (for short DPC) conducted the selection test of the candidates consisting of physical efficiency test (PET) during the period from 7.11.2006 to 12.11.2006 at the 1st M.R. Ground for recruitment of Sub-Inspectors/Jamadars of Manipur Police Department. The written test of the candidates qualified in physical efficiency (PET) was held on 21.11.2006 and on a later date at Khuman Lampak Indoor Stadium and the 1st M.R. Banquet Hall respectively. The result of the DPC was declared on late evening of 18.12.2006. The present respondent No. 2 Shri N. Uttam Meitei appeared in the said selection test or/ DPC for recruitment of SI and Jamadar of the Manipur Police Department.

6. On 21.12.2006, Shri N. Budhachandra Singh, (father of the respondent No. 2) submitted an application to the writ petitioner No. 3, Joint Secretary (Home), State Public Information Officer (SPIO), Government of Manipur for furnishing informations regarding respondent No. 2 who appeared in the said DPC, which read as follows:

1) That, the marks awarded by the DPC against the qualified candidates on Physical Efficiency Test (PET) held during the period from 7.11.2006 to 12.11.2006 at 1st M.R. Ground, Imphal.

2) The marks obtained by the PET qualified candidates in the Written Test Examination held on 21.11.2006 and on a later date at Khuman Lampak Indoor Stadium and 1st M.R. Banquet Hall respectively.

3) As the result of the DPC was declared on late evening of 18.12.2006 the overall marks obtained by the qualified candidate in PET, Written Test and viva-voce/personality Test the undersigned is earnest desire to know the marks obtained by the selected candidates so as to enable him to get the information whether the DPC has done justice or not while selecting the candidates as per their performance in comparison with that of his son.

4) To call the answer scripts of the selected candidates along with the answer script of his son named below to verify by a team of expert appointed by the Chief Information Commissioner, Manipur.

7. As the petitioner No. 3 failed to response to the said application dated 21.12.2006, Shri N. Budhachandra i.e. (father of the respondent No. 2) approached the State Chief Information Commissioner (respondent No. 1) by filing the appeal dated 24.4.2007 for furnishing the information mentioned in the said application dated 21.12.2006. In the said appeal dated 24.4.2007 it had been mentioned categorically that DPC had tempered or/ manipulated the marks obtained by the candidates and no action was taken up by the concerned authority against the irregularities and illegalities committed by the Chairman of the said DPC for recruitment of SI/Jamadar of the Manipur Police Department. The SPIO i.e. the petitioner No. 3 also appeared before the Cheif Information Commissioner, Manipur and filed an application dated 26.6.2007 stating inter-alia that the application/appeal filed by the N. Budhachandra is not maintainable as the DPC is governed by laid down rules/procedure and the power of the Commission under the Act does not perhaps, extend to holding/reveiwing a DPC and also that son



along with five others had filed W.P.(C) No. 30 of 2007 before this Court as aggrieved parties in the recruitment of SI/Jamadar in the Manipur Police Department and the said writ petition still pending the before this Court and as advised by the Law Department, the matter, the matter being heard by the Commissioner is subjudice. By the same application dated 26.6.2007, SPIO, Government of Manipur prayed for some more time for detail examination of the issue and for some submissions of the objection. The State Chief Election Commissioner, after taking into consideration of the said complain/appeal as well as the case of the writ petitioner and also the materials available on record had passed the order dated 2.7.2007 that-

(a) The following information/documents should be furnished to the above complainant by the SPIO within fifteen days, from today free of cost.

(i) The marks obtained by the son of applicant namely Shri Nameirakpam Uttam Meitei Chest No. 200, in PET, Written Test and Viva-Voce separately.

(ii) The marks obtained the 1st and last Successful Candidates in PET, Written Test and Viva-Voce separately of the same category as that of (i).

(iii) The Answer Script of the Written Test of Shri Nameirakpam Uttam Meitei should be allowed to be seen both by the applicant and the candidate.

All the information sought by the present applicant (if it is possible to arrange by the SPIO Home).

(b) The SPIO is also informed to submit a show cause within fifteen days from the receipt of this order why the penalty as prescribed under Section 20 of the Act which includes a maximum fine of Rs. 25,000/- and recommandation for disciplinary action should not be imposed on him for his failure to furnish the information within the time specified under Sub-section (1) of Section 7, without any reasonable cause.

(c) In case of grievances in respect of this case; the above complainant may approach this Commission again within five weeks from today.

8. In pursuance of the said order of the learned State Chief Information Commissioner, Manipur dated 2.7.2007, the State Public Information Officer i.e. writ petitioner No. 3 issued a Memorandum being No. 14/4(5)/07-H(MIC) dated 21.7.2007 that Shri N. Budha Chandra Meitei and the candidate, respondent No. 2 are informed to be present in person along with the identification papers and a copy of the passport size photograph at Manipur Police Headquarters, Imphal at 2 P.M. on Monday (23rd July, 2007) for inspection of the relevant records. The respondent No. 2, Shri N. Uttam Meitei was out of station at the relevant time and accordingly, only Shri N. Budha Chandra Meitei present in person at the Police Headquarters at 2 P.M. on Monday the 23rd July, 2007 for inspection of relevant records in presence of Shri Laxmi Prasad Chhetry, 2nd Member of the DPC for selection of SI/ Jamadar.

9. The respondent No. 2, Shri N. Uttam Meitei filed an application dated. 9.8.2007 to the said Information Officer/SPIO/Joint Secretary (Home), Government of Manipur requesting to furnish the informations viz to issue a photocopy of answer scripts of the written test for selection of the SI and Jamadar and also to furnish the marks awarded to

him in the viva-voce/personality test and the written test separately by the DPC members for selection of SI and Jamadar in the Manipur Police Department held during November and December, 2006. As the petitioner No. 3, SPIO failed to response to the said application dated 9.8.2007 for more than 30 days of the receipt of the request, the respondent No. 2 filed an application/appeal to the appellate authority i.e. the Principal Secretary (Home), Government of Manipur for furnishing the informations mentioned in the said application dated 9.8.2007. The Principal Secretary (Home)(appellate authority, Government of Manipur) passed the order being No. 14/4(5)/07/H(MIC) dated 29.10.2007 for rejecting the appeal as the respondent No. 2 had already been given ample opportunity for inspection of the relevant record and as being sub-judice, in W.P(C) No. 30 of 2007 of this Court. The respondent No. 2. Shri N. Uttam Meitei being aggrieved by the said order of the Principal Secretary (Home)/appellate authority, Government of Manipur dated 29.10.2007 approached the State Chief Information Commissioner, Manipur Information Commission by filing the second appeal dated 27.11.2007. The learned State Chief Information Commissioner, Manipur had registered the said appeal as appeal case No. 89 of 2007 and had allowed the same by passing reasoned impugned order dated 14.1.2008 directing the SPIO to furnish a copy of the answer scripts of the respondent No. 2 in the written examination and also the marks awarded in the viva-voce by the members of the DPC for recruitment of SI and Jamadar of the Manipur Police Department. Hence the present writ petition.

10. The grounds for challenging the order dated 14.1.2008 are that (1) the Chief Information Commissioner, Manipur ought not have entertained the application/appeal of the principal respondent No. 2 for the second time as he had already been given the opportunity to see his own script as per the earlier decision of the learned State Chief Information Commissioner, in complaint No. 18 of 2007 i.e. the order dated 2.7.2007, (2) The learned State Chief Information Commissioner ought not have entertained the second application/appeal of the principal respondent No. 2 on the principle of constructive res-judicata and (3) Opportunity to see the answer script, if permitted, would lead to opening a flood gate as all candidates would be also entitled to ask for photocopy of the answer script and thus the sanctity and confidentiality attached to the competitive test would be compromised and also that the State Chief Election Commissioner, Manipur ought not have allowed the application/appeal of the principal respondent No. 2 merely on general charge of corruption without himself being satisfied of any prima-facie existence of corrupt practice in the recruitment process relating to the answer script of the respondent No. 2.

11. Right to freedom of speech and expression of a citizen of India is guaranteed by Article 19(1)(a) of the Constitution of India. The right to know, "receive and the impart information" has been recognised within the right to freedom of speech and the expression of the citizen of India. A citizen has a fundamental right to use the best himself of imparting and receiving information. A Constitution Bench (8 Judges) of the Supreme Court had dealt with and considered the fundamental right of the citizen of India guaranteed by Article 19(1)(a) of the Constitution of India which include the right to receive and impart information in S.P. Gupta v. President of India and Ors. in [MANU/SC/0080/1981](#). The Apex Court in S.P. Gupta (supra) held that "this is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, discloser of information in regard to the functioning of Government must be the rule and secrecy an

exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time and disclosure also serves an important aspect of public interest. It is in the context of this background that we must proceed to interpret Section 123 of the Indian Evidence Act".

12. The Apex Court (8 Judges) in S.P. Gupta and Ors. (supra) clearly observed that disclosure of information in regard to the functioning of the Government must be the rule, secrecy and exception justified only strictness requirement of public interest so demand. A Constitution Bench of the Apex Court in the case of State of U.P. v. Rajnarayan and Ors. reported in AIR. 1975 SC 8865 held that the people of this country have a right to know every public Act, everything that is done in a public way, by the public functionary. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make on wary, when secrecy is claimed for transactions which can at any rate, have no repercussion on public security.

13. A seed for enactment of legislation on a right to information appears to have been sown in the conference of Chief Ministers held on 24.5.1977 at New Delhi. The Parliamentary Standing Committee of Home Affairs in its 3 report also recommended for enactment of legislation on right to information. The Government of India appointed a working group to examine the feasibility and the need for full-fledged Right to Information Act so as to make the government more transparent and accountable to the public. The Parliament enacted Act "Freedom of Information Act 2002" to provide for freedom to every citizen of India to secure assesses the information

under the control of public consistent of public interest. In order to ensure greater and the more effective mechanism for access to information the government resolved that the Freedom of Information Act 2002 enacted by the Parliament need to be more progressive, participatory and the meaningful. The National Advisory Council deliberated on the issue and suggested some important changes to be incorporated in the said Act to ensure smoother and the greater information. Later on, the government examined the suggestion made by the National Advisory Council and other and decided to make a number of changes in the law. Ultimately, the right to information bill 2005 had been introduced in both the Houses of Parliament and both the Houses passed the bills and received the assent of the President on 15.6.2005. It came into statute book as the Right to Information Act 2005. Aim and object for introducing the Right to Information Bill are:

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

Whereas the Constitution of India has established Democratic Republic;

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

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

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

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.

14. Meaning of "information" is defined in Section 2(f) of the RTI Act 2005 (Right to Information Act, 2005) which reads as follows:

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;

15. The "record" in the context of RTI Act, 2005 is defined in Section 2(i) which reads as follows:

2(i) "record" includes--

(ii) any document, manuscript and file;

(iii) any microfilm, microfiche and facsimile copy of a document;

(iv) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

(v) any other material produced by a computer or any other device;

16. The meaning of the "right to information" under the RTI Act, 2005 is also defined in Section 20 which reads as follows:

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

(i) inspection of work, documents, records;

(ii) taking notes, extracts, or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

17. On conjoint reading of 2(f), (i) and (j) of RTI Act, 2005 it is clear that information includes records, documents etc. and the right to information, as provided in the Act include right to inspection of works, documents, records, to take notes, extract or certified copies of the documents or record and taking certified samples of material.

18. An application making request for information shall not be required to give any reason for requesting the information. Over and above, Section 6 of the RTI Act does not prohibit filing more than one application for information. An essential requirement of the Section 6 of the RTI Act is that application making request for information shall specify the particular of the information sought by the application. Section 8 of the RTI Act exempted certain informations from disclosure.

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

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

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

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

(f) information received in confidence from foreign government;

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

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

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

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

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

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

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

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with subsection (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 Clause (a), (c) and (i) 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 s, 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.

19. Keeping in view of the relevant provisions of the RTI Act, 2005 and also the decision of the Apex Court discussed above, this Court had meticulously examined the said application dated 9.8.2002 and also the appeal/application dated 29.9.2002 to the Principal Secretary (Home)/Appellate authority as well as memo of appeal of the appeal Case No. 89 of 2007 wherein the respondent No. 2 requested to provide a photocopy of his answer script in the written test as well as the mark awarded to him separately in the viva-voce/personality test by the DPC members in the recruitment of SI and Jamadar in the Manipur Police Department during November and December, 2006. On such examination, this Court is of the considered view that right to information contemplated in the RTI Act 2005, the relevant portions of which have been discussed above, shall include the right of the principal respondent No. 2 to have a photocopy of his answer script in the said written test and also right to know the marks awarded to him separately in the viva-voce or/personality test and the written test by the DPC in the recruitment of SI and Jamadar in the Manipur Police Department during November and December, 2006. As reason for requesting the information is not required to be mentioned in the application for information under Section 6 of the RTI Act, the ground of the present writ petitioners for assailing the impugned order dated 14.1.2008 that the learned State Chief Information Commissioner has to prima-facie satisfied the existence of corrupt practice in the recruitment process and relating to the answer script before passing the impugned order for providing the information sought for by the principal respondent No. 2 is not sustainable in the eye of law. Further, this Court is of the considered view that the submissions of learned Advocate General that the principal respondent No. 2 cannot file more than one application for requesting" Information in respect of the selection test for recruitment of the SI/Jamadar in the Manipur Police Department during November and

December, 2006 has no force of law and is not sustainable in eye of the law and also that the writ petitioners had mis-conceived the principle of constructive res-judicata in the context of the present case.

20. The Full Bench of the Central Information Commission had discussed as to whether "right to information" contemplated in the RTI Act, 2005 also include the right to have a copy of the answer script of the candidate in the recruitment test conducted by the selection committee/DPC for appointment to the different posts under the control of the public authorities in *Rakish Kumar Singh v. Harish Chander*, Assistant Director, Lok Sabha Secretariat, Information Cell, Parliament House and the other cases and passed judgment and order dated 23.4.2007 wherein the Full Bench held that in the case of the public examination conducted by institution established by constitution like UPSC or institution established by an enactment by the Parliament or rules having established system as foolproof as that can be and also an inbuilt system of ensuring fair and correct evaluation with proper checks and balances, citizen cannot seek disclosure of the answer script under the RTI Act, 2005. The Full Bench of the Central Information Commission further held that so far as the departmental examinee are concerned or the proceeding of the other DPC are concerned, the disclosure of proceeding or disclosure of answer script not only of the examinee but also of the other candidates may bring in fairness and the neutrality and will make the system more transparent and accountable. Para No. 42 of the judgment in the case of *Rakesh Kumar Singh* (supra) rendered by the Full Bench of the Central Information Commission reads as follows:

42. However, in so far as the departmental examinees are concerned or the proceedings of Departmental Promotion Committee are concerned the Commission tends to take a different view in such cases, the numbers of examinees are limited and it is necessary that neutrality and fairness are maintained to the best possible extent disclosure of proceedings or disclosure of the answer sheets not only of the examinees but also of the other candidates may bring in fairness and neutrality and will make the system more transparent and accountable. The Commission, moreover finds that the proceedings of the Departmental Promotion Committee or its Minutes are not covered by any of the exemptions provided for under Section 8(1) and therefore, such proceedings, and minutes are to be disclosed. If a written examination is held for the purpose of selection or promotion, the concerned candidate may ask for a copy of the evaluated answer sheet from the authority conducting such test/examination. The right to get an evaluated answer sheet does not however extend to claiming inspection of or getting a copy of the evaluated answer sheets concerning other persons in which case, if the concerned CPIO decides to disclose the information, he will have to follow the procedure laid down under Section 11 of the Right to Information Act.

21. As such, the ratio laid down by the Full Bench of the Central Information Commission in the case of *Rakesh Kumar Singh* (supra) is that the answer script of the examinee in the proceeding of DPC like the present DPC for recruitment of the SI and Jamadar in the Manipur Police Department during November and December, 2006 and also the proceeding of the DPC shall disclose to the examinee and such disclosure may bring in fairness and neutrality and also will make system more transparent and accountable.

22. This Court is of the considered view that furnishing the photocopy of the answer script of the respondent No. 2 in the said selection test for recruitment of SI and Jamadar of the Manipur Police conducted by the said DPC during November and December,

2006 to the principal respondent No. 2. Sri N. Uttam Meitei shall make the proceeding of the DPC more transparent, accountable and also bring more fairness and neutrality.

23. For the reasons discussed above, this Court is of the firm view, the impugned order dated 14.1.2008 passed by the State Chief Information Commissioner, Manipur is legal and sustainable under RTI Act of 2005.

24. Accordingly, the writ petition is devoid of merit and hereby dismissed.

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**Equivalent Citation:** AIR2009Guj12

**IN THE HIGH COURT OF GUJARAT**

Spl. Civil Appln. Nos. 9723 and 9724 of 2008

Decided On: 02.09.2008

Appellants: **State of Gujarat and Anr.**  
**Vs.**

Respondent: **Pandya Vipulkumar Dineshchandra and Anr.**

**Hon'ble Judges:**

Jayant Patel, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Govt. Pleader, Bhavika Kotecha, AGP and Parikh, AGP

For Respondents/Defendant: N.V. Anjaria and R.C. Jani, Advs.

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005

**ORDER**

**Jayant Patel, J.**

1. Rule. Mr. Jani learned Counsel waives service of notice of rule for private respondent, and Mr. Anjariya learned, counsel waives service of notice of rule for the Chief Information Commissioner.

2. With the consent of the learned Counsel appearing for both the sides, the matter is finally heard today.

3. The only question to be considered, is whether the Chief Information commissioner, after recording conclusion that the information is to be provided, and certain informations were wrong, could exercise power for directing transferring authority to revoke the transfer order or not?

4. The facts of the case appear to be that certain informations were demanded under Right to Information Act 2005 (hereinafter referred to as the "Act"). The matter was processed at different level, and ultimately, the order came to be passed by the respondent No. 2, Chief Information Commissioner in Complaint No. 701 of 06-07 where he concluded as under:

Having regard to the above, the Commission observed that the source of information, that is, the transfer order of the complainant dated 30-1 -2004 is itself based on incorrect, false and

misleading information concerning the instructions of the Government. No such instructions were issued by the Government. The Government itself has raised this issue with the Director, CMSO in these circumstances the Commission decides that the source of information be corrected, the respondents to direct the Director, CMSO to ensure that the incorrect and misleading transfer order is revoked as expeditiously as possible, but within 15 days from the receipt of this order and to take appropriate measures to ensure compliance to the rules and proceedings governing the non-transferable cadre to which the complainant belongs.

5. Neither learned Counsel for the private respondent No. 1, nor learned Counsel for the respondent No. 2 Chief Information Commissioner are in a position to show any source of power for giving such direction for revocation of the transfer order. It deserves to be recorded that the power of the Chief Information Commissioner is creation of the statute, and his power is restricted to the Provisions of the Act. He has power to direct for supplying of the information, and he may in some cases, if the informations are not correctly supplied, proceed to direct for correction of such information, and to supply the same. However, his power would end there, and it would not further exceed for adjudication of the rights amongst the parties based on such information. Such powers for adjudication of the rights inter se amongst party on the basis of such information are not available to him. The aforesaid is apparent from the object and the provisions of the Act. Reference may also be made to the decision of this Court in case of Gokalbhai Nanbhai Patel v. Chief Information Commissioner and Ors. reported at 2007 (3) GLH 352 : AIR 2008 Guj 2.

6. Mr. Anjariya learned Counsel for the Chief Information Commissioner attempted to support the order for directing revocation of the transfer order, since the Chief information Commissioner was of the view that the information was incorrect and wrong and therefore the basis of the transfer order was non-existence.

7. In my view, even if, such is the position, then also the authority of the Chief Information Commissioner would end by making observation that the information was incorrect or otherwise, but thereafter he could not proceed for adjudication of the further rights of the parties, as to whether transfer order could be passed by the concerned Government authority or not. The said step can be said as exceeding exercise of the power beyond the scope of the Act. Hence, the attempt of Mr. Anjariya learned Counsel for the Chief Information Commissioner cannot be countenanced.

8. Hence, the only conclusion is that the Chief Information Commissioner has no power to adjudicate rights of the parties based on the information, may be for the transfer order passed by the Government authority or otherwise. Hence, the aforesaid portion for direction to revoke transfer order, can be said as wholly without jurisdiction, and also ultra virus to the power of the Chief Information Commissioner.

The other part of the order pertaining to the information, and its correctness or otherwise, is not subject-matter of the present petitions nor the same is challenged in the present petitions.

9. In view of the above, the impugned order passed by the Chief Information Commissioner, so far as it relates to direct the authority to revoke transfer order, and further direction to report accordingly concerning thereto, is quashed and set aside. Rule made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.

HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 13<sup>th</sup> November, 2009

Judgment pronounced on: 12<sup>th</sup> January, 2010

+ LPA No.501/2009

Secretary General, Supreme Court of India ..... Appellant  
Through: Mr.G.E. Vahanvati, Attorney  
General for India with  
Mr.Atul Nanda and  
Mr.Sanjay Bhardwaj, Advocates

Versus

Subhash Chandra Agarwal ..... Respondent  
Through: Mr.Prashant Bhushan with  
Mr.Mayank Mishra, Mr.Rohit  
Kumar Singh and Mr.Vivek  
Bishnoi, Advocates

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR.JUSTICE VIKRAMAJIT SEN**  
**HON'BLE DR.JUSTICE S. MURALIDHAR**

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

**AJIT PRAKASH SHAH, CHIEF JUSTICE**

1. This appeal is directed against the judgment dated 2<sup>nd</sup> September, 2009 of the learned single Judge (S. Ravindra Bhat, J) in the writ petition filed by the Central Public Information Officer, Supreme Court of India (hereinafter, "the CPIO") nominated under the Right to Information Act, 2005 (hereinafter, "the Act") questioning correctness and legality of the order dated 6<sup>th</sup>

January, 2009 of the Central Information Commission (hereinafter, "the CIC") whereby the request of the respondent No.1 (a public person) for supply of information concerning declaration of personal assets by the Judges of the Supreme Court was upheld.

## *PREFACE*

2. The subject matter at hand involves questions of great importance concerning balance of rights of individuals and equities against the backdrop of paradigm changes brought about by the legislature through the Act ushering in an era of transparency, probity and accountability as also the increasing expectation of the civil society that the judicial organ, like all other public institutions, will also offer itself for public scrutiny. A citizen demanded information about asset declarations by the Judges. In this context, questions have been raised and need to be answered as to whether a "right to information" can be asserted and maintained within the meaning of the expression defined in Section 2(j) of the Act. Equally important are the questions requiring interpretation of the expressions "fiduciary", as in Section 8(1)(e) and "privacy" as in Section 8(1)(j), both used but not defined specifically by the statute.

3. When the learned single Judge set about the task of hearing submissions on the writ petition, the Attorney General for India

appearing for the appellant clarified at the outset that the learned Judges of the Supreme Court are “not opposed to declaring their assets, provided that such declarations are made in accordance with due procedure laid down by a law which would prescribe (a) the authority to which the declaration would be made (b) the form in which the declaration should be made, with definitional clarity of what are ‘assets’, and (c) proper safeguards, checks and balances to prevent misuse of information made available.” After the learned single Judge had concluded the hearing and had reserved his judgment on the writ petition, certain events supervened. The Full Court of the Supreme Court resolved to place the information on the court website after modalities are duly worked out. Some High Courts, including Delhi High Court, also resolved similarly to make public the information about the declaration of assets by the Judges. The learned single Judge in the impugned judgment had given certain directions about disclosure. In the course of hearing on 7<sup>th</sup> October, 2009, on CM No.14043/2009, the learned Attorney General for India informed that the operative part in the judgment under appeal had been complied with. The appeal has been pursued on the ground that fundamental questions of law with regard to scope and applicability of the Act with specific reference to declarations of assets by the Judges of High Courts and Supreme Court persist and need to be addressed.

## *FACTS*

4. The genesis of the dispute at hand relates to two resolutions; first, resolution dated 7<sup>th</sup> May, 1997 of the Full Court of the Supreme Court (hereinafter, “the 1997 Resolution”) and second, the “Re-statement of Values of Judicial Life (Code of Conduct)” adopted unanimously in the Conference of the Chief Justices of all High Courts convened in the Supreme Court on 3<sup>rd</sup> and 4<sup>th</sup> December, 1999 (hereinafter, “the 1999 Resolution”). Through the 1997 Resolution, Hon’ble Judges of the Supreme Court, *inter alia*, resolved that “every Judge should make a declaration of all his/her assets in the form of real estate or investment” held in own name or in the name of spouse or any person dependent within a reasonable time and thereafter make a disclosure “whenever any acquisition of a substantial nature is made”. The 1999 Resolution, *inter alia*, referred to the 1997 Resolution and the draft re-statement of values of judicial life prepared on the basis, amongst others, inputs received from various High Courts and an earlier committee as also resolutions passed in the Chief Justices’ Conference held in 1992. The Code of Conduct, thus finalized, came to be adopted and may also be called 1999 Judicial Conference Resolution.

5. The facts of the case, briefly stated, are that the respondent (hereinafter, "the applicant") made an application to the CPIO on 10<sup>th</sup> November, 2007 under the Act making two-fold request; viz.,

(i) to furnish a copy of the 1997 resolution of the Full Court of the Supreme Court, and

(ii) information on any such declaration of assets etc. ever filed by Hon'ble Judges of the Supreme Court and further information if High Court Judges are submitting declaration about their assets etc. to respective Chief Justices in States.

6. The first request was granted by the CPIO and a copy of the 1997 resolution was made available to the applicant. The CPIO vide order dated 30<sup>th</sup> November, 2007, however, informed the applicant that the information sought under the second head was not held or under the control of the registry (of the Supreme Court) and, therefore, could not be furnished. The applicant preferred an appeal before the nominated appellate authority.

7. The Appellate Authority remanded the matter to CPIO, *inter alia*, observing that "the appellant is justified in contending that if the CPIO was not holding the information, he should have considered the question of Section 6(3). Regarding the respective States, if the CPIO was not holding information, he should have considered whether he should have invoked the

provision under Section 6(3) of the Right to Information Act”. The CPIO, after the said remand order, once again declined the relief, now stating that the request could not be appreciated since it was against the spirit of Section 6(3) inasmuch as the applicant had been very well aware that the information sought related to various High Courts and yet had taken a “short circuit procedure” by approaching the CPIO, Supreme Court of India, “and getting it referred to all the public authorities at the expense of one Central Public Information Officer”.

8. The applicant then filed an appeal before the CIC, the apex appellate authority under the Act. The contention raised was that the CPIO had not followed the directions of the appellate authority, which originally remanded the case for decision as to whether the application had to be sent to another authority. It was also submitted before the CIC that the order of CPIO maintained a studied silence about disclosure of information regarding asset declaration by Judges of the Supreme Court to the Chief Justice of India (hereinafter, “the CJI”), in accordance with the 1997 Resolution.

9. In the appeal before the CIC, the CPIO took several defences including the submission that the Registrar of the Supreme Court did not hold the information; the information sought related to a subject matter which was “an in-house exercise” and pertained to material held by the CJI in his personal capacity. It was also



submitted that the declarations made by the Judges of the Supreme Court had been made over by them to the CJI on voluntary basis in terms of the 1997 Resolution in a “fiduciary relationship”. On the basis of the last said submission, it was also contended before the CIC that the disclosure of such information would be in breach of the fiduciary character attached to the material and, therefore, contrary to the provisions of Section 8(1) of the Act.

10. Before the CIC the issue concerning transfer of the request under Section 6(3) of the Act was not pressed. The CIC vide its order dated 6<sup>th</sup> January, 2009 rejected the contentions of the CPIO. He reasoned that Supreme Court is a “public authority” within the meaning of Section 2(h) of the Act since it has been established by the Constitution of India. He referred to Section 2(e)(i) to hold that the CJI is a “competent authority” empowered to frame rules under Section 28 to carry out the provisions of the Act and thus concluded that the CJI and the Supreme Court cannot disclaim being public authorities. The CIC pointed out that the information in question is maintained like any other official information available for perusal and inspection to every succeeding CJI and, therefore, cannot be categorized as “personal information” held by the CJI in his “personal capacity”. It was argued before the CIC that CJI and Supreme Court of India are two distinct public authorities. This contention was repelled with further observation that the Registrar and CPIO of the Supreme

Court are part of the said institution and thus not independent or distinct authorities. On this finding, it was held by CIC that the CPIO is obliged to provide the information to a citizen making an application under the Act unless the disclosure was exempt. The CIC noted that neither the CPIO nor the first appellate authority had claimed that the information asked for is exempt on account of “fiduciary relationship” or it being “personal information”. He further noted that the applicant was apparently not seeking a copy (or inspection) of the declaration or the contents thereof or even the names etc. of the Judges giving the same. He concluded that the exemptions under Sections 8(1)(e) or 8(1)(j) were not attracted to the case.

11. The CIC, vide order dated 6<sup>th</sup> January, 2009 thus directed the CPIO “to provide the information asked for by the appellant in his RTI application as to whether such declaration of assets etc. has been filed by the Hon’ble Judges of the Supreme Court or not within ten working days from the date of receipt of this decision notice”.

#### *PROCEEDINGS BEFORE THE SINGLE JUDGE*

12. The writ petition was preferred by the CPIO challenging the said directions of CIC in the impugned order. The applicant was impleaded as a respondent.

13. In the writ proceedings before the learned single Judge, the Registrar, Supreme Court was subsequently added as a co-petitioner. On the other hand, Delhi High Court Bar Association (hereinafter, "DHCBA") and Rashtriya Mukti Morcha were allowed to join as interveners.

14. In the writ petition, the order of CIC was challenged mainly on the following lines:-

- a. The "information", to the disclosure of which a "right to information" can be claimed under the Act has to be an information "accessible" under the law and one "held by or under the control of any public authority", as defined in Section 2(j).
- b. The information sought for by the applicant is not in the "public domain" inasmuch as it is not held under the mandate of any law. The 1997 resolution is not binding nor can it be described as "rules" for the reasons that compliance therewith is a matter of choice or own volition for the individual Judges and there is no sanction attached for "non-performance";
- c. The disclosure made by the Judges, pursuant to the 1997 resolution, is not a public act done in the discharge of duties of their office whereas the regime under the Act is aimed at ensuring access to all actions of public officials done or performed during the course of their official duties;

- d. If it were to be held that the information sought by the applicant is “information” within the meaning of the expression used in the statute, the question of its access would arise with reference to exemptions under Section 8;
- e. The information sought is exempt from disclosure by virtue of Section 8(1)(e) of the Act. The 1997 resolution emphasized on the understanding that “declaration made by the Judges or the Chief Justice, as the case may be, shall be confidential”, and, therefore, there is a fiduciary duty cast on the CJI to hold these declarations “in confidence”. Founded on the last mentioned premise, it was further argued that any attempt to compel the CJI to make the information public would amount to compelling him “to breach the fiduciary nature of his duty”; and
- f. The information sought is exempt by virtue of Section 8(1)(j) of the Act for the reason it relates to “personal information” which has no nexus with “any public activity or interest” and the disclosure of which was likely to cause “unwarranted invasion of the privacy” of the Judges.

15. The applicant contested the writ petition before the learned single Judge joining issue on each of the grounds taken. It was submitted that Section 22 of the Act conferred upon this special statute an “overriding effect” and the classification of any information as “confidential”, by itself, would not render it an

information “not in the public domain” or one which cannot be accessed. It was argued that the 1997 Resolution represented a conscious decision taken by the Judges of the Supreme Court and, therefore, its binding nature could not be undermined. Before the learned single Judge, the applicant questioned the plea that the information was held by the CJI in his private capacity or in a fiduciary relationship. It was submitted that the Judges are public functionaries and the declarations in question were made by them in their official capacity to the CJI, who, in turn, received the same and held it in his official capacity. Though pointing out that the contents of the declarations made by the respective Judges were not part of the information that had been requested from the CPIO and thus submitting that there was no invasion of privacy in the case at hand, it was insisted that only such further information (i.e. contents of the declarations) could be asked for and disclosed under the Act, notwithstanding the exemption under Section 8(1)(j), should the CPIO or the appellate authority find justification in its disclosure “in larger public interest”.

16. Both the interveners, in their submissions before the learned single Judge adopted the case made out by the applicant and insisted that there exists a right to information vis-à-vis the declarations made by the judges under the Act.

17. The learned single Judge proceeded to consider the rival submissions. He culled out the points for consideration (in para 27 of the impugned judgment) as under:

- (1) Whether the CJI is a public authority;
- (2) Whether the office of CPIO of the Supreme Court of India, is different from the office of the CJI; and if so, whether the Act covers the office of the CJI;
- (3) Whether the asset declarations by Supreme Court judges, pursuant to the 1997 Resolution is “information”, under the Right to Information Act, 2005;
- (4) If such asset declarations are “information” does the CJI hold them in a “fiduciary” capacity, and are they therefore, exempt from disclosure under the Act;
- (5) Whether such information is exempt from disclosure by reason of Section 8(1)(j) of the Act;
- (6) Whether the lack of clarity about the details of asset declaration and about their details, as well as lack of security renders asset declarations and their disclosure, unworkable.

18. Upon consideration of the submissions made before him, the learned single Judge concluded against point Nos.1 and 2 that the CJI is a public authority under the Right to Information Act and holds the information pertaining to asset declarations in his capacity as the Chief Justice. It was also held that the office of the Chief Justice of India is “public authority” under the Act and is covered by its provisions.

19. On point No.3, it was held by the learned single Judge that the second part of the respondent's application (which relates to declaration of assets by the Supreme Court Judges) is "information" within the meaning of the expression defined in Section 2(f) of the Act and further that the information pertaining to declarations given to the CJI and the contents of such declarations are "information" which is subject to the provisions of the Right to Information Act.

20. The plea of the appellant, founded on Section 8(1)(e), that the information contained in said asset declarations are held by the CJI in "fiduciary capacity" and, therefore, exempt from disclosure was held to be "insubstantial". Answering point No.4, it was held that the CJI does not hold such declarations in a fiduciary capacity or relationship.

21. The learned single Judge further held, in the context of point No.5, that the contents of asset declarations, pursuant to the 1997 Resolution, as also 1999 Resolution, are entitled to be treated as personal information which are "not otherwise subject to disclosure" but "may be accessed in accordance with the procedure prescribed under Section 8(1)(j)." On the specific information sought by the applicant in the case at hand (i.e. whether the declarations were made pursuant to 1997 Resolution), it was held that the procedure under Section 8(1)(j) is "inapplicable".

22. The appellant had also raised the issue of lack of clarity about the asset declaration and details thereof as well as lack of security, claiming further that these aspects (lack of clarity and security) rendered asset declaration and the disclosure “unworkable”. This was the subject-matter of point No.6 (mentioned in para 27 of the impugned judgment). Learned single Judge observed that these are not insurmountable obstacles. In his view, the CJI, if he deems it appropriate, may in consultation with the Supreme Court Judges, evolve uniform standards, devising the nature of information, relevant formalities, and if required, the periodicity of the declarations to be made. In this context, learned single Judge referred to the forms evolved as well as the procedures followed in the United States (including the “redaction” of the norms) under the Ethics in Government Act, 1978, reports of the US Judicial Conference, as well as the Judicial Disclosure Responsibility Act, 2007 (which amended the Ethics in Government Act, 1978). Learned single Judge suggested that cue can be taken from the above norms or procedures in vogue in USA to: (i) restrict disclosure of personal information about family members of judges whose revelation might endanger them; (ii) extend the authority of the Judicial Conference to redact certain personal information of Judges from financial disclosure.



23. In view of the above findings, the learned single Judge, vide the impugned judgment, directed the appellant CPIO to reveal the information sought by the respondent applicant, about the declaration of assets (and not the contents of the declarations, as that was not sought for) made by Judges of the Supreme Court, within four weeks.

#### *CHALLENGE IN APPEAL*

24. This appeal was preferred by the CPIO and the Registrar of the Supreme Court impleading the applicant and the CIC as respondents. Vide order dated 7<sup>th</sup> October, 2009 of the Division Bench, upon a request by the learned Attorney General for India, CPIO and CIC were deleted from the array of parties with the further direction that Secretary General, Supreme Court of India will be the appellant. Considering the importance of the question involved, the appeal was directed to be heard by a larger Bench of three Judges.

25. It may be mentioned here that the findings to above effect returned by the learned single Judge in the context of point Nos. 1 & 2 referred to above are no longer an issue of controversy or debate. It has been fairly conceded on behalf of the appellant that the conclusions arrived at by the learned single Judge in the impugned judgment and the reasons therefor are correct and thus, do not deserve to be disturbed.

26. Notwithstanding the fact that the correctness of the findings respecting point Nos. 1 & 2 have been fairly conceded by the learned Attorney General for India, we have given our careful consideration to the matter in the overall facts and circumstances of these proceedings. We find ourselves in full agreement with the reasoning set out in the impugned judgment. The expression “public authority” as used in the Act is of wide amplitude and includes an authority created by or under the Constitution of India, which description holds good for Chief Justice of India. While providing for Competent Authorities under Section 2(e), the Act specifies Chief Justice of India as one such authority in relation to Supreme Court, also conferring upon him the powers to frame rules to carry out the purposes of the said law. Chief Justice of India besides discharging the prominent role of “head of judiciary” also performs a multitude of tasks specifically assigned to him under the Constitution or various enactments. As said in the impugned judgment, these varied roles of the CJI are directly relatable to the fact that he holds the office of Chief Justice of India and heads the Supreme Court. In absence of any indication that the office of the CJI is a separate establishment with its own Public Information Office under the Act, it cannot be canvassed that the office of the CPIO of the Supreme Court is different from the office of the CJI. Thus, the answer to point Nos. 1 & 2 referred to above has been correctly given in the impugned judgment which findings are hereby confirmed.

27. In this quest, both the sides did not seek to make any submissions on the issue of “unworkability” on account of “lack of clarity” or “lack of security” vis-à-vis asset declarations by the Judges, which form part of the discourse on point No.6 (para 27 of the impugned judgment).

28. The prime submission of the learned Attorney General for India appearing for the appellant is that the learned single Judge has failed to properly formulate or answer the question, which was fundamental and central to the adjudication of the issues arising, viz. that the applicant had no “right to information” under Section 2(j). It is contended that the “right to information” under Section 2(j) applies only when the information sought is in public domain. The learned Attorney General submits that the learned single Judge failed to consider or appreciate the submission about absence of “right to information” and instead had proceeded to examine whether the asset declaration pursuant to the 1997 resolution was “information”, which issue was not even raised. It is argued that the Resolution dated 7<sup>th</sup> May, 1997 has no force of law and even the “in-house procedure in the judiciary has its basis only of moral authority and not any exercise of power under any law”. It is urged that the words “held by” or “under the law” necessarily implied the legal sanction behind the holding of or controlling of such sanction. It is argued that the plea about information sought not being in public domain was a sequitor to

the Section 2(j) argument. The argument based on Sections 8(1)(e) and 8(1)(j) are reiterated.

### *THE ISSUES*

29. The controversy thus subsists on point Nos. 3,4 & 5, formulated for consideration by the learned single Judge. Having regard to the submissions at the stage of appeal, the points for consideration need to be recast as under:-

- (1) Whether the respondent had any “right to information” under Section 2(j) of the Act in respect of the information regarding making of declarations by the Judges of the Supreme Court pursuant to 1997 Resolution?
- (2) If the answer to question (1) above is in affirmative, whether CJI held the “information” in his “fiduciary” capacity, within the meaning of the expression used in Section 8(1)(e) of the Act ?
- (3) Whether the information about the declaration of assets by the Judges of the Supreme Court is exempt from disclosure under the provisions of Section 8(1)(j) of the Act ?

### *RIGHT TO INFORMATION*

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 for ever 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.

#### *RELEVANT INTERNATIONAL LAW*

31. The Charter of the United Nations, which was set up in 1945, in its preamble clearly proclaims that it was established in order to save succeeding generations (of humanity) from the scourge of war and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person. The right to information was recognised at its inception in 1946, when the General Assembly resolved that: “freedom of information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated”. [UN General Assembly, Resolution 59(1), 65th Plenary Meeting, 14th December, 1946].

32. The Universal Declaration of Human Rights of 1948 adopted on 10th December in Article 19 said :

“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.”

33. The International Covenant on Civil and Political Rights (ICCPR) was adopted in 1968. Article 19 of the Convention reads as follows:

- (1) Everyone shall have the right to hold opinions without interference;
- (2) Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.”

India has ratified the ICCPR. Section 2(d) read with 2(f) of the Protection of Human Rights Act, 1993 clarifies ‘human rights’ to include the rights guaranteed by the ICCPR.

34. The Convention of the Organisation of American States and European Convention on Human Rights also incorporate specific provisions on the right to information.

#### *RIGHT TO INFORMATION AS A CONSTITUTIONAL RIGHT*

35. The development of the right to information as a part of the constitutional law of the country started with petitions by the

print media in the Supreme Court seeking enforcement of certain logistical implications of the right to freedom of speech and expression such as challenging government orders for control of newsprint, bans on distribution of paper etc. It was through the following cases that the concept of the people's right to know developed.

36. In ***Benett Coleman v. Union of India***, AIR 1973 SC 106, the Court held that the impugned Newsprint Control Order violated the freedom of the press and therefore was ultra vires Article 19(1)(a) of the Constitution. The Order did not merely violate the right of the newspapers to publish, which was inherent in the freedom of the press, but also violated the right of the readers to get information which was included within their right to freedom of speech and expression. Chief Justice Ray, in the majority judgment, said:

“It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of the press embodies the right of the people to read.” (para 45)

37. In a subsequent judgment in ***Indian Express Newspaper (Bombay) Private Ltd. V. Union of India***, AIR 1986 SC 515, the Court held that the independence of the mass media was essential for the right of the citizen to information. In ***Tata Press Ltd. V. Maharashtra Telephone Nigam Ltd.***, (1995) 5

SCC 139, the Court recognized the right of the public at large to receive 'commercial speech'.

38. The concept of the right to information was eloquently formulated by Mathew, J. in ***The State of UP v. Raj Narain***, AIR 1975 SC 865, in the following words: (para 74)

“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. 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, see *New York Times Co. v. United States* (1971) 29 Law Ed. 822 = 403 U.S. 713. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.”

39. In the case of ***S.P. Gupta v. Union of India***, 1981 (Supp) SCC 87 (para 65), Bhagwati, J (as he then was) emphasising the need for openness in the government, observed:

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.”

40. In ***Association for Democratic Reforms v. Union of India***, AIR 2001 Delhi 126, the Delhi High Court held that voters have a right to receive information about the antecedents of the candidates who stood for election. The Court held that the Election Commission had the duty to inform the voters about the candidates and therefore, it can direct the candidates filing nominations for election to give details about their assets and liabilities, past criminal cases ending in acquittals or convictions and pending criminal prosecution if any. The Union Government appealed against that decision to the Supreme Court which upheld the Delhi High Court decision in ***Union of India v. Association for Democratic Reforms***, (2002) 5 SCC 294 and directed the Election Commission to seek such information from the candidates filing nominations. The Government after consulting various political parties arrived at the conclusion that the Election Commission should not have such power and it

brought forth an Ordinance under Article 123 of the Constitution to amend the Representation of People Act, 1951 and withdrew from the Election Commission such powers requiring information to the extent mandated by the above decision of the Supreme Court. Constitutional validity of that amendment was challenged in the Supreme Court. The Supreme Court held the amendment to be unconstitutional and void in ***PUCL v. Union of India***, (2003) 4 SCC 399. Justice M.B. Shah delivering the majority opinion of the Supreme Court said: (para 42)

“Firstly, it should be understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedom 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 art. 14, 19 and 21 and given meaning and colour so that nation can have a truly republic democratic society.”

41. Justice P. Venkatarama Reddi in his concurring opinion reiterated the same view as follows: (para 81)

“We must take legitimate pride that this cherished freedom (freedom of speech) has grown from strength to strength in the post independent era. It has been constantly nourished and shaped to new dimensions in tune with the contemporary needs by the constitutional courts.”

42. Professor S.P. Sathe, in his brilliant work on right to information (“Right to Information”: Lexis Nexis Butterworths, 2006) stated that there are certain disadvantages of treating the right to information as situated exclusively in Article 19(1)(a) of

the Constitution. According to the learned author, the right to information is not confined to Article 19(1)(a) but is also situated in Article 14 (equality before the law and equal protection of law) and Article 21 (right to life and personal liberty). The right to information may not always have a linkage with the freedom of speech. If a citizen gets information, certainly his capacity to speak will be enhanced. But many a time, he needs information, which may have nothing to do with his desire to speak. He may wish to know how an administrative authority has used its discretionary powers. He may need information as to whom the petrol pumps have been allotted. The right to information is required to make the exercise of discretionary powers by the Executive transparent and, therefore, accountable because such transparency will act as a deterrent against unequal treatment. In ***S.P. Gupta's case***, the petitioners had raised the question of alleged misuse of power of appointing and transferring the Judges of the High Court by the Government. In order to make sure that the power of appointment of Judges was not used with political motives thereby undermining the independence of the judiciary, the petitioners sought information as to whether the procedures laid down under Articles 124(2) and 217(1) had been scrupulously followed. Here the right to information was a condition precedent to the rule of law. Most of the issues, which the Mazdoor Kisan Shakti Sangathan of Rajasthan had raised in their mass struggle for the right to information, were mundane matters regarding

wages and employment of workers, such information was necessary for ensuring that no discrimination had been made between workers and that everything had been done according to law. The right to information is thus embedded in Articles 14, 19(1)(a) and 21 of the Constitution.

#### *THE RIGHT TO INFORMATION ACT, 2005*

43. After almost 55 years since the coming into force of the Constitution of India, a national law providing for the right to information was passed by both Houses of Parliament on 12/13<sup>th</sup> May, 2005. It is undoubtedly the most significant event in the life of Indian Democracy. Prime Minister Manmohan Singh, while speaking on the Right to Information Bill in the Lok Sabha, said:

“The Legislation would ensure that the benefits of growth would flow to all sections of people, eliminate corruption and bring the concerns of the common man to the heart of the all processes of governance.”

*[The Hindu, 12.5.2005, pg.1]*

44. The preamble to the Act says that the Act is passed because ‘democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and hold Governments and their instrumentalities accountable to the governed’. The Act restricts the right to information to citizens (Section 3). An applicant seeking information does not have to give any reasons why he/she needs such information except such details as may be necessary for

contacting him/her. Thus, there is no requirement of locus standi for seeking information [Section 6(2)].

#### *'INFORMATION' EXPLAINED*

45. Section 2(f) of the Act defines “information” as 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. As per Section 2(i), “record” includes (i) any document, manuscript and file; (ii) any microfilm, microfiche and facsimile copy of a document; (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (iv) any other material produced by a computer or any other device. “Right to information” is defined by Section 2(j) to mean the right to information accessible under the 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.

## *LIABILITY TO PROVIDE INFORMATION*

46. Every public authority is liable to provide information. “Public authority” has been defined by Section 2(h) as 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. By virtue of Section 24, the Act does not apply to the Intelligence and Security Organisations specified in the Second Schedule. However, the information pertaining to the allegations of corruption and human rights violations shall be required to be given by such authorities subject to the approval of the Central Information Commissioner.

47. The Act does not merely oblige the public authority to give information on being asked for it by a citizen but requires it to *suo moto* make the information accessible. Section 4(1)(a) of the Act requires every public authority to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the 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. Section 4 spells out various obligations of public authorities and Sections 6 and 7 lay down the procedure to deal with request for obtaining information.

### *EXEMPTIONS*

48. Exemptions from disclosure of information are contained in Section 8 of the Act and that provision starts with a non-obstante clause. Section 8(1) states that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information relating to following matters:

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

would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

- (e) **Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;**
- (f) Information received in confidence from foreign government;
- (g) Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (h) Information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. However, the decision of the 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 and exception to this is further provided in the second proviso which says that “those matters which



come under exemptions specified above shall not be disclosed;

- (j) **Information which relates to personal information the disclosure of which has no relation to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the CPIO or the SPIO, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.**

(emphasis supplied)

#### *OVER-RIDING EFFECT OF THE ACT*

49. Section 22 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent 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.

#### ***POINT 1: WHETHER THE RESPONDENT HAD ANY "RIGHT TO INFORMATION" UNDER SECTION 2(j) OF THE ACT?***

##### *APPELLANT'S CONTENTIONS:*

50. The gravamen of the submissions of the learned Attorney General is that the respondent had no 'right to information' under Section 2(j) of the Act. He submitted that Section 2(j) contemplates two essential ingredients to constitute a 'right to information' under the Act i.e. (i) the information should be

accessible under the Act and (ii) such information should be 'held by' or 'under the control of' any public authority. It is his submission that the second mandatory requirement is not fulfilled in the instant case. According to him, the phrases 'held by' or 'under the control of' necessarily imply a legal sanction behind the holding of or controlling such information. If there is no legal sanction behind holding of or controlling such information, there cannot be any right in respect of such information under Section 2(j). In other words unless public authority has dominion or control over the information, there is no right to information under the Act. The second limb of his argument is that the Resolutions have no force of law and that there is no legal or constitutional requirement for filing the assets declaration. As such declarations filed pursuant to 1997 Resolution cannot be the subject matter of disclosure under the Act. Therefore, the finding of the learned single Judge that the 1997 Resolution is binding merely because it was passed at the Chief Justices Conference is entirely unjustified. According to him, the observations of the learned single Judge failed to answer the further question as to how the Resolution is to be implemented, by whom, to what extent and in what manner.

51. In support of the above submissions, learned Attorney General relied upon the decision in (i) ***In re. Coe's Estate***, 2002 Pacific Reporter 2<sup>nd</sup> Series, 1022 in which the term 'held' was

construed as “being invested with legal title or right to hold such claim or possession”. In this context, he also referred to the decisions of the Supreme Court in **Bhudan Singh v. Nabi Bux**, (1969) 2 SCC 481 (para 12), **Kailash Rai v. Jai Jai Ram**, (1973) 1 SCC 527 (para 11). The observations of Evershed M.R. in **Dollfus Mieg et Compagnie S.A. v. Bank of England**, 1 Ch. 333 that “Control would ..... cover the right to tell the possessor what is to be done with the property” were relied upon. A reference was made to *Black’s Law Dictionary 8<sup>th</sup> ed.* where the word ‘control’ is defined as ‘to exercise power or influence over’ and also to P. Ramanatha Aiyar’s *Advanced Law Lexicon* that the expression ‘control’ connotes power to issue directions regarding how a thing may be done by a superior authority to an inferior authority. Certain passages in Philip Coppel’s book “Information Rights” were also relied upon.

52. Learned Attorney General further submitted that the Resolution of 1997 was in two parts. The first part related to the creation of an in-house mechanism for taking remedial action against Judges who do not follow the universally accepted values of judicial life, the second part related to the declaration of assets, and no sanction/in-house procedure was contemplated in the event of non-filing of declaration. He placed heavy reliance on the decision in the case of **Indira Jaising v. Registrar General** (2003) 5 SCC 294, in which the Supreme Court has held

that even the in-house procedure 'in the judiciary' has its basis only on moral authority and not in exercise of power under any law. Learned Attorney General argued that a plethora of information is available within the judiciary, for example, notes of Judges or draft judgments. If the only requirement is 'possession' then all such information would also have to be brought under Section 2(j) of the Act. Therefore, according to him, a restricted meaning will have to be given to the term 'held' as information held by a public authority in its functioning as a public authority and not merely in its possession.

#### *RESPONDENT'S CONTENTIONS*

53. In reply, Mr. Prashant Bhushan submitted at the outset that the respondent is not seeking the enforcement of the Resolutions. The non-enforcement of the Resolutions is an entirely different issue altogether, and it may be argued that a citizen cannot compel either the Judges or the Chief Justice to comply with the same. He submitted that when information is provided to the CJI under the Resolutions, the same constitutes information held and under the control of the CJI as a public authority and would thus be amenable to the provisions of the Act. The Code of Conduct, according to him, establishes a mechanism and an in-house procedure for inquiring into complaints by a committee constituted by the CJI for taking action against Judges found to have violated the Code of Conduct. The Code also prescribes

certain consequences that arise out of non-adherence to the Code. The information provided to the CJI is consciously retained by the office of the CJI in his capacity as the CJI and as a repository of such information, prescribed by the Resolutions. It is not as if such information is held unlawfully or casually or even by accident. It is in fact maintained in the office as record for successive Chief Justices. According to Mr. Bhushan if the interpretation suggested by the learned Attorney General is accepted, it would lead to subversion of the Act and would render it totally ineffective.

54. Mr. Bhushan submitted that the CJI has implemented this mechanism in several past instances, which reveals that Judges have considered that these are binding standards. The 1997 Resolution cannot be disclaimed, as it was a conscious decision taken by Judges, who hold high public office, under the Constitution of India. Therefore, it was submitted that the Resolution has the force of law, and alludes to the 1999 Conference Resolution, which states that it is a “restatement of pre-existing and universally accepted norms, guidelines and conventions ....” It was argued that the binding nature of either resolution cannot be undermined, and that it is for the CJI or the individual High Court Chief Justice, to take such appropriate measures as are warranted to ensure that declaration of assets takes place.

55. Mr. Bhushan submitted that the passages relied upon by the learned Attorney General from the commentary of Philip Coppel would rather support a liberal interpretation of the terms 'held' or 'under the control of' under Section 2(j) of the Act. The rest of the authorities relied upon by the learned Attorney General are related to property, which imply an entirely different nature of title and holding. With regard to the draft notes and judgments, learned counsel submitted that whether they constitute information within the meaning of the Act will have to be determined on case to case basis, in the manner all RTI applications are decided.

*SECTION 2(j) "RIGHT TO INFORMATION"*

56. Two definitions are crucial for answering the first issue i.e. "Information" [Section 2(f)] and "Right to Information" [Section 2(j)]. Information is defined to mean any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models. Also, data held in any electronic form such as FAX, micro film, microfiche etc. It also includes 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 definition thus comprehends all matters which fall within the expression "material in any form". In absence of any

specific exclusion, asset declarations by the Judges held by the CJI or the CJs of the High Courts as the case may be, are 'information' under Section 2(f). This position is not disputed by the learned Attorney General. But according to him, the term 'held' under the Act necessarily requires a Public Authority to have the right to call for the information, or impose on a person an obligation to provide such information to the public authority.

57. As defined in Section 2(j), the term 'right to information' means the right to information accessible under the Act which is held by or under the control of any public authority and includes the right to inspect, take notes, certified copies etc. 'Accessible' shall mean the information being readily available or reachable or which can be obtained from the document, file, record etc. It is mandatory for each public authority to give this information to the citizen except where the information is exempt under the provisions of Section 8(1) of the Act. However, a public authority may allow access to every information in public interest if disclosure outweighs the harm to the protected interest irrespective of the provisions under Section 8(1). Further, where the information is exempt from disclosure, Section 10 lays down that access may be provided to that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be secured from any part that contain exempt information.

58. Philip Coppel in his monumental work "Information Rights" (2<sup>nd</sup> Edition, Thomson, Sweet & Maxwell 2007) explains the holding requirement in the context of Freedom of Information Act, 2000 (UK), thus :

**"When information is "held" by a public authority**

For the purposes of the Freedom of Information Act 2000, information is "held" by a public authority if it is held by the authority otherwise than on behalf of another person, or if it is held by another person on behalf of the authority. The Act has avoided the technicalities associated with the law of disclosure, which has conventionally drawn a distinction between a document in the power, custody or possession of a person. Putting to one side the effects of s.3(2) (see para.9-009 below), the word "held" suggests a relationship between a public authority and the information akin to that of ownership or bailment of goods.

Information:

- that is, without request or arrangement, sent to or deposited with a public authority which does not hold itself out as willing to receive it and which does not subsequently use it;
- that is accidentally left with a public authority;
- that just passes through a public authority; or
- that "belongs" to an employee or officer of a public authority but which is brought by that employee or officer onto the public authority's premises,
- 

will, it is suggested, lack the requisite assumption by the public authority of responsibility for or dominion over the information that is necessary before it can be said that the public authority can be said to "hold" the information. The position under the Environmental Information Regulations 2004 is clearer, those regulations expressly providing that environmental information must have been produced or received by the public authority if it is to be information "held" by that public authority. Under both regimes, information sent to a public authority without invitation and knowingly kept for any material length of time can probably be said to be held by the public authority. In short, information will not be "held" by a public authority, it is suggested, where that information neither is nor has been



created, sought, used or consciously retained by it. Thus, in the example given by the explanatory notes to the legislation, a Minister's constituency papers would not be held by the department just because the Minister happens to keep them there. It is quite possible for the same information to be held by more than one public authority. For example, if a document is sent by one public authority to another, but the first keeps a copy for itself, both public authorities will be holding the information comprised in the document. There is nothing to stop an applicant making a request to either or both public authorities for the same information."

59. Therefore, according to Coppel the word "held" suggests a relationship between a public authority and the information akin to that of an ownership or bailment of goods. In the law of bailment, a slight assumption of control of the chattel so deposited will render the recipient a depository (see **Newman v. Bourne and Hollingsworth** (1915) 31 T.L.R. 209). Where, therefore, information has been created, sought, used or consciously retained by a public authority will be information held within the meaning of the Act. However, if the information is sent to or deposited with the public authority which does not hold itself out as willing to receive it and which does not subsequently use it or where it is accidentally left with a public authority or just passes through a public authority or where it belongs to an employee or officer of a public authority but which is brought by that employee or officer unto the public authority's premises it will not be information held by the public authority for the lack of the requisite assumption by the public authority of responsibility for or dominion over the information that is necessary before the

public authority can be said to hold the information. Coppel refers to the decision in **Canada Post Corpn. v. Canada (Minister of Public Works)** (1995) 2 F.C. 110 where the Federal Court has held that the notion of control was not limited to the power to dispose of a record, that there was nothing in the Act that indicated that the word “control” should not be given a broad interpretation, and that a narrow interpretation would deprive citizens of a meaningful right of access under the Act.

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.

61. The words 'held by' or 'under the control of' under Section 2(j) will include not only information under the legal control of the public authority but also all such information which is otherwise received or used or consciously retained by the public authority in the course of its functions and its official capacity. There are any numbers of examples where there is no legal obligation to provide information to public authorities, but where such information is provided, the same would be accessible under the Act. For example, registration of births, deaths, marriages, applications for election photo identity cards, ration cards, pan cards etc. The interpretation of the word 'held' suggested by the learned Attorney General, if accepted, would render the right to information totally ineffective.

#### *NOTES, JOTTINGS AND DRAFT JUDGMENTS*

62. The apprehension of the learned Attorney General that unless a restrictive meaning is given to Section 2(j), the notes or jottings by the Judges or their draft judgments would fall within the purview of the Information Act is misplaced. Notes taken by the Judges while hearing a case cannot be treated as final views expressed by them on the case. They are meant only for the use

of the Judges and cannot be held to be a part of a record “held” by the public authority. However, if the Judge turns in notes along with the rest of his files to be maintained as a part of the record, the same may be disclosed. It would be thus retained by the registry. Insofar as draft judgments are concerned it has been explained by Justice Vivian Bose in ***Surendra Singh v. State of UP*** AIR 1954 SC 194:

“Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the Court. That is what constitutes the ‘judgment’...”

The above observations though made in a different context, highlight the status of the proceedings that take place before the actual delivery of the judgment. Even the draft judgment signed and exchanged is not to be considered as final judgment but only tentative view liable to be changed. A draft judgment therefore, obviously cannot be said to be information held by a public authority.

***BINDING NATURE OF THE 1997 RESOLUTION AND THE 1999 JUDICIAL CONFERENCE RESOLUTION.***

63. The narration of the background as stated in “Restatement of Values of Judicial Life” adopted in the Chief Justices’ Conference in December, 1999 would show that as far back as on

September 18-19, 1992, the Chief Justices' Conference resolved to restate the pre-existing and universally accepted norms, guidelines and conventions reflecting the high values of judicial life to be observed by Judges during their tenure in office. A draft restatement of values was circulated on 21<sup>st</sup> November, 1993 to the Chief Justices of the High Courts for discussion with their colleagues. This draft prepared by a duly constituted committee was considered and adopted after approval in the Full Court meeting of the Supreme Court held on 7<sup>th</sup> May, 1997. This provided for an in-house procedure for remedial action against erring Judges and also declaration by individual Judges of all his/her assets in the form of real estate or investments held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her. The Resolution adopted in the Full Court meeting of the Supreme Court on 7<sup>th</sup> May, 1997 reads as follows:

“RESOLVED that an in-house procedure should be devised by the Hon’ble Chief Justice of India to take suitable remedial action against Judges who by their acts of omission or commission do not follow the universally accepted values of judicial life including those indicated in the “Restatement of Values of Judicial Life.”

RESOLVED FURTHER THAT every Judge should make a declaration of all his/her assets in the form of real estate or investments (held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her) within a reasonable time of assuming office and in the case of sitting Judges within a reasonable time of adoption of this Resolution and thereafter whenever any acquisition of a substantial nature is made, it shall be disclosed within a reasonable

time. The declaration so made should be to the Chief Justice of the Court. The Chief Justice should make a similar declaration for the purpose of the record. The declaration made by the Judges or the Chief Justice, as the case may be, shall be confidential.”

64. On 3<sup>rd</sup> and 4<sup>th</sup> December, 1999, the Conference of Chief Justices of all High Courts was held in the Supreme Court premises in which the Chief Justices unanimously resolved to adopt the “Restatement of Values of Judicial Life” (Code of Conduct). It is a complete code of canons of judicial ethics and is extracted below:

“(1) Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people’s faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.

(2) A Judge should not contest the election to any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.

(3) Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.

(4) A Judge should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.

(5) No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.

(6) A Judge should practice a degree of aloofness consistent with the dignity of his office.

(7) A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.

(8) A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.

(9) A Judge is expected to let his judgments speak for themselves; he shall not give interview to the media.

(10) A Judge shall not accept gifts or hospitality except from his family, close relations and friends.

(11) A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.

(12) A Judge shall not speculate in shares, stocks or the like.

(13) A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business).

(14) A Judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund for any purpose.

(15) A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this behalf must be got resolved and clarified through the Chief Justice.

(16) Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.

These are only the "Restatement of the Values of Judicial Life" and are not meant to be exhaustive but only illustrative of what is expected of a Judge."

## *INDEPENDENCE OF JUDICIARY*

65. The merits of the argument about the binding nature of the Resolutions involve, to a great extent, the examination of the role of the Judiciary in a democracy. A judiciary of undisputed integrity is the bedrock institution essential for ensuring compliance with democracy and the rule of law. Even when all other protections fail, it provides a bulwark to the public against any encroachments of its rights and freedoms under the law.

66. The recognition that independence of judiciary is a prerequisite for rule of law is to be found in nearly all major human right conventions. The International Covenant on Civil and Political Rights (ICCPR) contains “Procedural Guarantees in Civil and Criminal Trials.” Article 14 says that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. This cardinal procedure is derived from earlier statements of universal principles. (For example, “Universal Declaration of Human Rights, Article 10”).

67. It is impossible to ensure the rule of law upon which other human rights depend, without providing independent courts and



tribunals to resolve, in the language of the ICCPR, competently, independently and impartially, disputes both of a criminal and civil character. In his address on Independence of Judiciary – Basic Principles, New Challenges” Justice Michael Kirby, a former Judge of the Australian High Court, said:

“Total separation of the judicial power is not possible in the real world. In many countries, the Executive Government appoints judges. The legislature provides for their salaries and pensions. It funds the activities of the courts. To give content to the provisions of Art 14.1 ICCPR, it is therefore necessary to go beyond the letter of a written constitution. It is essential to breathe life into the sparse language of the ICCPR. This requires a reflection upon the constitutional struggles, past and present, by which people everywhere have been seeking to attain the kind of human right to which Art 14.1 gives expression. .... A judge without independence is a charade wrapped in a farce inside an oppression.”

[[http://www/hcourt.gov.au/speeches/kirbyj/kirbyj\\_abahk.htm](http://www/hcourt.gov.au/speeches/kirbyj/kirbyj_abahk.htm)]

68. The independence of judiciary is the basic postulate of our Constitution which has its genesis in the power of judicial review which enables the court to declare executive and legislative actions ultra vires the Constitution. A reference may be made to some of the important provisions of the Constitution concerning the judiciary and its independence. Articles 124 (2) and 217(1) require, in the matter of appointments of Judges, consultation with the Chief Justices [After the decision of the Supreme Court in **Supreme Court-Advocates On Record Association v. Union of India** [1993] 4 SCC 441], popularly known as the **Second Judges case**, the opinion of the Chief Justice of India (Collegium)

has been given primacy in the matter of appointments]. These provisions also ensure fixity of tenure of office of the Judge. The Constitution protects the salaries of the Judges. Article 121 provides that no discussion shall take place in Parliament with respect to conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President of India praying for the removal of the Judge as provided. Articles 124 and 124(5) afford protection against premature determination of the tenure. Article 124(4) says that a Judge of the Supreme Court shall not be removed from his office except on the grounds stated therein. The grounds for removal are again limited to proved misbehaviour and incapacity. A similar provision is found in Article 217 for the Judges of the High Courts.

69. By Articles 233 and 235, members of the subordinate judiciary are brought under the control of the High Court and except for initial entry and final exit, they are under the direct control of the High Court.

70. In cases dealing with subordinate judiciary, by a catena of decisions commencing from ***State of West Bengal v. Nripendra Nath Bagchi***, AIR 1966 SC 447 and ending with ***Shamsher Singh v. State of Punjab***, (1974) 2 SCC 831, it has been authoritatively laid down that in matters concerning the

conduct and discipline of District Judges, their further promotion and confirmations, disputes regarding their seniority, their transfers, placing of their services at the disposal of the government for ex-cadre posts, considering their fitness for being retained in service and recommending their discharge from service, exercise of complete discipline, jurisdiction over them including initiation of disciplinary inquiries and their premature retirement, the members of the subordinate judiciary are under the direct control of the High Court. In ***Shamsher Singh's case***, learned Chief Justice observed: (para 78)

“The members of the subordinate judiciary are not only under the control of the High Court but are also under the care and custody of the High Court.”

71. After reviewing all these provisions and decisions, Chandrachud, J, (as he then was) in ***Union of India v. Sankalchand Himmatlal Sheth***, [(1977) 4 SCC 193] observed: (para 12)

“It is beyond question that independence of the judiciary is one of the foremost concerns of our Constitution. The Constituent Assembly showed great solicitude for the attainment of that ideal, devoting more hours of debate to that subject than to any other aspect of the judicial provisions: “If the beacon of the judiciary was to remain bright, the Courts must be above reproach, free from coercion and from political influence.”

72. In ***S.P. Gupta v. Union of India***, Bhagwati, J, (as he then was) observed: (para 27)

“....If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the rule of law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the rule of law meaningful and effective. It is to aid the judiciary in this task that the power of judicial review has been conferred upon the judiciary and it is by exercising this power which constitutes one of the most potent weapons in armoury of the law, that the judiciary seeks to protect the citizen against violation of his constitutional or legal rights or misuse or abuse of power by the State or its officers. The judiciary stands between the citizen and the State as a bulwark against executive excesses and misuse or abuse of power by the executive and therefore it is absolutely essential that the judiciary must be free from executive pressure or influence and this has been secured by the Constitution-makers by making elaborate provisions in the Constitution to which detailed reference has been made in the judgments in *Sankalchand Sheth case [(1977)4 SCC 193]*. But it is necessary to remind ourselves that the concept of independence of the judiciary is not limited only to independence from executive pressure or influence but it is a much wider concept which takes within its sweep independence from many other pressures and prejudices. It has many dimensions, namely, fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the Judges belong.

.....

Judges should be of stern stuff and tough fibre, unbending before power, economic or political, and they must uphold the core principle of the rule of law which says, “Be you ever so high, the law is above you.” This is the principle of independence of the judiciary which is vital for the establishment of real participatory democracy, maintenance of the rule of law as a dynamic concept and delivery of social justice to the vulnerable sections of the community.”

#### *NEED FOR CODE OF CONDUCT*

73. It is no doubt true that the constitutional assurances relating to basic service conditions are absolutely necessary to

protect the independence of the judiciary, but they are not the be all and end all. Judicial independence is not the personal privilege or prerogative of the individual Judge. It is the responsibility imposed on each Judge to enable him or her to adjudicate a dispute honestly and impartially on the basis of the law and the evidence. The very existence of the justice delivery system depends on the Judges, who, for the time being, constitute the system. The greatest strength of the judiciary is the faith people repose in it. The constitutional rights, statutory rights, human rights and natural rights need to be protected and implemented. Such protection and implementation depends on the proper administration of justice, which in its turn depends on the existence and accessibility of an independent judiciary. Public confidence in the administration of justice is imperative for its effectiveness, because ultimately ready acceptance of a judicial verdict alone gives relevance to the judicial system. To quote the words of Pathak, J (as he then was) in **S.P. Gupta's case**: "While administration of justice draw its legal sanction from the constitution, its credibility rests in the faith of the people. Indispensable to that faith, an independent and impartial judiciary supplies reasons for the judicial institution; it also gives character and content to the constitutional milieu".

74. In **K. Veeraswamy v. Union of India & Others**, (1991) 3 SCC 655 (paras 79-80), the Supreme Court, emphasising the duty

of the Judge to maintain high standards of conduct observed that independence and impartiality and objectivity would be tall claims, hollow from within, unless the Judges are honest – honest to their Office, honest to the society and honest to themselves ...the society's demand for honesty in a Judge is exacting and absolute. The standards of judicial behaviour, both on and off the Bench, are normally extremely high. For a Judge, to deviate from such standards of honesty and impartiality is to betray the trust reposed to him. No excuse or no legal relativity can condone such betrayal. From the standpoint of justice, the size of the bribe or scope of corruption cannot be the scale for measuring a Judge's dishonour. A single dishonest Judge not only dishonours himself and disgraces his office but jeopardizes the integrity of the entire judicial system. A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause for great anxiety and alarm. A legislator or an administrator may be found guilty of corruption without apparently endangering the foundation of the State. But a Judge must keep himself absolutely above suspicion; to preserve the impartiality and independence of the judiciary and to have the public confidence thereof.

75. In a later judgment in ***C.Ravichandran Iyer v. Justice A.M. Bhattacharjee and others***, (1995) 5 SCC 457 (para 23),

the Supreme Court in the same vein observed: “To keep the stream of justice clean and pure, the Judge must be endowed with sterling character, impeccable integrity and upright behavior. Erosion thereof would undermine the efficacy of the rule of law and the working of the Constitution itself. The Judges of higher echelons, therefore, should not be mere men of clay with all the frailties and foibles, human failings and weak character which may be found in those in other walks of life. They should be men of fighting faith with tough fibre not susceptible to any pressure, economic, political or any sort. The actual as well as the apparent independence of judiciary would be transparent only when the office holders endow those qualities which would operate as impregnable fortress against surreptitious attempts to undermine the independence of the judiciary. In short, the behavior of the Judge is the bastion for the people to reap the fruits of the democracy, liberty and justice and the antithesis rocks the bottom of the rule of law.”

76. The 1997 Resolution and the 1999 Judicial Conference Resolution are intended to establish a standard for ethical conduct of Judges. The Resolutions give expression to the highest traditions relating to the judicial functions as visualised in all the world’s cultures and legal systems. They are designed to provide guidance to Judges and to afford the judiciary a framework for regulating judicial conduct. They recognise the

need for universally acceptable statements on judicial standards, which, consistent with the principle of judicial independence, would be capable of being respected and ultimately enforced by the judiciary.

77. Explaining the need for a self-regulatory mechanism for Judges, Justice J. S. Verma, former Chief Justice of India, said:

“We cannot say that we will control everyone else but there need not be any control on us merely because we take the oath of office. It would be exhibiting the ostrich syndrome to say that there can be any one who cannot be accountable to known standards. That is not the scheme of our constitution. That is antithesis to basic democratic principles and, therefore, for the purpose of effective preservation of Independence of Judiciary. It is necessary that we ought to ensure proper judicial accountability.”

*[R.C. Ghia Memorial Lecture by Justice J.S. Verma, delivered on 28.6.1997]*

#### *INTERNATIONAL PERSPECTIVE*

78. Guides to judicial conduct have become common place in recent years. As far as Commonwealth countries are concerned, a seminal study by Justice J.B. Thomas, a Judge of the Supreme Court of Queensland, “Judicial Ethics in Australia” was published in 1988. There have followed many documents including the Canadian Judicial Council’s “Ethical Principles for Judges” (1998), the “Guide to Judicial Conduct” published for the Council of Chief Justices of Australia (2002) and the Guide to Judicial Conduct for England and Wales (2006).



79. Having posed the question whether judicial ethics exist as such, Justice J.B. Thomas stated:

“We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations.”(Judicial Ethics in Australia, Sydney, Law Book Company, 1988)

80. On a wider stage, what have become known as the Bangalore Principles of Judicial Conduct were initiated in 2001. The Bangalore principles arose from a United Nations initiative with the participation of Dato’ Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers. A draft code of judicial conduct was prepared by a group comprising senior Judges from Commonwealth countries. This was discussed at several conferences attended by Judges of both common law and civil law systems and has also been considered by the Consultative Council of European Judges. Revised principles were prepared in November 2002 following a round-table meeting of Chief Justices held at the Peace Palace, the Hague and were endorsed at the 59<sup>th</sup> session of the United Nations Human Rights Commission at Geneva in April, 2003.

81. The Bangalore Principles are succinctly stated as six ‘values’ and their stated intention is : “To establish standards for ethical conduct of Judges. They are designed to provide a framework for regulating judicial conduct. They are also intended to assist members of the Executive and Legislature, and lawyers and the public in general, to better understand and support the judiciary”. The principles are:

- (i) Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A Judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.
- (ii) Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.
- (iii) Integrity is essential to the proper discharge of the judicial office.
- (iv) Propriety, and the appearance of propriety, are essential to the performance of all of the activities of the Judge.
- (v) Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

- (vi) Competence and diligence are prerequisites to the due performance of judicial office.

82. Prior to adoption of Bangalore Principles at the 6<sup>th</sup> Conference of Chief Justices held in Beijing in August 1995, 20 Chief Justices adopted a Joint Statement of Principles of the Independence of Judiciary. This Statement was further refined during the 7<sup>th</sup> Conference of Chief Justices held in Manila in August, 1997. It has now been signed by 32 Chief Justices throughout the Asia-Pacific region and, inter alia, reads as follows:

“1. The Judiciary is an institution of the highest value in every society.

2. The Universal Declaration of Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 14(1)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent judiciary is indispensable to the implementation of this right.

3. Independence of the Judiciary requires that;

a) The judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source; and

b) The judiciary has jurisdiction, directly or by way of review, over all issues of a justiciable nature.

4. The maintenance of the independence of the judiciary is essential to the attainment of its objectives and the proper performance of its functions in a free society observing the rule of

law. It is essential that such independence be guaranteed by the State and enshrined in the Constitution or the law.

5. It is the duty of the judiciary to respect and observe the proper objectives and functions of the other institutions of government. It is the duty of those institutions to respect and observe the proper objectives and functions of the judiciary.

6. In the decision-making process, any hierarchical organisation of the judiciary and any difference in grade or rank shall in no way interfere with the duty of the judge exercising jurisdiction individually or judges acting collectively to pronounce judgement in accordance with Article 3 (a). The judiciary, on its part, individually and collectively, shall exercise its functions in accordance with the Constitution and the law.

7. Judges shall uphold the integrity and independence of the judiciary by avoiding impropriety and the appearance of impropriety in all their activities.

8. To the extent consistent with their duties as members of the judiciary, judges, like other citizens, are entitled to freedom of expression, belief, association and assembly.

9. Judges shall be free, subject to any applicable law, to form and join an association of judges to represent their interests and promote their professional training and to take such other action to protect their independence as may be appropriate.

### *JUDICIAL ACCOUNTABILITY*

83. The 1997 Resolution and the 1999 Judicial Conference Resolution emphasise that any code of conduct or like expression of principles for the judiciary should be formulated by the judiciary itself. That would be consistent with the principle of judicial independence and with the separation of powers. High

integrity and independence is fundamental and inherent, notwithstanding any specific code having been provided in the constitution or by a statute. If the judiciary fails or neglects to assume responsibility for ensuring that its members maintain high standards of judicial conduct expected of them, public opinion and political expediency may lead the other two branches of government to intervene. When that happens, the principle of judicial independence upon which the judiciary is founded and by which it is sustained, is likely to be undermined to some degree, perhaps seriously.

84. The ***second Judges case*** witnessed an assertion by the Supreme Court of the independence of the Judiciary forming part of the basic structure of the Constitution. The need to insulate judiciary from interference by the Executive in the matter of appointments of Judges was seen as a necessary concomitant of its very functioning within the scheme of the Constitution. The Judiciary was also asserting as a part of that independence, that as an institution it believed in self-regulation. In other words, it was believed that the Judiciary as an institution could itself regulate conduct of Judges without requiring any enacted law for that purpose. The 1997 and 1999 Resolutions have to be viewed in the background of the above assertion of the independence of judiciary.

85. The text of the two Resolutions focuses on two different aspects of accountability. One touching on the conduct of Judges for which the Resolutions speak of an in-house mechanism. The other concerns declaration of assets which is also seen as a facet of accountability.

86. That Judges have to declare their assets is a requirement that is not being introduced for the first time as far as subordinate Judges are concerned. They have for long been required to do that year after year in terms of the Rules governing their conditions of service. As regards accountability and independence, it cannot possibly be contended that a Judicial Magistrate at the entry level in the judicial hierarchy is any less accountable or independent than the Judge of the High Court or the Supreme Court. If declaration of assets by a subordinate judicial officer is seen as essential to enforce accountability at that level, then the need for such declaration by Judges of the constitutional courts is even greater. While it is obvious that the degree of accountability and answerability of a High Court Judge or a Supreme Court Judge can be no different from that of a Magistrate, it can well be argued that the higher the Judge is placed in the judicial hierarchy, the greater the standard of accountability and the stricter the scrutiny of accountability of such mechanism. All the Judges functioning at various levels in the judicial hierarchy form part of the same institution and are

independent of undue interference by the Executive or the Legislature. The introduction of the stipulation of declaring personal assets, is to be seen as an essential ingredient of contemporary accepted behaviour and established convention.

87. Questioning of the binding nature of the Resolutions is, therefore, contrary to the assertions of judicial independence. To contend that there has to be a law enacted by the Parliament to compel Judges to disclose their assets is to undermine the independence that has been asserted in **the second Judges case**.

88. It can hardly be imagined that Resolutions which have been unanimously adopted at a conference of Judges would not be binding on the Judges and its efficacy can be questioned. In fact, the understanding of successive CJIs and the institution as a whole since the passing of these Resolutions has been otherwise. Letters have been written by the CJI to each of the Chief Justices of the High Courts enclosing copies of the Resolutions and requiring the Chief Justice of every High Court to draw the attention of individual Judges to the text of the resolutions and to ask for information pertaining to assets possessed by each of them, his/her spouse and dependent persons. At no point in time has there been any questioning of the need to comply with the requirements of the Resolutions.

### *EXTENT AND MANNER OF DECLARATION*

89. It is indeed strange that it is sought to be contended that unless and until the Resolutions themselves provide for a sanction or penalty for non-compliance of disclosure of assets by an individual Judge to the CJI or the CJ, as the case may be, the Resolutions would not have any binding effect and that would not be in the nature of 'law'. The question posed by the learned Attorney General and reiterated in the written submissions is that unless the question "as to how the Resolution is to be implemented, by whom, to what extent and in what manner" is answered, it cannot be said that the Resolutions have a binding effect.

90. Since the impugned judgment of the learned single Judge, a resolution has been passed on the administrative side by the Full Court of the Supreme Court, deciding to place information relating to assets on the website. Four High Courts have decided to disclose the assets of their Judges publicly. Two of the High Courts have placed the information on their respective websites. Although it was sought to be contended by the learned Attorney General that even such resolutions would not have a binding effect of law, such a contention cannot be accepted if the proper functioning of the judiciary as an institution has to be ensured. The consequence of accepting such an argument would mean



that individual Judges will simply declare that they are not bound by any of the resolutions of the Court and they are free to act according to their whim. Such a position is wholly untenable and unacceptable for the proper functioning of the judiciary as a self-regulatory independent mechanism of State, accountable to the people and to the Constitution of India.

91. The disclosure on the website of information pertaining to assets of Judges is a complete answer to the question posed by the learned Attorney General. The disclosure of assets by Judges, their spouses and dependent persons on the website of the Supreme Court, Kerala High Court and Madras High Courts provides the answer as to how the Resolutions can be implemented, in what manner, by whom and to what extent. This, therefore, cannot be the reason for denying the binding nature of the Resolutions. Much has been said of where one should draw a line on how much should be disclosed. This is entirely for the Judges to decide consistent with their perception of their accountability to the judiciary as an institution. It can be seen from the assets disclosure of the Judges which are available on website that the uniform standards have been evolved regarding the nature of the information and the periodicity of the declarations to be made. The above development shows that the Judges have perfectly understood how much information should be disclosed and in what manner they have to put the information on the website.

## *INDIRA JAISING'S CASE DISTINGUISHED*

92. The reliance placed by the learned Attorney General on ***Indira Jaising's case*** is rather misconceived. In that case, a petition was filed under Article 32 of the Constitution in public interest primarily for the publication of the inquiry report made by a Committee consisting of two Chief Justices and a Judge of different High Courts in respect of certain allegations of alleged involvement of sitting Judges of the High Court of Karnataka in certain incidents and also for a direction to any professional and independent investigating agency having expertise to conduct a thorough inquiry into the said incident and to submit a report on the same to the Supreme Court. Rajendra Babu, J (as he then was) writing the judgment pointed out that a Judge cannot be removed from his office except by impeachment by a majority of the House and a majority of not less than two-third present and voting as provided by Articles 124 and 217 of the Constitution of India. The Judges (Inquiry) Act, 1968 has been enacted providing for the manner for conducting inquiry into the allegation of judicial conduct upon a motion of impeachment sponsored by at least hundred Lok Sabha Members or fifty Rajya Sabha Members. No other disciplinary inquiry is envisaged or contemplated either in the Constitution or under the Act. On account of this lacuna, in-house procedure has been adopted for inquiry to be made by the peers of Judges for report to the Chief Justice of India in case

of a complaint against the Chief Justices or Judges of the High Court in order to find out the truth of the imputation made in the complaint and that in-house inquiry is for the purpose of his own information and satisfaction. The report of the Inquiry Committee is purely preliminary in nature, ad hoc and not final. If the Chief Justice of India is satisfied that no further action is called for in the matter, the proceeding is closed. If any further action is to be taken as indicated in the in-house procedure itself, the Chief Justice of India may take such further steps as he deems fit. In case of breach of any rule of the Code of Conduct, the Chief Justice can choose not to post cases before a particular Judge against whom there are acceptable allegations. It is possible to criticise that decision on the ground that no inquiry was held and the Judge concerned had no opportunity to offer his explanation particularly when the Chief Justice is not vested with any power to decide about the conduct of a Judge. The Court was of the opinion that a report made on such inquiry if given publicity will only lead to more harm than good to the institution as Judges would prefer to face inquiry leading to impeachment. In such a case, the only course open to the parties concerned if they have material is to invoke provisions of Article 124 or Article 121(7) of the Constitution, as the case may be. It is in this context it was observed that the only source or authority by which the Chief Justice of India can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. The

obligation of the Judges to declare assets in terms of the Resolutions was not in issue before the Court. It is not even remotely suggested that the Code of Conduct is not binding on the Judges or they are free to ignore the Code of Conduct. Indeed the Court distinguished the decisions in **S.P. Gupta, Raj Narain** etc., relating to the right to information. We must bear in mind that this decision was rendered prior to the enactment of the Right to Information Act and may not serve as a useful guide in interpreting the provisions of the said Act.

93. The learned single Judge thus rightly concluded that the Resolutions are meant to be adhered to and that the fact that there is no objective mechanism to ensure its implementation is of little consequence because the consequence of not complying with the Resolutions is linked to the faith in the system; that thought alone is sufficient to incentivise compliance. Justice J.B. Thomas sums up this position aptly in the following manner:

“Some standards can be prescribed by law, but the spirit of, and the quality of the service rendered by a profession depends far more on its observance of ethical standards. These are far more rigorous than legal standards.... They are learnt not by precept but by the example and influence of respected peers. Judicial standards are acquired, so to speak, by professional osmosis. They are enforced immediately by conscience.”

*[Ref. Justice J.B. Thomas; Judicial Ethics in Australia, 2d ed. Sydney: LBC Information Services, 1997]*

94. In view of the above discussion, it is held that the respondent had right to information under Section 2(j) of the Act in respect of the information regarding making of declarations by the Judges of the Supreme Court pursuant to the 1997 Resolution.

***POINT 2: WHETHER THE CJI HELD THE "INFORMATION" IN HIS "FIDUCIARY" CAPACITY***

95. The submission of the learned Attorney General is that the declarations are made to the CJI in his fiduciary capacity as *pater familias* of the Judiciary. Therefore, assuming that the declarations, in terms of the 1997 Resolution constitute "information" under the Act, yet they cannot be disclosed – or even particulars about whether, and who made such declaration, cannot be disclosed – as it would entail breach of a fiduciary duty by the CJI. He relies on Section 8(1)(e) to submit that a public authority is under no obligation to furnish "information available to a person in his fiduciary relationship". He argues that the voluntary information given by the Judges is not information in the public domain. He emphasizes that the Resolution crucially states:

"The declaration made by the Judges or the Chief Justice, as the case may be, **shall be confidential**".

96. On the other hand, Mr. Prashant Bhushan argues that a fiduciary relationship is one that is based on trust and good faith, rather than on any legal obligation. The purpose for disclosing a

statement of assets to the CJI is to foster transparency within the judiciary and is essential for an independent, strong and respected judiciary, indispensable in the impartial administration of justice. Where the Judges of the Supreme Court act in their official capacity in compliance with a formal Resolution, it cannot be said that the CJI acts as a fiduciary of the Judges and that he must, therefore, act in the interests of the Judges and not make such information public. According to him, unless the information sought can be excluded on the basis of one of the exemptions under Section 8 of the Act, the same cannot be denied merely on the classification of a document or on a plea of confidentiality, if the document is otherwise covered by the Act.

#### *FIDUCIARY RELATIONSHIP*

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)]

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" (2<sup>nd</sup> 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.”

102. The CJI cannot be a fiduciary vis-à-vis Judges of the Supreme Court. The Judges of the Supreme Court hold independent office, and there is no hierarchy, in their judicial functions, which places them at a different plane than the CJI. The declarations are not furnished to the CJI in a private relationship or as a trust but in discharge of the constitutional obligation to maintain higher standards and probity of judicial life and are in the larger public interest. In these circumstances, it cannot be held that the asset information shared with the CJI, by the Judges of the Supreme Court, are held by him in the capacity of fiduciary, which if directed to be revealed, would result in breach of such duty.

#### *CONFIDENTIALITY*

103. The Act defines which information will be in the public domain and includes within the definition “any material in any form, including records, documents, memos, e-mails, opinions, advices, etc.” Irrespective of whether such notes, e-mails, advices, memos etc. were marked confidential and kept outside the public domain, the Act expressly places them in the public domain and accessible to the people subject to exclusionary clauses contained in Section 8 of the Act. Section 11(1) of the Act

provides that where the authority intends to disclose any information which relates to and was supplied by a third party and has been treated confidential by third party, it shall give a clear notice of five days to such third party inviting him to make a submission in writing or orally whether such information should be disclosed and such submission shall be kept in view while taking a decision regarding the disclosure of such information. Except in the case of trade and commerce secrets, protected by law, disclosure may be allowed in public interest if disclosure outweighs in importance any possible harm or injury to the interest of the third party. The disclosure of such information regarding a third party is, however, further subject to the provisions providing for non-disclosure of information relating to privacy of a person under Section 8(j) of the Act.

104. In U.K., the Freedom of Information Act 2000 exempts the information from disclosure where it was obtained by a public authority from any other person and the disclosure of the information to the public by the public authority would constitute an actionable breach of confidence. Similar provisions are made in the information laws of USA, New Zealand, Australia, Canada etc. However, as pointed out by Phillip Coppel, a public interest defence is available to a claim of breach of confidence. Therefore, a consideration of the public interest is required to determine whether disclosure would constitute an actionable

breach of confidence. In addition, so far as government secrets are concerned, the Crown is not entitled to restrain disclosure or to obtain redress on confidentiality grounds unless it can establish that disclosure has damaged or would be likely to damage the public interest. [*Phillip Coppel's "Information Rights", pg.836-837*].

105. In ***Attorney General v. Guardian Newspapers Limited*** [(No.2) (1990) 1 AC 109], Lord Goff identified three limiting concepts to the principles of breach of confidence. The first, that the principle of confidentiality does not apply to information that is so generally accessible that, in all the circumstances, it cannot be regarded as confidential. The second is that the duty of confidence does not apply to information that is useless or trivial. The third limiting concept identified by Lord Goff is that in certain circumstances the public interest in maintaining confidence may be outweighed by the public interest in disclosure. Lord Goff summed up the matter as follows: (pg.282)

“The third limiting principle is of far greater importance. It is that, although the basis of the law’s protection of confidence is that there is a law, nevertheless that public interest may be outweighed by some other countervailing public interest which favours disclosure. This limitation may apply, as the learned judge pointed out, to all types of confidential information. It is this limiting principle which may require a court to carry out a balancing operation, weighing the public interest in maintaining confidence against a countervailing public interest favouring disclosure. Embraced within this limiting principle is, of course, the so called defence of iniquity. In origin, this principle was narrowly stated, on the basis that a man cannot be made ‘the confidant of a crime or a fraud’: see *Gartside v. Outram* per Sir William Page Wood V.C. But it is now clear that the principle extends to matters of which disclosure is required in the public interest: see *Beloff v. Pressdram Ltd*, per Ungood Thomas, J and *Lion*

Laboratories Ltd v. Evans per Griffiths L.J. It does not however follow that the public interest will in such cases require disclosure to the media, or to the public by the media. There are cases in which a more limited disclosure is all that is required: see *Francome v. Mirror Group Newspapers Ltd*. A classic example of a case where limited disclosure is required is a case of alleged iniquity in the Security Services.”

#### *DUTY TO DENY OR CONFIRM*

106. In the present case, the only information that was sought by the respondent was whether such declaration of assets were filed by Judges of the Supreme Court and also whether High Court Judges have submitted such declarations about their assets to respective Chief Justices in States. The respondent had not sought a copy of the declaration or the contents thereof or even the names etc., of the Judges providing the same. Release of this information would not amount to actionable breach of any confidentiality. The duty to confirm or deny would not amount to breach of confidentiality unless the request is so specific that the mere confirmation that information is held (without a disclosure of that information) would be to disclose the gist of the information.

Philip Coppel explains the legal position as follows:

“The duty to confirm or deny”

“The duty to confirm or deny does not arise if, or to the extent that, a confirmation or denial that the public authority holds the information specified in the request would (apart from the Act) constitute an actionable breach of confidence. This is an absolute exclusion of duty. As a matter of practice, other than where the request is so specific that the mere confirmation that the information is held (without a disclosure of that information) would be to disclose the gist of the information, it is difficult to

contemplate circumstances in which a public authority could properly refuse to confirm or deny that it held information under S.41(2)". (page 843)

107. In our opinion, the learned single Judge has summed up the position correctly in para 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. If viewed from this perspective, it is immediately apparent that the CJI cannot be a fiduciary vis-à-vis Judges of the Supreme Court; he cannot be said to have superior knowledge, or be better trained, to aid or control their affairs or conduct. Judges of the Supreme Court hold independent office, and there is no hierarchy, in their judicial functions, which places them at a different plane than the CJI. In these circumstances, it cannot be held that asset information shared with the CJI, by the judges of the Supreme Court, are held by him in the capacity of a fiduciary, which if directed to be revealed, would result in breach of such duty. So far as the argument that the 1997 Resolution had imposed a confidentiality obligation on the CJI to ensure non-disclosure of the asset declarations, is concerned, the court is of opinion that with the advent of the Act, and the provision in Section 22 – which overrides all other laws, etc. (even overriding the Official Secrets Act) the argument about such a confidentiality condition is on a weak foundation. The mere marking of a document, as "confidential", in this case, does not undermine the overbearing nature of Section 22. Concededly, the confidentiality

clause (in the 1997 Resolution) operated, and many might have bona fide believed that it would ensure immunity from access. Yet the advent of the Act changed all that; all classes of information became its subject matter. Section 8(1)(f) affords protection to one such class, i.e. fiduciaries. The content of such provision may include certain kinds of relationships of public officials, such as doctor-patient relations; teacher-pupil relationships, in government schools and colleges; agents of governments; even attorneys and lawyers who appear and advise public authorities covered by the Act. However, it does not cover asset declarations made by Judges of the Supreme Court, and held by the CJI.”

108. For the above reasons, we hold that Section 8(e) does not cover asset declarations made by Judges of the Supreme Court and held by the CJI. The CJI does not hold such declarations in a fiduciary capacity or relationship.

***POINT 3: WHETHER INFORMATION ABOUT DECLARATION OF ASSETS BY JUDGES IS EXEMPT UNDER SECTION 8(1)(j).***

109. The learned Attorney General argued that the information which is sought for by the respondent is purely and simply personal information, the disclosure of which has no relationship to any public activity. He emphasized that access to such information would result in unwarranted intrusion of privacy. The submission is that such information is exempt under Section 8(1)(j) of the Act. On the other hand, Mr. Prashant Bhushan argues that information as to whether declarations have been made, to the CJI can hardly be said to be called “private” and that

declarations are made by individual judges to the CJI in their capacity as Judges. He submitted that the present proceeding is not concerned with the content of asset declarations.

*RIGHT TO INFORMATION VIS-À-VIS RIGHT TO PRIVACY*

110. The right to privacy as an independent and distinctive concept originated in the field of Tort law, under which the new cause of action for damages resulting from unlawful invasion of privacy was recognized. This right has two aspects: (i) The ordinary law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy and (ii) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful government invasion. Right to privacy is not enumerated as a fundamental right in our Constitution but has been inferred from Article 21. The first decision of the Supreme Court dealing with this aspect is ***Kharak Singh v. State of UP***, AIR 1963 SC 1295. A more elaborate appraisal of this right took place in later decisions in ***Gobind v. State of MP***, (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.

111. The freedom of information principle holds that, generally speaking, every citizen should have the right to obtain access to government records. The underlying rationale most frequently

offered in support of the principle are, first, that the right of access will heighten the accountability of government and its agencies to the electorate; second, that it will enable interested citizens to contribute more effectively to debate on important questions of public policy; and third, that it will conduce to fairness in administrative decision-making processes affecting individuals. The protection of privacy principle, on the other hand, holds in part at least that individuals should, generally speaking, have some control over the use made by others, especially government agencies, of information concerning themselves. Thus, one of the cardinal principles of privacy protection is that personal information acquired for one purpose should not be used for another purpose without the consent of the individual to whom the information pertains. The philosophy underlying the privacy protection concern links personal autonomy to the control of data concerning oneself and suggests that the modern acceleration of personal data collection, especially by government agencies, carries with it a potential threat to a valued and fundamental aspect of our traditional freedoms.

112. The right to information often collides with the right to privacy. The government stores a lot of information about individuals in its dossiers supplied by individuals in applications made for obtaining various licences, permissions including passports, or through disclosures such as income tax returns or



for census data. When an applicant seeks access to government records containing personal information concerning identifiable individuals, it is obvious that these two rights are capable of generating conflict. In some cases this will involve disclosure of information pertaining to public officials. In others, it will involve disclosure of information concerning ordinary citizens. In each instance, the subject of the information can plausibly raise a privacy protection concern. As one American writer said one man's freedom of information is another man's invasion of privacy.

*PROTECTION OF PERSONAL INFORMATION UNDER SECTION 8(1)(j)*

113. The right to information, being integral part of the right to freedom of speech, is subject to restrictions that can be imposed upon that right under Article 19(2). The revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and, therefore, with a view to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal, Section 8 has been enacted for providing certain exemptions from disclosure of information. Section 8 contains a well defined list of ten kinds of matters that cannot be made public. A perusal of the aforesaid provisions of Section 8 reveals that there are certain information contained in sub-clause

(a), (b), (c), (f),(g) and (h), for which there is no obligation for giving such an information to any citizen; whereas information protected under sub-clause (d), (e) and (j) are protected information, but on the discretion and satisfaction of the competent authority that it would be in larger public interest to disclose such information, such information can be disclosed. These information, thus, have limited protection, the disclosure of which is dependent upon the satisfaction of the competent authority that it would be in larger public interest as against the protected interest to disclose such information.

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.

116. In the present case the particulars sought for by the respondent do not justify or warrant protection under Section 8(1)(j) inasmuch as the only information the applicant sought was whether 1997 Resolution was complied with. That kind of innocuous information does not warrant the protection granted by Section 8(1)(j). We concur with the view of the learned single Judge that the contents of asset declarations, pursuant to the 1997 Resolution, are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); that they are not

otherwise subject to disclosure. Therefore, as regards contents of the declarations, information applicants would have to, whenever they approach the authorities, under the Act satisfy them under Section 8(1)(j) that such disclosure is warranted in “larger public interest”.

#### *DISCLOSURE OF ASSETS INFORMATION OF JUDGES – INTERNATIONAL TRENDS*

117. “Although Judges often balk at the invasion of privacy that disclosure of their private finances entails, it is almost uniformly considered to be an effective means of discouraging corruption, conflicts of interest, and misuse of public funds...” [*Guidance for Promoting Judicial Independence and Impartiality, 2001, USAID, Technical Publication*]. Income and Asset Disclosure is generally perceived to be an essential aid towards monitoring whether judges perform outside work, monitoring conflicts of interests, discouraging corruption, and encouraging adherence to the standards prescribed by judicial code of conduct. In countries where disclosure is mandatory, “the Guidance Principle” suggests that list of judges’ assets and liabilities must be declared at appointment and annually thereafter. “Guidance Principle” further stipulates that the information disclosure must be accurate, timely and comprehensive. Furthermore, security and privacy concerns of judges should be respected, oversight body monitoring the register must be credible and the public should have proper access to the public portion of the register.

118. Keith E. Henderson in his article “Asset and Income Disclosure for Judges: A Summary Overview and Checklist” states that even though the OAS Convention created the legal basis for income and asset disclosure of public officials, the legal question as to whether Judges are deemed to be public officials remains unclear or is being debated on in a number of countries. In some countries, Judges have raised issues of constitutional separation of powers and have taken the position that the judicial branch itself must pass and enforce its own disclosure laws and rules. This is exactly what is achieved by the 1997 and 1999 Resolutions. Other unresolved issues relate to how to effectively and fairly implement and enforce disclosure laws and how much of this personal information should be publicly available and in what form. The author has pointed out that there are three basic sources of the assets declaration obligation:

- a) Constitutional Obligation: Some constitutions impose an obligation to disclose assets of public officials e.g. Colombia, Constitution Article 122.
- (b) Legislative Obligation: Some countries regulate asset disclosure by statute, although there are different types of Acts creating this obligation e.g. Poland, El Salvador, etc.
- c) Court rules: In some countries, such as United States, Argentina, the judiciary itself regulates the conduct of Judges.

According to the author, while addressing the issue of assets disclosure, it is fundamental to find a balance between the kind of information that must be available to the public and the rights to

privacy and security of the official or Judge. Corrupt “information keepers” or weak information systems and institutions can result in serious information leaks that could have serious human rights implications – particularly in transition countries. A cursory review of existing laws reveals that there is no one model law or policy regarding exactly the range of assets Judges should disclose. To some degree, it depends, inter alia, on the development context of the country in question. Regarding the kind of assets to be disclosed, different countries have likewise adopted different models depending on the development context:

Broad Disclosure - In the United States, there is an obligation to make a broad accounting of financial holdings, including a list of gifts, lecture fees or other outside incomes. However, there has been some criticism of some judges not fully disclosing their having received trip expenses from private sources and these rules are still under debate.

Medium-size disclosure - In Argentina, judges are exempt from declaring some kinds of property if it might jeopardize their security. For example, judges are not obligated to submit details of the place where they live or their credit card numbers.

Narrow disclosure - In many transition countries, judges must declare only incomes – assets are exempt. “

119. The Ethics in Government Act, 1978 of United States requires that federal judges disclose personal and financial information each year. Under the Act, federal judges must disclose the source and amount of income, other than that earned as employees of the United States government, received during the preceding calendar year. Judges must also disclose

the source description and value of gifts, for which the correct value is more than certain minimal amount, received from any source other than a relative; the source and description of reimbursements; the identity and category of value of property and interests; the identity and category of values of liabilities owed to creditors other than certain immediate family members; and other financial information. The Act allows judges to redact information from their financial disclosure request under certain circumstances. A report may be redacted “(i) to the extent necessary to protect the individual who files the report; and (ii) for so long as the danger to such individual exists”. The Act further charges the US Judicial Conference Committee with the task of submitting to the House and Senate Committee on the Judiciary an annual report documenting redactions. When a member of the public requests for a copy of judges financial disclosure report, the Committee sends a notification of the request to the judge in question asking the judge to respond in writing whether he would like to request new or additional redactions of information. If the judge does not request redaction from his/her report, a copy of the report is released to the requester. However, if the judge requests redaction upon receiving the request for a copy of the report, the Committee then votes on the redaction request, with a majority needed to approve or deny the request, and finally a copy of the report is released, with approved redactions, if any.



120. It will be useful to note certain developments which led to the federal judges' asset information being placed on the internet. In September, 1999, APBnews.com ("APB"), a site focused on criminal justice news, requested for financial disclosure reports filed by federal judges in 1998. The Judicial Conference Committee denied this request in December, 1999 ruling that the disclosure reports should not be turned over to APB because posting the reports on the internet would contravene the statutory requirement that all report registers identify themselves by name, occupation and address. After the Judicial Conference Committee denied APB's request, APB filed suit in the US District Court for southern districts of New York to obtain the report. But on March 14, 2000, the Judicial Conference Committee voted to reverse its decision and allowed the reports to be available on the internet, recognizing that the statutory language did not permit withholding the reports in their entirety from news organizations. Though the Act generally prohibits obtaining or using a report for commercial purposes, it contains an exemption for "news and communication media" involved in "dissemination to the general public". Thus APB could not be refused access to the reports. Before the forms were released to the APB, however, the Committee removed some personal information submitted by judges but not required by the Act, such as home addresses and names of spouses and dependants.

## EPILOGUE

121. It was Edmund Burke who observed that “All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust.” Accountability of the Judiciary cannot be seen in isolation. It must be viewed in the context of a general trend to render governors answerable to the people in ways that are transparent, accessible and effective. Behind this notion is a concept that the wielders of power – legislative, executive and judicial – are entrusted to perform their functions on condition that they account for their stewardship to the people who authorize them to exercise such power. Well defined and publicly known standards and procedures complement, rather than diminish, the notion of judicial independence. Democracy expects openness and openness is concomitant of free society. Sunlight is the best disinfectant.

122. We are satisfied that the impugned order of the learned single Judge is both proper and valid and needs no interference. The appeal is accordingly dismissed.

CHIEF JUSTICE

VIKRAMAJIT SEN, J.

JANUARY 12, 2010  
“nm/v/pk”

S. MURALIDHAR, J.

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

Judgment Reserved on : 04.05.2009  
Judgment Pronounced on: 02.09.2009

+

W.P. (C) 288/2009

THE CPIO, SUPREME COURT OF INDIA,  
TILAK MARG, NEW DELHI

..... Petitioner

Through: Mr. Goolam. E. Vahanvati,  
Attorney General of India with  
Mr. Gaurav Duggal, Advocate.

versus

SUBHASH CHANDRA AGARWAL & ANR.

..... Respondents

Through: Mr. Prashant Bhushan,  
Mr. Mayank Misra and Mr. Harendra Singh,  
Advocates for Resp. No.1.  
Mr. K.K. Nigam, Advocate, for CIC  
Mr. K.C. Mittal, Mr. D.K. Sharma,  
Mr. Arvind Jain and Mr. Sujeet Kumar, Advocates  
for Delhi High Court Bar Association.  
Mr. P.N. Lekhi, Sr. Advocate with  
Mr. Vijay Chaudhary and Mr. Ravinder Kumar,  
Advocates, for Rashtriya Mukti  
Morcha/ Intervener.

**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. This proceeding, under Article 226 of the Constitution of India, requires the examination of questions and issues involving declaration as to personal assets of judges of the Supreme Court, made to the Chief Justice of India, pursuant to a Full Court

resolution of the Supreme Court of India, made in 1997. The petitioners challenge an order of the Central Information Commission, dated 6<sup>th</sup> January, 2009, upholding the request of the respondent who had applied for disclosure of certain information concerning such declaration of personal assets, by the judges (of the Supreme Court).

2. The facts of the case are that the Respondent (hereafter “applicant”) had, on 10.11.2007 required the Central Public Information Officer, Supreme Court of India (“the CPIO”), nominated under the Right to Information Act (hereafter “the Act”) to furnish a copy of the resolution dated 7.5.1997 of the Full Court of the Supreme Court, (“the 1997 resolution”) which requires every judge to make a declaration of all assets. He further sought for information relating to declaration of assets etc, furnished by the respective Chief Justices of States. By order dated 30<sup>th</sup> November, 2007, the CPIO informed the applicant that a copy of the resolution dated 7.5.1997 would be furnished on remitting the requisite charges. He was also told that information relating to declaration of assets by the judges was not held by or under the control of the Registry of the Supreme Court and, therefore, it could not be furnished.

3. The applicant appealed to the nominated Appellate authority, who, after hearing him, recorded satisfaction (of the applicant) about receipt of a copy of the resolution; he nevertheless, challenged the second part of the impugned order which held that the CPIO did not hold any information regarding the declaration of assets. It was also contended that if the CPIO was not holding the information, he should have disclosed the authority holding such information and should have referred the application to such an authority, invoking Section 6 (3) of the Right to Information Act. It was also contended out that assuming that the CPIO did not hold the information, since the applicant had sought information regarding the declaration of assets made by the various Chief Justice of the States, the CPIO, Supreme Court should have transferred the

matter to the respective CPIOs. The appellate authority remanded the matter for reconsideration, to the CPIO, observing as follows:

*“A perusal of the application dated 10.11.2007 discloses that the appellant had sought for information relating, to the declaration of assets by the Hon’ble Judges of the Supreme Court as well as the Chief Justice of the States. The order of the CPIO is silent regarding Section 6 (3) of the Right to Information Act. to the above extent, I feel that the appellant is justified in contending that if the CPIO was not holding the information, he should have considered the question of Section 6 (3). Regarding the respective States, if the CPIO was not holding information, he should have considered whether he should have invoked the provision under Section 6 (3) of the Right to Information Act.*

*In the above circumstances, the impugned order to the above extent is liable to be remanded back. The matter is remanded to the CPIO to consider the question whether Section 6(3) of the Act, is liable to be invoked by the CPIO.*

*The matter is remanded to the CPIO for afresh consideration on the above limited point after giving a reasonable opportunity of being heard to the appellant.*

*The Appellant, if aggrieved by this order, is entitled to file a second appeal before the Central Information Commission, New Delhi under Section 19(3) of the Right to Information Act within 90 days from the date of communication of this order.”*

After remission, the CPIO rejected the application, stating as follows:

*“In the case at hand, you yourself knew that the information sought by you is related to various High Court in the country and instead of applying to those Public Authorities you have taken a short circuit procedure by approaching the CPIO, Supreme Court of India remitting the fee of Rs.10/- payable to one authority and getting it referred to all the public authorities at the expense of one Central Public Information Officer. In view of this, the relief sought by you cannot be appreciated and is against the spirit of Section 6 (3) of the Right to Information Act, 2005.*

*You may, if so advised approach the concerned public authorities for desired information”.*

4. The Applicant approached the Central Information Commission (CIC). It was contended that the CPIO had not followed the directions of the appellate authority, which originally remanded the case, and decided whether the application had to be sent

to another authority, as it was expected to. It was also contended that the CPIO's order maintained a studied silence about disclosure of information about asset declaration by judges of the Supreme Court to the Chief Justice of India ("CJI") in accordance with the 1997 Resolution. The CPIO contended, before the CIC, that the RTI application had two parts, the first part related to copy of Resolution, which was provided to the applicant, and the second part related to declaration of assets by the Supreme Court judges. The CPIO submitted that the Registrar of the Supreme Court did not hold the information. It was submitted that the 1997 Resolution was an in-house exercise; and the declaration regarding assets of the judges is only voluntary. The resolution itself describes submission of such declarations as "Confidential". It was also contended that disclosure of the declarations would be breach of a fiduciary relationship. The CPIO further submitted that the declarations were submitted to the Chief Justice of India not in his official capacity but in his personal capacity and that any disclosure would be violate of the 1997 resolution, deemed such declarations 'confidential'. It was also contended that the disclosure would be contrary to the provisions of section 8(1) of the Act.

5. The CIC, in its impugned order, reasoned that since the Supreme Court was established by the Constitution of India and is a public authority within the meaning of Section 2(h) of the Act. Section 2(e) (i) was referred, to say that the Chief Justice of India was a competent authority, under the Act, empowered to frame Rules under Section 28 of the Act to carry out provisions of the Act. It was held that rule making power is conferred by provisions of the Act, upon the Chief Justice and the Supreme Court, who cannot disclaim being public authorities. The applicant's appeal was allowed, on the following reasoning:

*"16. The rule making power has been explicitly given for the purpose of carrying out the provisions of the RTI Act. The Act, therefore, empowers the Supreme Court and the other competent authorities under the act and entrusts upon them an additional responsibility of ensuring that the RTI Act is implemented in letter and spirit. In view of this, the contention of the respondent public authority that the*

*provisions of Right to Information act are not applicable in case of Supreme Court cannot be accepted.*

17. *The learned counsel appearing on behalf of the Supreme Court during the course of hearing argued that the information concerning the declaration of assets by the judges is provided to the Chief Justice of India in his personal capacity and it is “voluntary’ and “confidential”. From what was presented before us. It can be inferred that the declaration of assets are filed with the Chief Justice of India and the office of the Chief Justice of India is the custodian of this information. The information is maintained in a confidential manner and like any other official information it is available for perusal and inspection to every succeeding Chief Justice of India. The information, therefore, cannot be categorized as “personal information” available with the Chief Justices in their personal capacity.*

18. *The only issue that needs to be determined is as to whether the Chief Justice of India and the Supreme Court of India are two distinct Public Authorities or one Public Authority. In this context, it would be pertinent to refer again to the provisions of section 2 (h) of the Right to Information Act, the relevant part of which reads as under:*

*“2(h)“Public authority” means any authority or body or institution of self – government established or constituted...”*

19. *The Public Authority, therefore, can only be an “authority” ‘body’ or an “institution” of self, government, established or constituted, by or under the Constitution or by any other law, or by an order made by the appropriate government.*

20. *The words “Authority, “body” or “institution” has not been distinctly defined in the Act, the expression “authority” in its etymological sense means a Body invested with power to command or give an ultimate decision, or enforce obedience or having a legal right to command and be obeyed. Webster’s Dictionary of the English language defined “authorities as “official bodies that control a particular department or activity, especially of the Government. The expression other authorities has been explained as authorities entrusted with a power of issuing directions, disobedience of which is punishable as an offence, or bodies exercising legislative or executive functions of the state or bodies which exercise part of the sovereign power or authority of the State and which have power to make rules and regulations and to administer or enforce them to the detriment of the citizens. In the absence of any statutory definition or judicial*

*interpretation to the contrary, the normal etymological meaning of the expression, has to be accepted as the true and correct meaning.*

21. *According to the dictionary meaning, the term “institution” means a body or organization or an association brought into being for the purpose of achieving some object. Oxford Dictionary defines an “institution as a establishment, organization or an association instituted for the promotion of some objects especially one of public or general utility, religious, charitable, educational etc., The definition of the ‘institution’, therefore, includes an authority as well as a body. By very implication, the three terms exclude an “individual”. Even the Hon’ble Apex Court in Kamaraju Venkata Krishna Rao Vs. Sub – collector, Ongole – AIR 1969 SC 563 has observed that it is by no means easy to give definition of the word “institution” that would cover every use of it. Its meaning must always depend upon the context in which it is found.*

22. *If the provisions of Article 124 of the Constitution are read in view of the above perspective, it would be clear that the Supreme Court of India, consisting of the Chief Justice of India and such number of judges as the Parliament may by law prescribe, is an institution or authority of which the Hon’ble Chief Justice of India is the Head. The institution and its Head cannot be two distinct public authorities. They are one and the same. Information, therefore, available with the Chief Justice of India must be deemed to be available with the Supreme Court of India. The Registrar of the Supreme Court of India, which is only a part of the Supreme Court cannot be categorized as a Public Authority independent and distinct from the Supreme Court itself.*

23. *In view of this, the question of transferring an application under Section 6(3) of the Right to Information Act by the CPIO of the Supreme Court cannot arise. It is the duty of the CPIO to obtain the information that is held by or available with the public authority. Each of the sections or department of a public Authority cannot be treated as a separate or distinct public authority. If any information is available with one section or the department, it shall be deemed to be available with the Public Authority as one single entity CPIO cannot take a view contrary to this.*

24. *In the instant case, admittedly, the information concerning the judges of the Supreme Court is available with the Supreme Court and the CPIO represents the Supreme Court as a public authority. Under the RTI Act, he is, therefore, obliged to provide this information to a citizen making an application under the RTI Act unless the disclosure of such information is exempted under the law.*



25. *During course of hearing, it has been argued that the declaration of assets submitted by the judges of the Supreme Court are confidential and the information has been provided to the chief justice of India in a fiduciary relationship and as such, its disclosure is exempted under Section 8(1) (e) of the RTI Act.*

26. *In this context it will be pertinent to reiterate what the appellant has asked for in his RTI Application and which is as follows:*

*I will be obliged if your honour very kindly arranges to send me a copy of the said resolution passed by the judges of the Supreme Court on 7.5.2007.*

*I will be obliged if your honour kindly provides me information on any such declaration of assets etc ever filed by Honourable judges of the Supreme Court.*

*Kindly also arrange information if High Court judges are submitting declaration about their assets etc to respective Chief Justices in States.*

27. *The information in regard to point (i) as above has already been provided. As regards the information covered by point No. (ii) & (iii) above, the same has been denied on the ground that it is not held by or under the control of the Registrar of the Supreme Court of India and, therefore, cannot be furnished by the CPIO.*

28. *The First Appellant Authority while deciding the matter assumed that the CPIO of the Supreme Court was not holding the information concerning the declaration of the assets made by the High Court judges and that this information is held by the chief justices of the State High Courts and accordingly, he observed that the appellant is justified in contending that if the CPIO was not holding the information, he should have considered the question of invoking Section 6(3) of the RTI Act. accordingly, the matter was remanded back by him to the CPIO of the Supreme Court for fresh consideration on limited point i.e. transfer of application to various High Courts u/s 6(3) of the RTI Act. It will not be out of context to reproduce what the Appellate Authority has decided in his order:*

*“In the above circumstances, the impugned order to the above extent is liable to be remanded back. The matter is remanded to the CPIO to consider the question whether section 6(3) of the Act, is liable to be invoked by the CPIO.*

*The matter is remanded to the CPIO for afresh consideration on the above limited point after giving a reasonable opportunity of being heard to the appellant.”*

29. CPIO on receiving the matter back on remand rejected the application of the appellant. It appears that both the CPIO and the first Appellant Authority have remained silent as regards the information concerning declaration of assets by the judges of the Supreme Court. At the time of hearing, it was admitted that the information concerning declaration of the assets by the judges of the Supreme Court is not available with the Registry, but the office of the Chief Justice of India holds the same. The information requested under the RTI Act was denied only on the ground that the Registry does not hold the information. But the first appellate authority did not find as to where the information is available. The CPIO maintained silence as regards this matter even after he received the matter on remand. At the time of hearing before this Commission, however, it was submitted that the information might be available with the office of the Chief Justice of India. It is clear that neither the CPIO nor the First Appellate Authority has claimed that the information asked for by the appellant is exempt either under Section 8 (1) (e) of the Act being received in fiduciary relationship or that this information is 'personal information' attracting exemption under section 8 (1) (j).

30. The appellant Shri S.C. Agrawal is apparently not seeking a copy of the declarations or the contents therein or even the names etc. of the judges filing the declaration, or is he requesting inspection of any such declaration already filed. He is seeking simple information as to whether any such declaration of assets etc., has ever been filled by the judges of the Supreme Court or High Courts. What he is seeking cannot be held to attract exemption under Sections 8(1)(e) or 8(1) (j).

31. The only question that remains to be decided is as to whether CPIO was justified in turning down the request of the Appellant to transfer the RTI application to the concerned CPIO of the High Courts even after the First Appellate Authority remanded the case to him. In this connection, it may be mentioned that the request for transfer under section 6(3) of the Right to information Act has been turned down on the ground that the appellant was well aware that the information is available with the respective High Courts which are separate and distinct public authorities. This point has not been pressed at the time of hearing as such, it is not necessary to decide this issue at this stage.

32. In view of what has been observed above, the CPIO of this Supreme Court is directed to provide the information asked for by the appellant in his RTI application as to whether such declaration of assets etc. has been filed by the Hon'ble Judges of the Supreme Court or not within ten working day from the date of receipt of this decision notice."

6. When presented, the CPIO was the sole writ petitioner; later, however, the Registrar, Supreme Court was added as a party. The petitioners were represented by the (then) Solicitor General, Mr. Goolam E. Vahanvati (hereafter referred to as “the petitioners’ counsel”); Mr. Prashant Bhushan argued on behalf of the respondent applicant.

7. It is argued at the outset that the petition, is not filed with a view to raise technical objections to avoid declaring assets of the judges, but on a fundamental question of law with regard to scope and applicability of RTI; it is also clarified that the learned judges of the Supreme Court are not opposed to declaring their assets, provided that such declarations are made in accordance with due procedure laid down by a law which would prescribe (a) the authority to which the declaration would be made (b) the form in which the declaration should be made, with definitional clarity of what are ‘assets’; and (c) proper safeguards, checks and balances to prevent misuse of information made available.

8. The petitioners argue that the information sought for, by the applicant, is not in the public domain. In support, it is submitted that the expression “right to information” defined by Section 2(j) envisions information “*accessible, in this Act, which is held by or under the control of any public authority...*” The petitioners contend that the source of the right to seek information, is not any law, but a non-binding obligation, on account of the 1997 resolution. It is argued that there is no Constitutional or legal obligation to furnish such declaration. Though it was urged that the CJI is not a public authority, the counsel submitted that the terms of the Act would show that in fact, he is one. In the petition it has been submitted that the office of the CJI is distinct from the Registry, and the CIC’s findings in that regard are erroneous; the petitioners emphasize that the CJI is required, by provisions of the Constitution, and different laws, and also the decision in *Supreme Court Advocates on Record Association v. Union of India*, (1993) 4 SCC 441 to

perform various functions that are distinct from his role as Chief Justice of the Supreme Court. Therefore, the impugned order, according to them, is unsustainable.

9. The petitioners urge that for anything, to constitute information, it should be in the public domain, and should be held by a public authority under the mandate of law; the law should prescribe that something should be done, or not be done, and must be accompanied by sanction for its non-performance. In support, reliance is placed on the judgment reported as *Kruze v. Johnson* 1895 All ER 105; *Dwarkanath Tewari v. State of Bihar* AIR 1959 SC 259 and *Indian Airlines Corporation v. Sukhdev Rai* 1971 (2) SCC 192. It is urged that individual judges have the choice of declaring, or not declaring assets; an autonomy that cannot be commented upon, or interfered with by the CJI. It is likewise argued that non-disclosure does not result in any breach of law, or attract any sanction, which clearly demonstrate that the 1997 resolution is not binding. The petitioners' counsel submits that the resolution cannot also be described as containing "Rules". In this context, counsel urges that rules are made unilaterally by the concerned authority, and are not dependent upon their binding nature on the choice or exercise of volition of anyone, subjected to them. Reliance is placed on *Sirsi Municipality v. Cecilia Con. Francis Tellis* 1973 (1) SCC 409.

10. Learned counsel for the petitioner urges that the ruling in *Indira Jaising v. Registrar General* 2003 (5) SCC 494 held that deliberations during the "in house procedure" evolved as a result of the resolution of the Chief Justices' Conference (in 1999) cannot be the subject matter of disclosure. Reliance is placed on the following observations:

*"Therefore, in the hierarchy of the courts, the Supreme Court does not have any disciplinary control over the High Court Judges, much less the Chief Justice of India has any disciplinary control over any of the Judges. That position in law is very clear. Thus, the only source or authority by which the Chief Justice of India can exercise this power of inquiry is moral or ethical and not in exercise of powers*

*under any law. Exercise of such power of the Chief Justice of India based on moral authority cannot be made the subject-matter of a writ petition to disclose a report made to him."*

It is submitted that there is nothing in the 1997 Resolution involving processes of government; reliance is also placed on the following passage from *Indira Jaising*:

*"Heavy reliance has been placed upon the decisions of this Court in S. P. Gupta v. Union of India (1981 Supp SCC 87), State of U.P. v. Raj Narain ((1975) 4 SCC 428), Union of India v. Assn. for Democratic Rights ((2002) 5 SCC 294) and Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal ((1995) 2 SCC 161). The principles stated in these decisions have been reconsidered by this Court in People's Union for Civil Liberties (PUCL) v. Union of India ((2003) 4 SCC 399 : JT (2003) 2 SC 528). 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 by the learned counsel of the petitioner, does not say in absolute terms that information gathered at any level in any manner for any purpose shall be disclosed to the public. The inquiry ordered and the report made to the Chief Justice of India being confidential and discreet is only for the purpose of his information and not for the purpose of disclosure to any other person. The principles stated in the above decisions are in different context and those principles cannot be invoked in a case of this nature, which is of an exceptional category. Therefore, the first contention advanced on behalf of the petitioner by Shri Shanti Bhushan for a direction to release the said report has got to be rejected in limine."*

11. It is next argued that any disclosure made by judges, pursuant to the 1997 resolution, is not a public act done in the discharge of duties of their office. The petitioners elaborate this by saying that the Act is aimed at ensuring access to all actions of public officials done or performed during the course of their official duties. Such being the case, the declaration of personal assets, by individual judges, has nothing to do with their duties, as judges. The petitioners again emphasize the voluntary nature of such disclosure, and absence of any legal sanction as a result of non-disclosure.

12. The second limb of the petitioners' submission is that the information, about assets of judges, if such facts are deemed "information" is exempt from disclosure, by virtue of Section 8(1) (e) which casts a fiduciary duty on the CJI to hold the asset declarations in confidence. Here, the petitioners emphasize that the Resolution which says that the "*declaration made by the judges or the Chief Justice as the case may be, shall be confidential..*" It is submitted that such being the case, asking disclosure, would be compelling the CJI to breach the fiduciary nature of his duty to keep the asset declarations confidential. The petitioners submit that the fiduciary nature of duty applies even in respect of the nature of information sought, i.e. details of whether judges declared their assets, to the CJI.

13. The petitioners contend that though the question of what has been declared (contents of individual asset details provided by the judges to CJI) is not subject matter of these proceedings, the question of its access would arise, if it is held that such declarations are "information" under the Act. The contention is that the information – if asset declarations are to be deemed as such, are exempt by virtue of Section 8(1) (j) of the Act, which provides that:

*"(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."*

14. Counsel argues that in the absence of any legally binding norm, declaration of assets by judges, if construed to be "information" is private, and as such exempt from the Act. Counsel points to the non-obstante clause in Section 8 and submits that Parliament intended that such personal matters are kept out of bounds, as they involve

issues of privacy and confidentiality. The petitioners lastly argue that there is lack of clarity in the resolutions, about “assets” and “investments” which can easily lead to confusion, and that lack of appropriate guidelines in this regard, would lead to unknown consequences.

### Respondents' contentions

15. The respondent applicant contests the argument that information which is not in the public domain cannot be accessed, and terms it as begging the question. The Act, says the applicant, defines which information will be in the public domain and is widely cast, to allay any doubts in that regard. Referring to the definition, it is submitted that irrespective of whether such notes, e-mails, advice, memos, etc. were marked confidential and made by civil servants to be kept outside the public domain, the Act expressly places them in the public domain and available to the people on the principle laid down in the matter of *State of UP v. Raj Narain*, AIR 1975 SC 865. Reliance is placed on the following observations in that judgment:

*“[I]n a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be put 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 way, 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.”*

The respondent contends that in a democracy, people are the masters and all civil servants or any other public servants are their servants and therefore, the masters have a right to know what their servants are doing in every detail and in every aspect which includes the decision making process. That is why notings, e-mails, memos, correspondence, advice, etc., were expressly included within the definition of



information accessible under the Act. Learned counsel submitted that the Act has overriding effect, by reason of Section 22.

16. The respondent next submits that Section 8 of the Act, in the statutory scheme, exempts certain classes of information. (The provision begins with a *non-obstante clause*); it is argued that exemptions contain several legitimate grounds for excluding information from public scrutiny in public interest. No other ground for excluding information which exists with any public authority can be deduced under the Act, particularly in respect of information merely marked “confidential”. The only exemption there in connection with this is the exemption under clause 8 (1) (j) which deals with 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. However this information may also be disclosed if 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. It is argued that by no stretch of imagination can the query whether judges have declared their assets, be considered exempt; there is no question of any confidentiality or privacy. The respondents argue that the information sought is only in this regard. It was however argued, that the question of contents of asset declarations and access are also intrinsically linked to this issue, since they involve the examination of the same legal *regime*.

17. It is submitted that this issue has been settled by the Supreme Court in 2002, and 2003 in its judgment in *Union of India v. Association for Democratic Reforms*, AIR 2002 SC 2112, and *People’s Union for Civil Liberties v. Union of India*, AIR 2003 SC 2363, where the Court held that the fundamental right of citizens, under Article 19 (1) (a) includes the citizens’ right to know the assets and liabilities of candidates contesting elections to parliament or to the State Legislatures, thereby seeking to hold positions of



responsibility in Government. In para 50 of their judgment in the *Association for Democratic Reforms* case, it was held that:

*“Mr. Ashwni Kumar, learned senior counsel appearing on behalf of the intervenor submitted that the aforesaid observations are with regard to citizens right to know about the affairs of the Government, but this would not mean that citizens have a right to know the personal affairs of MPs or MLAs. In our view this submission is totally misconceived. There is no question of knowing personal affairs of MP’s or MLAs. The limited information is whether the person who is contesting elections is involved in any criminal case and if involved, what is the result ? Further, there are widespread allegations of corruption against the persons holding post and power. In such a situation, question is not of knowing personal affairs but to have openness in democracy for attempting to cure cancerous growth of corruption by few rays of light. Hence, citizens who elect MPs or MLAs are entitled to know that their representative has not misconducted himself in collecting wealth after being elected. This information could be easily gathered only if prior to election, the assets of such person are disclosed...”*

18. The respondent also refers to a Code of Conduct, (hereafter “the Code”) evolved in the Chief Justices’ Conference, (hereafter, “the Conference”) in 1999, which reiterated and adopted the 1997 resolution, and says that the said Code established a mechanism and an in-house procedure to enquire into complaints against Judges, through a Committee of Judges, constituted by the CJI, to take action against those violating the Code. A copy of the resolution has been produced; the respondent says that the CJI has implemented this mechanism in several past instances, which reveals that judges have considered that these are binding standards. Extending the logic, it is emphasized that, therefore, the 1997 resolution cannot be disclaimed, as it was a conscious decision taken by judges, who hold high public office, under the Constitution of India. Counsel contends therefore, that the said resolution has the force of law, and alludes to the 1999 Conference Resolution, which states that it is a *“restatement of pre-existing and universally accepted norms, guidelines and conventions..”* Reacting to the petitioners’ submission that the 1997 resolution or the 1999 Conference resolution cannot be enforced legally, it is argued that the binding nature of either resolution

cannot be undermined, and that it is for the CJI or the individual High Court Chief Justice, to take such appropriate measures as are warranted to ensure that declaration of assets takes place.

19. The respondent disputes that the information given by judges (of the Supreme Court) to the CJI is retained by him in a fiduciary capacity, and say that “fiduciary” relationship has been defined in *Black’s Law Dictionary* as “one founded on trust or confidence reposed by one person in the integrity and fidelity of another.” Similarly, the respondent places reliance on the following extracts from the definition in the Permanent Edition of “*Words and Phrases*”:

*“Generally, the term ‘fiduciary’ applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another....*

*... a ‘fiduciary’ or confidential relation in sense that a ‘fiduciary’ is required to render an account exists in all cases where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing the confidence.*

*..The word fiduciary implies that the relationship exists only when there is a reposing of faith, confidence and trust and the placing of reliance by one upon the judgment and advice of another.*”

20. It is argued that a fiduciary relationship, therefore, is based on trust and good faith, rather than legal obligation. Such relationship obligates the fiduciary to act for the benefit and interests of him, who reposes the trust in him (i.e. the fiduciary), in regard to the matter of trust. It is argued that judges, while declaring their assets, do so in their capacity as judges, and not as private individuals; the Chief Justice does not act as a fiduciary, while keeping the information given to him by them. But for the status as judge, the individual concerned would not have furnished any declaration to the CJI. According to the respondent, the process of information gathering, by the CJI is an

official process, in his official capacity; hence, no fiduciary relationship is involved. The CJI does not exercise any control over the judges, as they are holders of Constitutional office, in their right.

21. Dealing with the contention regarding exemption under Section 8(1)(j), the respondent argues that asset information of electoral aspirants are not deemed private or personal information, and blanket exemption cannot be granted; reliance is placed on the *Association for Democratic Reforms* case. It is also contended that likewise judges are public functionaries, and in their official capacity, make declarations, and immunity cannot be granted to them. Counsel disputes the petitioners' submission that independence of the judiciary would be undermined, if access to asset declaration is permitted. It is emphasized that if information is given to the Government, possibly independence of the judiciary would be compromised; however, public disclosure of the declaration, under the Act will allow access to the public, which would thwart attempt at blackmailing of individual judges, or "corrosion" of their independence.

22. The Delhi High Court Bar Association, ("DHBA") added as a party, with consent of the petitioners and the respondent, argues that the Supreme Court, and the High Court are authorities under the Constitution of India and squarely covered by the definition "public authority" similarly, it is argued that CJI and Chief Justices of High Courts are public authorities. The DHBA adopts the respondent's arguments, and further submits that the petitioners' stand that asset declarations and information about who gave declarations not being "information" is untenable. It is submitted that right to information is now a part of right to freedom of speech, and the Act merely confers statutory recognition. The definition of "information" is sufficiently wide to cover all kinds of records and information. It is submitted that the 1997 resolution was to reinforce faith in the judiciary, and the present denial of information tends to

undermine it. DHBA argues that the Act nowhere restricts information furnished to be only in respect of duties of public servants or officials.

23. Counsel for DHBA submits that the issue of judges' asset disclosure should not be considered in isolation, but in the context of the 1999 Conference resolution; here too reference is made to the "in-house" procedure or mechanism to deal with complaints against judges. It is emphasized that the Code, adopted by the Conference in 1999, is to be followed with a view to affirm people's faith in the judiciary. Contrasting the position in the case of the lower judiciary, who are obligated by specific service rules, to declare their assets, through annual returns, the DHBA submits that such specific rules may not exist in the case of the higher judiciary, yet the duty to do so arises by virtue of the high office their members occupy. Reliance is placed on the observations of the Supreme Court in *C.Ravichandran Iyer v. Justice A.M. Bhattacharjee & Others* 1995 (5) SCC 457:

*"21. Judicial office is essentially a public trust. Society is, therefore, entitled to expect that a Judge must be a man of high integrity, honesty and required to have moral vigour, ethical firmness and impervious to corrupt or venial influences. He is required to keep most exacting standards of propriety in judicial conduct. Any conduct which tends to undermine public confidence in the integrity and impartiality of the court would be deleterious to the efficacy of judicial process. Society, therefore, expects higher standards of conduct and rectitude from a Judge. Unwritten code of conduct is writ large for judicial officers to emulate and imbibe high moral or ethical standards expected of a higher judicial functionary, as wholesome standard of conduct which would generate public confidence, accord dignity to the judicial office and enhance public image, not only of the Judge but the court itself. It is, therefore, a basic requirement that a Judge's official and personal conduct be free from impropriety; the same must be in tune with the highest standard of propriety and probity. The standard of conduct is higher than that expected of a layman and also higher than that expected of an advocate. In fact, even his private life must adhere to high standards of probity and propriety, higher than those deemed acceptable for others. Therefore, the Judge can ill-afford to seek shelter from the fallen standard in the society...."*

24. The DHBA also refers to observations made by the Supreme Court, in *K.Veerawami v. Union of India* 1991 (3) SCC 655, and says that judges are "public

servants” under the Indian Penal Code. Observations from *S.P.Gupta v. Union of India* AIR 1982 SC 149 are relied on to say that while an independent judiciary is a must to cure legislative and executive excesses or transgressions of law or the Constitution, judges should not claim special privileges and immunities, while they impose duties of transparency upon other public officials and legislative candidates. It was submitted that the Constitution has designed elaborate safeguards to secure the tenure, salary and conditions of service of judges, with the aim of insulating them from outside influences, as they are expected to act fairly and fearlessly. This imposes a duty upon them to maintain high standards and ensure public faith. The DHBA relies on observations in the judgment reported as *Supreme Court Advocate on Record Association v. Union of India* (1993) 4 SCC 441 and says that absence of statute law does not mean that declaration of assets by judges to the CJI is without legal sanction; judges function under the Constitution, and owe their existence to it. If, in the course of their tenure, decisions to declare their personal assets are taken, with a view to establishing conventions, for future adherence, such practices have the sanctity of law, as conventions of the Constitution.

25. Mr. P.N. Lekhi, appeared for the intervenor, with the permission of the court. He challenged the petitioners’ *locus standi* and submitted that they are fighting a “proxy” battle for Supreme Court judges. He submitted that judicial review can be availed of only if there is a *lis*, and the court should refrain from examining the various issues that are sought to be canvassed in these proceedings. It is argued that what the petitioners are seeking to achieve would strike at the foundation of democracy, under the Indian Constitution, and place judges of the higher judiciary above other sections of the people of India, which conflicts with its “basic structure”. He therefore urged that the writ petition should be dismissed.

26. Before further discussion, it is relevant to extract the 1997 Resolution, as well as the Judicial Conference of 1999's resolution, followed by material provisions of the Act, which are reproduced below.

**The 1997 Resolution:**

**“RESOLUTION**

*The following two Resolutions have been ADOPTED in the Full Court Meeting of the Supreme Court of India on May 7, 1997:*

*RESOLVED that an in-house procedure should be devised by the Hon'ble Chief Justice of India to take suitable remedial action against Judges who by their acts of omission or commission do not follow the universally accepted values of judicial life including those indicated in the “Restatement of Values of Judicial Life.”*

*RESOLVED FURTHER THAT every Judge should make a declaration of all his/her assets in the form of real estate or investments (held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her) within a reasonable time of assuming office and in the case of sitting Judges within a reasonable time of adoption of this Resolution and thereafter whenever any acquisition of a substantial nature is made, it shall be disclosed within a reasonable time. The declaration so made should be to the Chief Justice of the Court. The Chief Justice should make a similar declaration for the purpose of the record. The declaration made by the Judges or the Chief Justice, as the case may be, shall be confidential.”*

**The 1999 Judicial Conference Resolution:**

*“RESTATEMENT OF VALUES OF JUDICIAL LIFE (CODE OF CONDUCT) ADOPTED IN THE CHIEF JUSTICES' CONFERENCE IN DECEMBER 1999*

*The Conference of Chief Justices of all High Courts was held on 3<sup>rd</sup> and 4<sup>th</sup> December, 1999 in the Supreme Court premises. During the said Conference, the Chief Justices unanimously resolved to adopt the “Restatement of Values of Judicial Life” (Code of Conduct).*

*WHEREAS by a Resolution passed in the Chief Justices' Conference held at New Delhi on September 18-19, 1992, it was resolved that it is desirable to restate the pre-existing and universally accepted norms, guidelines and conventions reflecting the high values of judicial life to be followed by Judges during their tenure of office;*

*AND WHEREAS the Chief Justice of India was further requested by that Resolution to constitute a Committee for preparing the draft restatement to be circulated to the*

*Chief Justices of the High Courts for discussion with their colleagues, which was duly circulated on 21.11.1993;*

*AND WHEREAS suggestions have been received from the Chief Justices of the High Courts after discussion with their colleagues;*

*AND WHEREAS a Committee has been reconstituted by the Chief Justice of India on April 7, 1997, to finalize the 'Restatement of Values of Judicial Life' after taking note of the draft Restatement of Values of Judicial Life prepared by a Committee appointed pursuant to the Resolution passed in the Chief Justices' Conference 1992 and placed before the Chief Justices' Conference in 1993;*

*AND WHEREAS such a Committee constituted by the Chief Justice of India has prepared a draft restatement after taking into consideration the views received from various High Courts to the draft which was circulated to them;*

*NOW THEREFORE, on a consideration of the views of the High Courts on the draft, the restatement of the pre-existing and universally accepted norms, guidelines and conventions called the 'RESTATEMENT OF VALUES OF JUDICIAL LIFE' to serve as a guide to be observed by Judges, essential for an independent, strong and respected judiciary, indispensable in the impartial administration of justice, as redrafted, has been considered in the Full Court Meeting of the Supreme Court of India on May 7, 1997 and has been ADOPTED for due observance.*

**RESTATEMENT OF VALUES OF JUDICIAL LIFE:**

*(1) Justice must not merely be done but it must also be seen to be done. The behaviour and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary. Accordingly, any act of a Judge of the Supreme Court or a High Court, whether in official or personal capacity, which erodes the credibility of this perception has to be avoided.*

*(2) A Judge should not contest the election to any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law.*

*(3) Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed.*

*(4) A Judge should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him.*



- (5) *No member of his family, who is a member of the Bar, shall be permitted to use the residence in which the Judge actually resides or other facilities for professional work.*
- (6) *A Judge should practice a degree of aloofness consistent with the dignity of his office.*
- (7) *A Judge shall not hear and decide a matter in which a member of his family, a close relation or a friend is concerned.*
- (8) *A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.*
- (9) *A Judge is expected to let his judgments speak for themselves; he shall not give interview to the media.*
- (10) *A Judge shall not accept gifts or hospitality except from his family, close relations and friends.*
- (11) *A Judge shall not hear and decide a matter in which a company in which he holds shares is concerned unless he has disclosed his interest and no objection to his hearing and deciding the matter is raised.*
- (12) *A Judge shall not speculate in shares, stocks or the like.*
- (13) *A Judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (Publication of a legal treatise or any activity in the nature of a hobby shall not be construed as trade or business).*
- (14) *A Judge should not ask for, accept contributions or otherwise actively associate himself with the raising of any fund for any purpose.*
- (15) *A Judge should not seek any financial benefit in the form of a perquisite or privilege attached to his office unless it is clearly available. Any doubt in this behalf must be got resolved and clarified through the Chief Justice.*
- (16) *Every Judge must at all times be conscious that he is under the public gaze and there should be no act or omission by him which is unbecoming of the high office he occupies and the public esteem in which that office is held.*

*These are only the “Restatement of the Values of Judicial Life” and are not meant to be exhaustive but only illustrative of what is expected of a Judge.*

*Provisions of the Act*





*(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,-*

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*information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third part, 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;*

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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:*

*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."*

27. The previous narration of events and submissions would reveal that the petition involves the following points, that are to be ruled upon by the Court:

- (1) Whether the CJI is a public authority;
- (2) Whether the office of CPIO, of the Supreme Court of India, is different from the office of the CJI; and if so, whether the Act covers the office of the CJI;
- (3) Whether asset declarations by Supreme Court judges, pursuant to the 1997 Resolution is "information", under the Right to Information Act, 2005;

(4) If such asset declarations are “information” does the CJI hold them in a “fiduciary” capacity, and are they therefore, exempt from disclosure under the Act;

(5) Whether such information is exempt from disclosure by reason of Section 8(1) (j) of the Act;

(6) Whether the lack of clarity about the details of asset declaration and about their details, as well as lack of security renders asset declarations and their disclosure, unworkable.

Point Nos. 1 and 2:

28. Both these points are taken up for consideration, together, for convenience, as they involve analysis of related issues. Before a decision on the point, a few words about the Act are necessary. Under the scheme of the Information Act, “record”, “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, as noticed above are defined by Section 2(h) as-

*“means any authority or body or institution of self – government established or constituted-*

*(a) by or under the Constitution of India.”*

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 who is approached, does not possess the information sought, the

Public Information Officer (PIO) has to forward the application, under Section 6(3) to the authority who 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).

29. The Act arguably is one of the most important pieces of legislation, in the post independence era, to effectuate democracy. It may be likened to a powerful beacon, which illuminates unlit corners of state activity, and those of public authorities which impact citizens' daily lives, to which they previously had no access. It 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, by Section 8). Decisions and decision making processes, which affect lives of individuals and collectives can now be subjected to gaze; if improper motives, or reasons contrary to law or avowed policies are discernable, those actions can be questioned. Parliamentary intention in enacting this law was to arm citizens with the mechanism 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. This has been addressed at two levels: one, by taking a number of security and intelligence related organizations out of purview of the Act, and two, by enacting specified exemptions – from disclosure, on grounds of public interest.

30. As noted previously, “public authority” has been widely defined; it includes an authority created by or under the Constitution of India. The CIC concluded that the CJI is a public authority, on a facial reading of Article 124. The provision is under the heading “Establishment and constitution of the Supreme Court,” and in the relevant part, it says that “*There shall be a Supreme Court of India consisting of a Chief Justice of India and...*” The Act, notes the CIC, also provides for competent authorities defined by Section 2(e). The CJI is one such specified competent authority, in relation to the Supreme Court, under Section 2(e) (ii) of the Act and Section 28 empowers him to frame Rules to carry out purposes of the Act. In view of these provisions, the court is of opinion that the CIC did not commit any error in concluding that the CJI is a public authority.

31. The second point, which flows out of the first, requires further examination. It is contended that the office of the CJI is different from that of the Registry (of the Supreme Court); the further contention here appears to be that the CJI performs a verisimilitude of functions, than merely as Chief Justice of the Supreme Court, and in such capacity, through his office, separately holds asset declarations, and information relating to it, pursuant to the 1997 resolution.

32. That the Constitution recognizes the CJI’s prominent role in higher judicial appointments is stating the obvious. He is, unlike the United States (where the Chief Justice is the Chief Justice of the US Supreme Court) the Chief Justice of India. This prominent role as “head of the judiciary” or the judicial family, if one may use a well worn term, was underlined by a Constitution Bench of the Supreme Court in *K. Veeraswami v. Union of India* 1991 (3) SCC 655, where the court, by the majority and concurring judgments held that members of the higher judiciary (High Courts and the Supreme Court) are covered by the Prevention of Corruption Act, and can be prosecuted, provided the CJI is consulted beforehand, and consents to that course. Mr. Justice J.S. Verma (who later held the office of Chief Justice of India with distinction)

dissented; he held that the Prevention of Corruption Act, according to its scheme, as existing, does not apply to constitutional functionaries, such as Judges of the High Courts, Judges of the Supreme Court, the Comptroller and Auditor General and the Chief Election Commissioner. Though not a “vertical” superior (to borrow a phrase from the dissenting opinion in *Veeraswami*) nevertheless the CJI discharges various other functions. The question is whether those are exempted from the Act.

33. It would be necessary to recollect here that initially, in this case, the Appellate authority had remitted the matter for consideration of the respondent’s query- which was in two parts, one, being information about whether declarations were made by Supreme Court judges, and two, being about declarations made by High Court judges to the respective Chief Justices. The appellate authority held, *inter alia*, that:

*“The order of the CPIO is silent regarding Section 6 (3) of the Right to Information Act. To the above extent, I feel that the appellant is justified in contending that if the CPIO was not holding the information, he should have considered the question of Section 6 (3). Regarding the respective States, if the CPIO was not holding information, he should have considered whether he should have invoked the provision under Section 6 (3) of the Right to Information Act.”*

The first petitioner (CPIO), however, after remand did not address the issue fully; he only asked the applicant to approach the concerned States for what he sought. Thus, whether the information relating to asset declaration was held by the CJI or separately in another office of the CJI, was left unanswered.

34. Now, there cannot be any two opinions about the reality that the Chief Justice of India performs a multitude of tasks, specifically assigned to him under the Constitution and various enactments; he is involved in the process of appointment of judges of High Courts, Chief Justices of High Courts, appointment of Judges of Supreme Court, transfer of High Court judges and so on. Besides, he discharges *administrative* functions under various enactments or rules, concerning appointment of members of quasi judicial

tribunals; this may be by him, or nominees (other Supreme Court judges) appointed by him. He is also involved in the administration of legal aid, and heads policy formulation bodies, under law, in that regard, at the national level; he heads the judicial education programme initiative, at the national level. It is quite possible therefore, that the Chief Justice, for convenience maintains a separate office or establishment. However, the petitioners did not urge about these aspects, or bring any other facts to this court's notice.

35. What this court cannot ignore, regardless of the varied roles of the CJI, is that they are directly relatable to his holding the office of CJI, and heading the Supreme Court. His role as Chief Justice of India, is by reason of appointment to the high office of the head of the Supreme Court. The first petitioner did not assign the application to either the CJI or any other office or authority; it is not also urged that such office has a separate establishment, with its own Public Information Office, under the Act. There is no provision, other than Section 24, exemption organizations. That provision exempts, through the Second Schedule (to the Act), the Intelligence Bureau, Research and Analysis Wing of the Cabinet Secretariat; Directorate of Revenue Intelligence; Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotic Control Bureau, Aviation Research Centre, various para-military forces, and named police establishments. Section 24(2) empowers the Central Government, by notification to vary the Second Schedule, and add other organizations. There is no clue in these provisions, that the office of the Chief Justice of India, is exempt; on the contrary, internal indications in the enactment point to even the President of India, being covered by the Act (Section 2(h) and Section 2(e) (iv)). To conclude that the CJI does not hold asset declaration information in his capacity as Chief Justice of India, would also be incongruous, since the 1997 resolution explicitly states that the information would be given to him. In these circumstances the court concludes that the CJI holds the information pertaining to asset declarations in his capacity as Chief Justice; that office is



a “public authority” under the Act and is covered by its provisions. The second point stands decided, accordingly.

Point No. 3

36. The definition of “information” under Section (f) is 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..”*

As evident, the definition is extremely wide; the crucial words are “any material in any form”. The other terms amplify these words, explaining the kind of forms that information could be held by an authority. It also includes “information relating to any private body which can be accessed by a public authority under any other law for the time being in force”. Facially, the definition comprehends all matters which fall within the expression “material in any form”. There is no justification in cutting down their amplitude by importing notions of those materials which are mandatorily held by it. The emphasis is on the information available, having regard to the objectives of the Act; not the manner in which information is obtained or secured by the authority. Thus, *inter se* correspondence of public authorities may lead to exchange of information or file sharing; in the course of such consultative process, if the authority borrowing the information is possessed of it, even temporarily, it has to account for it, as it is “material” held. As far as the later part of the definition, i.e. accessing of information by or under any law, is concerned, it appears that this refers to what is with a private organization, but can be accessed by the public authority, under law. The court deduces this, because the theme is included by the conjunctive “and”; but for such inclusion, such private information would not have been subjected to the *regime* of the Act. Therefore, it is held that all “material in any form” includes all manner of information;

the absence of specific exclusion leads this court to conclude that asset declarations by judges, held by the CJI are “information”, under Section 2(f).

37. The court would now proceed to discuss the decisions cited by the petitioners. In *Dwarkanath Tewari*, the question was take-over of management of a school, under provisions of an Education Code. The Supreme Court held that the action was unlawful, as the Education Code did not have the force of law:

*“the Code has no greater sanction than an administrative order or rule, and is not based on any statutory authority or other authority which could give it the force of law. Naturally, therefore, the learned Solicitor General, with his usual fairness, conceded that the article relied upon by the respondents as having the force of law, has no such force, and could not, therefore, deprive the petitioners of their rights in the properties aforesaid.”*

In *Kruze v. Johnson (supra)* the court considered the validity of a bye-law, framed by a county council, saying that it was one having the force of law as one affecting the public or some section of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done and accompanied by some sanction or penalty for its non-observance. If validly made such a bye-law has the force of law within the sphere of its legitimate operation. The function of such bye-laws is to supplement the general law by which the legislature delegates its own power to make them. This holding was followed by our Supreme Court in *Indian Airlines Corpn. v. Sukhdeo Rai*, (1971) 2 SCC 192.

38. The above decisions were rendered at a time, when administrative law in this country was in a nascent stage of development. Early decisions of the Supreme Court had ruled that in absence of a duty under a statute or law, a writ of mandamus would not lie. This perception slowly changed, after the decision in *A.K. Kraipak v. Union of India* 1969 (2) SCC 262, where it was held that the line between quasi-judicial orders and administrative orders had thinned. The court said that arriving at a just decision was the

aim of both quasi-judicial enquiries as well as administrative enquiries and that an unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. Similarly, enforceability of non-statutory norms through writ proceedings was underlined, in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691:

*“..They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed, if a positive obligation exists, mandamus cannot be denied.”*

It may be worthwhile mentioning, that far back, in *B.N. Nagarajan v. State of Mysore*,(1966) 3 SCR 682, a Constitution Bench of the Supreme Court rejected a submission that absence of rules framed under Article 309, or a legislation, constrained the executive from prescribing terms and conditions of service of its employees. The court observed that:

*“We see nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that rule or act.”*

For these reasons, and in the light of the previous conclusion regarding whether declarations had to be mandated by norms having the force of law, the court is of the view that the cases cited on behalf of the petitioners are not apt, for a decision in these proceedings.

39. The next limb of the question is the important ground for the petitioners' questioning the impugned order was that the 1997 Resolution is non-binding and entirely volitional, vis-à-vis judges of the Supreme Court. The petitioners argued that

though the Resolution commended declaration of assets to the CJI, it did not have any legal sanctity, and was not based on any legal obligation. Thus, if an individual judge were not to furnish a declaration, as was expected by the Resolution, the omission could not be addressed. It was emphasized that dependence on an individual's volition, afforded an extremely tenuous foundation, (equal to none) to say that there existed a legal obligation. At best the Resolution encapsulated a hope, and recorded an unenforceable moral declaration by those making it. The further argument was that the CJI had no power under the Constitution, or any law, to compel the individual Justice omitting to declare his assets, or take remedial measures, was underlined as a strong indicator that the obligation, if so termed, was moral, and not legal. Reliance was placed upon for the submission that duties to be termed as such are to be founded on some legal provision. The context of this argument was that any matter or material held without mandate of law, or not mandated by law, is not "information".

40. The respondent and the interveners countered the petitioners' submission by saying that the Resolutions were meant to be complied with, and not otherwise. Commenting on the lack of any mechanism for its (the Resolution's) enforcement, it was argued that the method of dealing with it would be for the CJI to consider. The interveners argued that the Chief Justices' Conferences, held annually, are not sanctioned by law- in the sense understood; each High Court is autonomous, under the Constitution, and yet no one questions this annual practice, for which considerable public expenditure is incurred. These, say the interveners, establish that the foundations of the obligation (to declare personal assets) are not confined to the provisions of the Constitution, or any law, but on conventions and practices which develop around them, and crystallize into binding norms. For support, reliance was placed upon the judgment of the Supreme Court, in the *Supreme Court Advocates on Record Association* case.

41. The merits of the argument – about whether the Resolution’s provisions for declaration (of assets, by judges) involve, to a great extent, an examination of Judges’ role in society, and under the Constitution. India adopted her Constitution 62 years ago with the avowed objective of ushering a Democratic state. The scheme of power-sharing envisions both horizontal distribution (between the three branches, i.e. legislature, executive and judicial) and vertical -Centre, State, Local bodies and Panchayats. Autonomy is granted to certain specifically created bodies (Election Commission, Comptroller and Auditor Genral, Union Public Service Commission), which are mandated to be independent in their functioning, to effectuate democratic guarantees, and fairness in official functioning. The Courts play a pivotal role in this scheme; they arbiter disputes that arise between these wings, - between states, between individuals or citizens and states or their agencies, between disputing citizens and so on. The duty of interpreting the Constitution is that of the courts (the Supreme Court and the High Courts). Judicial review – through Articles 32 and 226 of the Constitution forms a critical component of this unique structure; it is deemed almost inviolate; and non-derogable (*L. Chandra Kumar v. Union of India* 1997 (3) SCC 261; *Minerva Mills v. Minerva Mills v. Union of India* 1980 (3) SCC 625; *Kesavananda Bharati v. Union of India* 1973 Supp SCR 1).

42. The underlying premise of every modern Constitution is that power, wherever given, is held and exercised in trust. Thus provisions are made to account for the use of such power; these are often alluded to as a system of checks and balances, whereby the tendency of one wing of the state overstepping its bounds, is curtailed. To the legislator or Parliamentarian, is added on additional check of public opinion, and the attendant voter rejection, (for perceived misdeeds, inaction or abuse of power) in an election. A minister’s tenure is guaranteed as long as he has the confidence of the Chief Minister or Prime Minister, or as long as the Council of Ministers has the confidence of the legislature. A Civil Servant, however, enjoys greater assurance of tenure, and can be

removed or dismissed on previously prescribed grounds, after following fair procedures, mandated by rules of legal provisions. In this context, the judicial role is unique, and the measure of confidence placed on judges is reflected in the protection afforded to their tenure, as well as the extent their functioning is insulated from other branches (of government) and all sources of potential influence. The protection given, in India, is of a very high order, to members of the higher judiciary. They cannot be removed from office, except for proved misbehavior; the removal can be only by two-thirds majority of each House of Parliament followed by an address to the President; this is to be preceded by findings of a three-member inquiry; the composition of this tribunal lends objectivity to the process, of a very high order. One may well ask why such a high degree of protection is granted. If the answer were to be summed up in one word, it is independence. Independence is multidimensional - it is hierarchal (i.e. freedom to decide according to law, -which includes binding precedent- unconstrained by dictates of judicial hierarchy); it is the independence to decide irrespective of parties' expectations; to decide unconstrained by the individual judge's expectations of public approbation or condemnation, about the result; to decide on the basis of objectively known and discernable, binding, legal principles, rather than caprice or humour. The inalienable value of independence of the judiciary – achieved through entrenched provisions in the Constitution of India – has been repeatedly emphasized in several decisions, during the last 59 years (*J. P. Mitter v. Chief Justice, Calcutta* AIR 1965 SC 961; *Kesavananda Bharati* (supra); *Smt. Indira Nehru Gandhi v. Shri Raj Narain* 1975 Supp SCC 1; *In re the Special Courts Bill* 1979 (1) SCC 380; *S.P.Gupta v. Union of India* AIR 1982 SC 149; *K. Veeraswami* (supra); *Sub-Committee on Judicial Accountability v. Union of India* 1991 (4) SCC 699 [holding that independence of the judiciary is “an essential attribute of the rule of law” and therefore, a part of the basic structure of the Constitution of India]; *Supreme Court Advocates on Record Association* (supra) *C. Ravichandran Iyer* (supra); *L.*

*Chandra Kumar* (supra); and *Re Special Reference No. 1 of 1998* (1998 [7] SCC 739 and *I.R. Coelho v. State of Tamil Nadu* 2007 (2) SCC1).

43. A judge's independence, paradoxically imposes duties on him (or her): duty to decide according to law and binding precedent, rather than individual choice of the judge's notion of justice of the case; the duty to not only do justice, but follow a fair procedure which accords with notions of justice: "appear to be doing justice", which in turn would mean that the judge is not completely "free" to follow a personal agenda, but has to decide the merits of the case, according to facts presented by parties. This aspect is summed up by Dr. Frances Kahn Zemans, in her article "*The Accountable Judge: Guardian of Judicial Independence*," 72 S. CAL. L. REV. 625, 646-47 (1999) as follows:

*"The impression that the judge relies on fairness as the standard against which to measure decisions can have dangerous implications that the judge is free to follow her conscience despite the law. Sometimes the law itself is unfair or unwise, but lacking a constitutional infirmity the judge is bound by it. And unless there is a legal basis, the judge cannot right every wrong. In addition, judges do not set their own agendas. Thus, they are dependent on others to bring claims before them. While these are quite obvious to judges and lawyers, they may not be so obvious to those who need to be convinced that judicial independence is to be valued and protected..."*

44. The second duty – another dimension of independence- is that judges do not decide cases by dictates of popularly held notions of right and wrong. Indeed a crucial part of the judge's mandate is to uphold those fundamental values upon which society organizes itself; here, if the judge were to follow transient "popular" notions of justice, the guarantees of individual freedoms, entrenched in the Constitution, would be rendered meaningless. Again, Justice Micheal Kirby, an outstanding contemporary jurist, underlined this value of independence in the following words:

*"In a pluralist society judges are the essential equalisers. They serve no majority or any minority either. Their duty is to the law and to justice. They do not bend the knee to the governments, to particular religions, to the military, to money, to*

*tabloid media or the screaming mob. In upholding law and justice, judges have a vital function in a pluralist society to make sure that diversity is respected and the rights of all protected.”*

Dr. Aharon Barack, former Chief Justice of Israel, in his acclaimed work *“Judges in a Democracy”* underlines that transient “popular” notions of justice can never be the basis of a proper verdict. He summarizes this paradox as follows:

*“...An essential condition for realizing the judicial role is public confidence in the judge. This means confidence in judicial independence, fairness and impartiality. It means public confidence in the ethical standards of the judge. It means public confidence that judges are not interested parties to the legal struggle and that they are not fighting for their own power but to protect the constitution and democracy. It means that public confidence that the judge does not express his own personal views but rather the fundamental beliefs of the nation...This fact means that the public recognizes the legitimacy of judicial decisions, even if it disagrees with their content.*

*The precondition of ‘public confidence’ runs the risk of being misunderstood. The need to ensure public confidence does not mean the need to ensure popularity. Public confidence does not mean following popular trends or public opinion polls. Public confidence does not mean accountability to the public in the way the executive and the legislature are accountable. Public confidence does not mean pleasing the public; public confidence does not mean ruling contrary to the law or contrary to the judge’s conscience to bring about a result that the public desires. On the contrary, public confidence means ruling according to the law and according to the judge’s conscience, whatever the attitude of the public may be...”*

45. Having set this backdrop, it is necessary to examine the rival contentions. That the Resolution, so far as it mandates judges’ asset disclosure to the CJI is not grounded on any law, or founded on a Constitutional provision, or that there are no provisions similar to the Ethics in Government Act, 1978 as in the United States, explicitly obliging judges and other public servants to disclose personal assets, cannot be doubted. Yet, the debate cannot end on that note itself. Judges, in a modern society – more so in India, in the legitimate exercise of their jurisdiction, handle complex social, political and economic issues. Very frequently, this means that significant policy gaps in legislation, or



executive determinations are to be commented, or ruled upon. Such filling in of the “gaps” is recognized as falling within the legitimate domain of the courts. Rights and liberties of individuals and collectives, as well as duties and limitations placed upon governments, or their myriad agencies, are routinely examined and adjudicated upon, by courts. In the exercise of such jurisdiction, courts generally and judges in particular act as neutral and impartial arbiters; while discharging such powers, they are custodians of the law. The power is undeniably vast and the impact of judgments, depending on what is in issue, wide and sweeping. If the courts and judges are placed in the context of a modern democracy, it is imperative that the value of independence and freedom from bias and other unwanted tendencies ought to be- *in principle*- accounted for. The system of checks and balances, which ensures, at two levels – internally (through appeals, reviews and overruling of precedents by larger bench decisions), and externally, through overbearing legislation of a verdict, deemed unworkable or not in accord with the law which is interpreted, guarantees institutional accountability.

46. If one considers that Legislators, Parliamentarians and Administrators are held to standards of disclosure (of personal assets) whether by express rules (as in the case of the civil services) or so mandated, by virtue of the elective office legislators aspire to (by reason of the law declared by the Supreme Court, in the *Association for Democratic Reforms case*) the petitioners’ argument seems strained. Judges – of the Supreme Court and the High Courts, swear to uphold the Constitution and the laws. The oath poignantly reminds the judge who dons the robes would decide “without fear or favour” - an obvious reference to the independent role. It would be highly anomalous to say that in exercise of the legitimate jurisdiction to impact peoples’ lives, property, liberties and individual freedoms, as well as interpret duties and limitations placed upon state and non-state agencies, barring the institutional accountability standards existing in the Constitution, judges have no obligation to disclose their personal assets, to someone or authority.

47. All power – judicial power being no exception – is held accountable in a modern Constitution. Holders of power too are expected to live by the standards they set, interpret, or enforce, at least to the extent their office demands. Conventions and practices, long followed, are known to be legitimate sources, and as binding upon those concerned, as the express provisions themselves. This was emphasized, by a nine-judge Bench, in *Supreme Court Advocates-on-Record Assn. case (supra)*:

*“The primary role of conventions is to regulate the exercise of discretion – presumably to guard against the irresponsible abuse of powers. Colin R. Munro in his book Studies in Constitutional Law (1987 Edn.) has summed up the field of operation of the conventions in the following words:*

*“Some of the most important conventions, therefore, are, as Dicey said, concerned with ‘the discretionary powers of the Crown’ and how they should be exercised. But it is not only in connection with executive government and legislature-executive relations that we find such rules and practices in operation. They may be found in other spheres of constitutional activity too; for example, in relations between the Houses of Parliament and in the workings of each House, in the legislative process, in judicial administration and judicial behaviour, in the civil service, in local government, and in the relations with other members of the Commonwealth.”*

*...Sir Ivor Jennings puts it as under:*

*“The laws provide only a framework; those who put the laws into operation give the framework a meaning and fill in the interstices. Those who take decisions create precedents which others tend to follow, and when they have been followed long enough they acquire the sanctity and the respectability of age. They not only are followed but they have to be followed.”*

*“...We are of the view that there is no distinction between the “constitutional law” and an established “constitutional convention” and both are binding in the field of their operation. Once it is established to the satisfaction of the Court that a particular convention exists and is operating then the convention becomes a part of the “constitutional law” of the land and can be enforced in the like manner.”*

(emphasis supplied)

The Supreme Court therefore, concluded, in that case, that the practice of accepting the Chief Justice of India's advice, for appointment of judges, had resulted in a binding convention.

48. The 1997 Resolution (and the 1999 Judicial Conference resolution) were intended, in this Court's opinion to reflect the best practices to be followed, and form the standards of ethical behaviour of judges of the higher judiciary. As observed earlier, independence and impartiality of judges are "core" judicial values. There are others, equally, if not more important. Those values – or canons, as the 1999 Judicial Conference Resolution puts it – flesh out what all judges should conform to, such as avoidance of certain types of conduct, rectitude in public and private life, avoidance of any relationship that could potentially conflict with judicial functions, avoidance of spouses' and children practicing in the Court of the judge concerned, prohibition of certain kinds of investment, avoiding airing views by the judge in the press or newspaper (in sensitive or controversial matters, or those likely to be considered by the Court) and so on. That these canons are an inalienable part of what a judge is and how he or she is expected to behave, is not doubted. The declaration of assets by such judges to their respective Chief Justices was a part of that codification process; the 1999 Judicial Conference Resolution sees the 1997 Resolution (of the Supreme Court) as such. It might arguably be stated that no such norm existed, before the 1997 Resolution, requiring declaration of assets by judges. That might be so; yet such ethical norms are neither static nor are in a vacuum. They are in one sense universal (as in the case of the need to be unbiased, impartial, independent and maintain probity and rectitude); at the same time, they are contextual to the times – particularly when they pertain to the kinds of behaviour, relationships and investments that could be deemed acceptable – or not acceptable- having regard to a judge's role and challenges faced by Court during

particular times. Seen from this dynamic, norms of judicial ethics are placed in a continuum, evolving with contemporary challenges. Therefore, the introduction of the stipulation of declaring personal assets, is to be seen as an essential ingredient of contemporary acceptable behaviour and establishing a convention.

49. This court is of the opinion that the volitional nature of the resolutions, should be seen as the higher judiciary's commitment to essential ethical behaviour, and its resolve to abide by it. Therefore, that such need to declare assets is not mandated by Parliamentary law, or any statutory instrument, becomes of secondary importance. The mere fact that Supreme Court judges (through the 1997 Resolution) and members of the higher judiciary (through the Judicial Conference Resolution) recognize these as normative, and governing their conduct, is sufficient to bind them. They formed a set of conventions of the Constitution. To conclude otherwise would *endanger credibility* of the institution, which prides – by its adherence to the doctrines of precedent, and *stare decisis* (in the discharge of its constitutional obligation in judging) – in consistency, and by meaning what it says, and saying what it means. This aspect is summed up aptly by an Australian Judge in the following manner:

*“Some standards can be prescribed by law, but the spirit of, and the quality of the service rendered by; a profession depends far more on its observance of ethical standards. These are far more rigorous than legal standards.... They are learnt not by precept but by the example and influence of respected peers. Judicial standards are acquired, so to speak, by professional osmosis. They are enforced immediately by conscience.”*

[ Ref. Justice J.B. Thomas; *Judicial Ethics in Australia*, 2d ed. Sydney: LBC Information Services,1997]

50. There is yet, perhaps one more powerful reason to hold that the 1997 Resolution binds members of the higher judiciary. In its interpretation of non-statutory instruments – be they orders, circulars, or policies- by state, or agencies (as understood under Article 12 of the Constitution of India) the Supreme Court has ruled on several occasions (Ref

*Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489; *H.V. Nirmala v. Karnataka State Financial Corpn.*, (2008) 7 SCC 639; *G.J. Fernandez v. State of Karnataka* 1990 (2) SCC 488 and *Union of India v. Rajpal Singh* 2009 (1) SCC 216) that such executive determinations are binding on the authority making it (“*executive authority must be rigorously held to the standards by which it professes*”- *Ramana Dayaram; supra*). While there cannot be any dispute that the 1997 Resolution was made by a body- Full Court of the Supreme Court, and the 1999 Resolution, through a Chief Justices’ conference – which is not accorded constitutional status, and granted that High Courts are not “subordinate” to the Supreme Court in the sense that the latter has no powers of superintendence, yet, those bodies (the conference) are undeniably collegial, consisting of the highest judicial authorities of each High Court, and the Supreme Court. The decisions taken, and resolutions adopted during their deliberations are aimed at arriving at common solutions to grapple problems that beset the legal system of the country as a whole. The resolutions and decisions are taken seriously, and with the intention of implementation. To put it otherwise, the resolutions were made (and similar resolutions, are made) to be followed and adhered to. In these circumstances, it would be robbing the solemnity of the Resolutions adopted in 1997 to say that they were made with the expectation of not being implemented.

51. This court, is also mindful that the law declared in Supreme Court, based on the existence of conventions of the Constitution, in the *Supreme Court Advocates on Record Association* case, ushered a new chapter in the annals of our Constitutional history, whereby the function of recommending appointments to the higher judiciary was left almost exclusively to the senior most echelons of the High Court and Supreme Court (for High Courts’) and for the Supreme Court, exclusively to a defined collegial body of its five senior most judges. One (perhaps) implied and inarticulate premise of the judgment was the emergence of professionally better equipped judges, with the required degree of independence, insulated from potential conflicts and capable of handling complex

legal issues for the years to come. The 1997 Resolution, and the Judicial Conference Resolution of 1999 have to be placed in perspective, and this historical context, where the higher judiciary – in the wake of the 1993 judgment, committed itself, for the first time, to a declared set of codified standards. In view of the above discussion, the court finds that the 1997 Resolution binds all those covered by it.

52. The last submission of the petitioners' counsel, on this point, was while emphasizing that the 1997 Resolution was at best a moral declaration, that it could not, in the event of its non-compliance be enforced. No doubt, the CJI is not a "vertical" superior (to borrow the phrase from the dissenting opinion in *K. Veeraswami*). In that sense, there is vacuum, in regard to a prescribed mechanism for ensuring compliance, by all those who make, and are governed, by the Resolution. Yet, as underlined in the preceding part of this judgment, this aspect of the matter cannot be viewed from the traditional duty-breach-enforcement perspective. The Resolution of 1997 is *meant to be adhered to*; the question of its non-adherence should not be debated. Members of the higher judiciary in this country occupy high Constitutional office; the Constitution designedly devised only one procedure for removal, and conferred immense confidence on these functionaries. The assumption was, and continues to be that holders of these offices are women and men of impeccable credentials, and maintain the highest standards of probity in their professional and personal lives. They are deemed to be aware of the demands of their office, and the role of judges. Therefore, if they consciously decide to create a self-regulatory norms, their adherence is guaranteed. That there is no objective mechanism to ensure its implementation is in the circumstances, of little or no moment, because the consequence of not complying – with the Resolution, is linked to the faith in the system: the thought alone is sufficient to incentivize compliance. Moreover, the question of enforceability should be seen in the context of a given situation. Peer pressure, the administrative options available with the

CJI and the Chief Justices of High Courts, would be weighed carefully, with the aim of seeing that asset declarations are made.

53. In view of the above discussion, it is held that the second part of the respondent's application, relating to declaration of assets by the Supreme Court judges, is "information" within the meaning of the expression, under Section 2 (f) of the Act. The point is answered accordingly; the information pertaining to declarations given, to the CJI and the contents of such declaration are "information" and subject to the provisions of the Right to Information Act.

Point No. 4

54. The petitioners argue that assuming that asset declarations, in terms of the 1997 constitute "information" under the Act, yet they cannot be disclosed – or even particulars about whether, and who made such declarations, cannot be disclosed – as it would entail breach of a fiduciary duty by the CJI. The petitioners rely on Section 8 (1) (f) to submit that a public authority is under no obligation to furnish "*information available to a person in his fiduciary relationship*". The petitioners emphasize that the 1997 Resolution crucially states that:

*"The declaration made by the Judges or the Chief Justice, as the case may be, shall be confidential."*

The respondent, and interveners, counter the submission and say that CJI does not stand in the position of a fiduciary to the judges of the Supreme Court, who occupy high Constitutional office; they enjoy the same judicial powers, and immunities and that the CJI cannot exercise any kind of control over them. In these circumstances, there is no "fiduciary" relationship, least of all in relation to making the asset declarations available to the CJI, who holds it because of his status as CJI. It is argued that a fiduciary relationship is created, where one person depends, on, or entrusts his affairs to

someone, who has superior knowledge, or enjoys an advantage, which would be beneficial to the person entrusting the subject matter of trust.

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 trial 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 Lexicon*, 3rd Edition, 2005, defines fiduciary relationship as

*“a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the 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. If viewed from this perspective, it is immediately apparent that the CJI cannot be a fiduciary vis-à-vis Judges of the Supreme Court; he cannot be said to have superior knowledge, or be better trained, to aid or control their affairs or conduct. Judges of the Supreme Court hold independent office, and are there is no hierarchy, in their judicial functions, which places them at a different plane than the CJI. In these circumstances, it cannot be held that asset information shared with the CJI, by the judges of the Supreme Court, are held by him in the capacity of a fiduciary, which if directed to be revealed, would result in breach of such duty. So far as the argument that the 1997 Resolution had imposed a confidentiality obligation on the CJI to ensure non-disclosure of the asset declarations, is concerned, the court is of opinion that with the advent of the Act, and the provision in Section 22 – which overrides all other laws, etc. (even overriding the Official Secrets Act) the argument about such a confidentiality condition is on a weak foundation. The mere marking of a document, as “confidential”, in this case, does not undermine the overbearing nature of Section 22. Concededly, the confidentiality clause (in the 1997 Resolution) operated, and many might have *bona fide* believed that it would ensure immunity from access. Yet the advent of the Act changed all that; all classes of information became its subject matter. Section 8(1) (f) affords protection to one such class, i.e. fiduciaries. The content of such provision may include certain kinds of relationships of public officials, such as doctor-patient relations; teacher-pupil

relationships, in government schools and colleges; agents of governments; even attorneys and lawyers who appear and advise public authorities covered by the Act. However, it does not cover asset declarations made by Judges of the Supreme Court, and held by the CJI.

59. For the above reasons, the court concludes the petitioners' argument about the CJI holding asset declarations in a fiduciary capacity, (which would be breached if it is directed to be disclosed, in the manner sought by the applicant) to be insubstantial. The CJI does not hold such declarations in a fiduciary capacity or relationship.

Point No. 5

60. The petitioners argue that the information sought for is exempt from disclosure by reason of Section 8 (1) (j) of the Act. The argument here is that such class of information – about personal asset declarations has nothing to do with the individual's duties required to be discharged, as a judge, an obvious reference to the first part of Section 8 (1) (j); it is also emphasized that access to such information would result in unwarranted intrusion of privacy. The applicant counters the submission and says that details of whether declarations have been made, to the CJI can hardly be said to be called "private" and that declarations are made by individual judges to the CJI in their capacity as judges. It is submitted that the present proceeding is not concerned with the content of asset declarations.

61. The scheme of the Act, visualizes certain exemptions from information disclosure. Section 8 lists these 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. 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”*

If, however, the information 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 who is concerned with the information or whose records are sought) and after considering his views, the authority can disclose it.

62. 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. Certain conflicts may underlie particular cases of access to information and the protection of personal data, arising from the fact that both rights cannot be exercised absolutely in all cases. The rights of all those affected must be respected, and no single right must prevail over others, except in clear and express circumstances. To achieve these objectives, and resolve the underlying tension between the two (sometimes) conflicting values, the Act reveals a well-defined list of 11 kinds of matters that cannot be made public, under section 8(1)(j). There are two types of information seen as exceptions to access; the first usually refers to those matters limited only to the State in protection of the general public good, such as national security, international relations, confidentiality in cabinet meetings, etc. The second class of information with state or its agencies, is personal data of individual citizens, investigative processes, or confidential information disclosed by artificial or juristic entities, like corporations, etc. Individuals’ personal data is protected by the laws of access to confidential data and by privacy rights. Often these guarantees – right to access information, and right to privacy, occur at the same regulatory level. The Universal Declaration of Human Rights, through

Article 19 articulates the right to information; Article 12, at the same time, protects the right to privacy:

*“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”.*

63. There can be no doubt that the Act is premised on disclosure being the norm, and refusal, the exception. As noticed, besides the exemptions, non-disclosure is also mandated in respect of information relating to second schedule institutions. 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. Clause (j) of Sub-section (1) 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.

64. Ironically the right to privacy, a recognized fundamental right by our Supreme Court, has found articulation – through a safeguard, though limited, against information disclosure, under the Act. In India, there is no law relating to data protection, or privacy; these 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”* is 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. These judgments, however did not explore the latent tension 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.

65. 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. In *Kameshwar Prasad v. State of Bihar* AIR 1962 1166, the Supreme Court repelled an argument that public servants do not possess fundamental rights, through another Constitution Bench, as follows:

*“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....*

.....

*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)*

The above discussion would mean that an individual or citizen's fundamental rights, which include the right to privacy – are not subsumed or extinguished if he accepts or holds public office. Section 8(1) (j) is an affirmation of this; it ensures that all information furnished to public authorities – including personal information (such as asset disclosures) are not given blanket access; the information seeker has to disclose a sustainable public interest element for release of the information.

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.

68. This court cannot be unmindful of the fact that several categories of public servants, including Central and State Government servants, as well as public sector employees and officers of statutory corporations are required by service rules to declare their assets, periodically. Settled procedures have been prescribed, both as to periodicity as well as contents of such asset disclosure. The *regime* ushered under the Act no doubt mandates, by Section 4, disclosure of a wide spectrum of information held by each public authority to be disseminated to the public; it can even be through the medium of the internet. Yet, that provision is overridden by Section 8 – by virtue of the *non-obstante* clause. This means that such personal information – regarding asset disclosures, need not be made public, unless public interest considerations dictate it, under Section 8(1)(j). Any other interpretation would rob this clause of its vitality, as the value of privacy would be completely eroded, and the information would be disseminated without following the procedure prescribed.

69. There is another aspect to this issue. The obligation to spell out what class of information exists with each public authority, is provided in Section 4; the relevant part reads as follows:

*“Section 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 computerized are, within a reasonable time, and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated;*

*(b) publish within one hundred and twenty days from the enactment of this Act:-*

*(i) particulars of its organization, functions and duties;*

*(ii) the powers and duties of its officers and employees;*

*(iv) the norms set by it for the discharge of its functions;*

*(vi) a statement of the categories of documents that are held by it or under its control*

*(xiv) details in respect of the information, available to or held by it, reduced in electronic form;*

*(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 communication, including internet, so that the public have minimum resort to the use of this Act to obtain information....”*

70. The obligation to provide unimpeded access, to information, even through the internet, however, is lifted in case of the 11 categories or classes of information, mentioned in Section 8; this is apparent from the opening words *“Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen...”* If these two provisions are seen together, the primary obligation to facilitate public access – even through internet, cast by Section 4, does not apply in respect of information that

would fall under Section 8. The norm, (by virtue of the subject matter of Section 8, and the *non-obstante* clause) is non-disclosure, of those categories which fall under the exemptions. Now, Section 8 (1) (j) clearly alludes 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. If public servants – here the expression is used expansively to include members of the higher judiciary too – 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”. As observed earlier, a public servant does not cease to enjoy fundamental rights, upon assuming office. That the public servant has to make disclosures is a part of the system’s endeavor 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 private gain. If the information applicant is able to demonstrate what Section 8(1) (j) enjoins the information seeker to, i.e. that *“the larger public interest justifies the disclosure of such information”* the authority deciding the application can proceed to the next step, after recording its *prima facie* satisfaction, to issue notice to the “third party” i.e. the public servant who is the information subject, why the information sought should not be disclosed. After considering all these views and materials, the CPIO or concerned State PIO, as the case may be can pass appropriate orders, including directing disclosure. This order is appealable.

71. Section 8 (1) in the opinion of the court, confers substantive rights even while engrafting procedural safeguards, because of the following elements:

- (1) Personal information and privacy rights being recognized by Section 8 (1) (j), as the substantive rights of third parties;

Due satisfaction of the CPIO or the State PIO, that disclosure of such personal information is necessary and in the public interest – which is to be arrived at on the basis of objective materials;

The satisfaction being recorded after hearing or considering the views of the third party whose information is in issue, in accordance with the procedure prescribed in Section 11;

(2) The satisfaction being recorded in writing, through an order, under Section 11 (3);

(3) The order, if adverse to the third party, is appealable (Section 11 (4)).

72. The respondents had relied on the *Assn. for Democratic Reforms*, case, and contended that in a democracy, public officials, including members of the higher judiciary are under a duty to disclose their assets. The context of that decision was whether electoral aspirants, i.e. candidates to elective office, in the absence of statutory obligation, could be compelled to disclose their assets. The Supreme Court said that they could be, affirming this court's decision, and significantly observing that if a law had existed, courts would have been bound by its terms. The court held that:

*“19. At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory Rules. It is for Parliament to amend the Act and the Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules.*

*20. However, it is equally settled that in case when the Act or Rules are silent on a particular subject and the authority implementing the same has constitutional or statutory power to implement it, the Court can necessarily issue directions or orders on the said subject to fill the vacuum or void till the suitable law is enacted.*

*21. Further, it is to be stated that: (a) one of the basic structures of our Constitution is “republican and democratic form of government”; (b) the election to the House of People and the Legislative Assembly is on the basis of adult suffrage, that is to say, every person who is a citizen of India and who is not less than 18 years of age on such date as may be fixed in that behalf by or under any*

law made by the appropriate legislature and is not otherwise disqualified under the Constitution or any law on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election (Article 326); (c) holding of any asset (immovable or movable) or any educational qualification is not the eligibility criteria to contest election; and (d) under Article 324, the superintendence, direction and control of the “conduct of all elections” to Parliament and to the legislature of every State vests in the Election Commission. The phrase “conduct of elections” is held to be of wide amplitude which would include power to make all necessary provisions for conducting free and fair elections.”

.....

*The aforesaid decision of the Constitution Bench unreservedly lays down that in democracy the little man — voter — has overwhelming importance on the point and the little-large Indian (voter) should not be hijacked from the course of free and fair elections by subtle perversion of discretion of casting votes. In a continual participative operation of periodical election, the voter does a social audit of his candidate and for such audit he must be well informed about the past of his candidate. Further, Article 324 operates in areas left unoccupied by legislation and the words “superintendence, direction and control” as well as “conduct of all elections” are the broadest terms. The silence of statute has no exclusionary effect except where it flows from necessary implication. Therefore, in our view, it would be difficult to accept the contention raised by Mr Salve, learned Solicitor-General and Mr Ashwani Kumar, learned Senior Counsel appearing on behalf of the intervenor that if there is no provision in the Act or the Rules, the High Court ought not to have issued such directions to the Election Commission. It is settled that the power of the Commission is plenary in character in exercise thereof. In statutory provisions or rules, it is known that every contingency could not be foreseen or anticipated with precision, therefore, the Commission can cope with a situation where the field is unoccupied by issuing necessary orders.”*

.....

*...it can be deduced that the members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves and this would include their decision of casting votes in favour of a particular candidate. If there is a disclosure by a candidate as sought for then it would strengthen the voters in taking appropriate decision of casting their votes...”*

73. It is evident that the court consciously declared the law, in that case, in a statutory vacuum. The value it reached out to, underlines the foundation of our republic i.e. democracy, and the voter’s right to make an informed choice while exercising his franchise. Being a participant in the democratic process, where law and policy makers

are elected, the court reasoned that the “little” man cannot be kept in the dark, about the individuals who offer themselves as candidates, in elections. The situation here is radically different, to say the least. One, a statute occupies the field, in the form of the Right to Information Act, whose provisions were not considered by the Supreme Court, in the above case. Two, India did not choose the US model of either electing judges, or subjecting their appointment to a confirmation process (as in the case of the Federal Judiciary) where the legislature plays a prominent participatory role. Three, any obligations and safeguards have to be seen in the context of the statutory mandate, and the court cannot, on vague notions of transparency, detract from well established values of independence. It is one thing to say that judges are accountable, and have to make asset declarations; for extension of complete and uninhibited access to the contents, of asset declarations, by invoking transparency, a mere demand is insufficient, as the court would be decreeing something which the law not only does not provide, but for which the existing law makes explicit provisions to the contrary. Most importantly, it would be wrong for the court to, for this purpose equate the two class of public servants – i.e. legislators and members of the higher judiciary. Apart from the inalienable value of independence of the judiciary, which is entrenched in the Constitution, and guaranteed by various provisions, judges’ tenure is secured till retirement, subject to good behaviour (the threshold of their removal being very high), whereas legislators, Parliamentarians and the top most echelons of the Government, at ministerial level, occupy office as long as the people choose to keep them there, or as long as the concerned individual has the confidence of the Prime Minister or Chief Minister (in the case of a minister, in the cabinet or council of minister). Rhetoric and polemics apart, there is no reason to undermine the protections provided by law, merely because some members of the public believe that judges ought to permit unimpeded disclosure of their personal assets to the public. The obligation to give access or deny access to information, is today controlled by provisions of the Act, as it

presently exists. It nowhere obliges disclosure of assets of spouses, dependants and children – of judges. Members of the higher judiciary are, in this respect entitled to the same protection – and exemptions- as in the case of other public servants, including judicial officers up to the District Judge level, members of All India services, and other services under the Union. The acceptance of such contentions, in disregard of express provisions of law, can possibly lead to utterly unreasonable demands for all kinds of disclosure, from all classes of public servants – which would be contrary to statutory intendment.

74. In this court’s opinion Section 8(1)(j) is both a check on the power of requiring information dissemination, (having regard to its potential impact on individual privacy rights,) as well as a mechanism whereby individuals have limited control over whether personal details can be made public. This safeguard is made in public interest in favour of all public officials and public servants. There can be no manner of doubt that Supreme Court and High Court judges are public servants (*K. Veeraswami* established that). They are no doubt given a high status, and afforded considerable degree of protections, under the Constitution; yet that does not make them public servants any less. If that is the true position, the protection afforded by Section 8(1) (j) to judges is of no lesser quality than that given to other public servants, in this regard. To hold otherwise would be incongruous, because, members of the higher judiciary are held to self imposed obligatory Constitutional standards, and their asset disclosures are held, (by this judgment), to be “information” held by the CJI, a public authority, under the Act; yet, they would be deprived of the protection that the same enactment extends to all those covered by it. It cannot be that judges’ being held to high standards, on the basis of norms articulated by the 1997 resolution and the judicial conference resolution of 1999, should place their asset declarations outside of the Act – a demand never made by the applicant, whose case from inception of these proceeding has been that they are subjected to the Act, being “information”. Therefore, as regards contents of the

declaration, information applicants would have to, whenever they approach the authorities, under the Act, satisfy them under Section 8(1)(j) and cross the threshold of revealing the “larger public interest” for disclosure, as in the case of all those covered by the said provision. For the purposes of this case, however, the particulars sought do not justify or warrant that protection; all that the applicant sought is whether the 1997 resolution was complied with. That kind of innocuous information does not warrant the protection granted by Section 8 (1)(j).

75. In view of the above discussion, it is held that the contents of asset declarations, pursuant to the 1997 resolution – and the 1999 Conference resolution- are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); they are not otherwise subject to disclosure. As far as the information sought by the applicant in this case is concerned, (i.e. whether the declarations were made pursuant to the 1997 resolution) the procedure under Section 8(1)(j) is inapplicable.

Point No. 6

74. This point was urged by the petitioners, in support of the submission that the 1997 resolution does not state with clarity, what are “assets” and “investments” and that this ambiguity, which renders the system unworkable.

75. The 1997 resolution says, *inter alia*, that:

*“...every Judge should make a declaration of all his/her assets in the form of real estate or investments (held by him/her in his/her own name or in the name of his/her spouse or any person dependent on him/her) within a reasonable time of assuming office...”*

It is no doubt true that the resolution lacks particulars about what constitutes “assets” and “investments”. The lack of clarity, understandably means the likelihood of individual



Justices of the Supreme Court, interpreting the expression differently, leading to some confusion. In that sense, the argument does raise some concern.

76. The Ethics in Government Act, 1978 was enacted by the US Congress; it applies to all levels of federal judges (known as “Article III judges” since they are usually appointed for life, and cannot be removed except through a process analogous to impeachment). The enactment obliges federal judges to disclose personal and financial information each year; the sources of income, other than what is earned as an “employee of the United State” (since judges in the US are free to receive remuneration through writing, teaching, and lecturing, provided such activity does not hinder their duties) received during a preceding calendar year, the source, description and value of gifts beyond a defined value too are to be declared. The US Congress passed what are known as “redaction” provisions to the Ethics in Government Act, for the first time in 1998, allowing members of the judiciary to withdraw, or withhold certain information “to the extent necessary to protect the individual who filed the report”. Redaction is permitted after the individual judge demonstrates the existence of objective factors which justify withholding of part of the information, mandated to be revealed. The US Judicial Conference (which is a statutorily created body, by virtue of Congressional law, and comprises of 13 representatives among District Judges, equal representation from Circuit (Appeal Court) judges, and two judges of the US Supreme Court, with the Chief Justice of the US Supreme Court as the Chairman) submits reports; it also examines redaction applications, by judges, through a committee known as “Subcommittee on Public Access and Security”. The procedure followed has been described in the article *“Re-examining Financial Disclosure Procedures for the Federal Judiciary”* (The Georgetown Journal of Legal Ethics, Summer 2005, by Sarah Goldstein):

*“The Committee has developed a multi-phase process for reviewing judges’ redaction requests and public requests for copies of judges’ reports. When a member of the public requests a copy of a judge’s financial disclosure report, the*

*Committee sends a notification of the request to the judge in question and concurrently contacts the United States Marshals Service ("USMS") for a security consultation. The public request must be made on "an original, signed form listing the judges whose reports [the requester is] seeking and any individuals on whose behalf the requests are being made." When the Committee notifies the judge of the public request for the report, it asks the judge to respond in writing within fourteen days as to whether the judge would like to request new or additional redactions of information; however, the Committee can extend this response period if the judge so requests. If the judge does not request a redaction from his or her report at this time, the Committee staff sends a cost letter to the requester, the requester pays for the report, and the Committee then releases a copy of the report to the requester. However, if the judge requests a redaction upon receiving notification of the request for a copy of the report, the Committee staff sends the results of USMS security consultations, original requests for the judge's report, and the judge's redaction requests to members of the Subcommittee. The Subcommittee then votes on the redaction requests, with a majority needed to approve or deny the request, and the Subcommittee vote is forwarded to the Committee staff. As with reports where the judge has not requested a redaction, the staff then sends a cost letter to the requester, and the requester pays for the report. Finally, the Committee releases a copy of the report, with approved redactions, to the requester."*

77. As may be seen from the above discussion and from the extracts quoted, fairly well established norms defining what kinds of information should be disclosed; the safeguards, and provision for public disclosure of the information furnished by the concerned US federal judges, exist. Absence of particularization or lack of uniformity about the content, of asset declarations, pursuant to the 1997 resolution, can therefore, result in confusion. However, these are not insurmountable obstacles; the CJI, if he deems it appropriate, may in consultation with the Supreme Court judges, evolve uniform standards, devising the nature of information, relevant formats, and if required, the periodicity of the declarations to be made. The forms evolved, as well as the procedures followed in the United States, - including the redaction norms- under the Ethics in Government Act, 1978, reports of the US Judicial Conference, as well as the Judicial Disclosure Responsibility Act, 2007, which amends the Ethics in Government Act of 1978 to: (1) restrict disclosure of personal information about family members of

judges whose revelation might endanger them; and (2) extend the authority of the Judicial Conference to redact certain personal information of judges from financial disclosure reports may be considered. Such forms may be circulated to various High Courts, for consideration. Under the scheme of the Constitution, High Courts are independent, and would have to decide on such matters after due deliberation (See *Indira Jaising* where it was held that “*in the hierarchy of the courts, the Supreme Court does not have any disciplinary control over the High Court Judges, much less the Chief Justice of India has any disciplinary control over any of the Judges.*”).

78. There is one more area, which may be appropriately considered. With this court holding that asset declarations are “information”, in the event of applications under the Act, seeking access to content of such declarations, it may become necessary for the CPIOs concerned to examine, while considering the requests, the existing information. The evolution of formats assumes importance in this context; if such forms are evolved, claim of various applicants will have to be effectively adjudicated. The CJI may consider the feasibility of constituting a CPIO of sufficient seniority, as well as an Appellate authority, in this regard. The court would refrain from expressing anything more, as those are administrative concerns, which are not within the purview of discussion, here.

#### *Postscript*

79. The intervening developments have focused on “accountability” of judges. As this judgment has sought to demonstrate, a judge is not “unaccountable” as is sometimes wrongly understood; and is subject to several constraints. The judicial branch lacks either the “sword or the purse” controlled by the other two branches. Through its judgments, upholds values such as equality, fundamental human rights, freedom of speech and the press, dignity of human beings, and acts as bulwark against contemporary majoritarian impulses, that could threaten democratic values – be it on the basis of region, class, caste, religion, or even political persuasion (such as against

McCarthyism). Even while independent, judges are under several visible constraints unlike the executive branch, they are to conduct proceedings in open court. This holds great value, since publicity of proceedings is, in the words of Lord Shaw (Ref. *Scott –vs- Scott* 1913 AC 417):

*“the very soul of justice. It is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself while trying under trial...”*

Again, unlike Parliament, which enacts laws, which apply generally, the judge is an occasional, or casual law-maker, “filling in” small gaps, through his interpretive role; he never does that in vacuum. Most importantly, judgments of courts are to be based on reason, and discuss fairly, what is argued. Judges, unlike other sections of members of the public cannot meet unjustified personal attacks or tirades carried out against them, or anyone from their fraternity; no clarifications can be issued, no justification is given; propriety and canons of judicial ethics require them to maintain silence. Standards of judicial ethics require that judges are not heard in public (See Canons of Ethics, Judicial Conference Resolution of 1999 that *“(8)A Judge shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination.”* The judge is thus unable to go and explain his position to the people. An honest, but strict or unpopular judge can be unfairly vilified, without anyone giving his version; similarly, unfounded allegations of improper personal behaviour cannot be defended by the judge in public, even though they can be levelled freely; they may tarnish his reputation or worse, and he would have to smart under them, under the haunting prospect of its being resuscitated every now and then.

80. Anecdotal references to corruption - in the absence of any empirical materials, by those who formerly held high judicial offices, have tended to undermine the judicial branch; this denigration persists, unfortunately, even as regards the judicial *role*. Those who know, keep quiet about the crushing burdens that members of the judiciary – including the higher judiciary have to shoulder. The number of cases filed, continue to

increase; expenditure on the judicial branch is infinitesimal. The CJ's conference of 2008, in its agenda, noted that the Ninth (five year) Plan (1997-2000) released, for priority demands of the judiciary released a meager 0.071 percent of the total expenditure; for the tenth plan, the expenditure was 0.0078 percent.

81. The perception that the wheels of justice grind too slowly, in the meanwhile, continues. For the litigant, who pins his hopes on speedy resolution of his disputes, these explanations may wear thin; yet the judge who tries cases is not superhuman; the judge is as human as any other citizen. In 1987, the Law Commission recommended appointment of 107 judges per million people, when it found that at that time the ratio was only 10.5 judges per million people and it wished the same to begin with appointment of 50 judges per million people. Most states have not been able to achieve it even today. The popular public perception is that judges do not work after official hours, and enjoy long vacations, a hangover of the British Raj. On the contrary, a crushing load ensures that judges put in equal number of hours, sometimes more, than what is spent by them, in open court, resulting typically in 10-14 hour working days, at times more. Most Saturdays are working days, if the judicial officer or the judge has to be "on par" with the judgments and orders that are to be prepared and announced. If judges have to understand and deal with all the cases listed before their courts, they would also have to spend some time, beforehand, reading up the previous day. They would have to also spare time to think, reflect and write judgments; the day's orders have to be corrected and signed by them, each day; often, these are extremely urgent, and concern vital matters, such as bails, interim injunctions, and the like. If an analysis of the number of judgments impacting litigants were to be made, some startling facts would emerge. These are not peculiar to Indian courts; Courts in the United Kingdom, too have a similar structure, as the website of the Judiciary of England and Wales, suggests ([http://www.judiciary.gov.uk/keyfacts/legal\\_year/judicial\\_sitting\\_days.htm](http://www.judiciary.gov.uk/keyfacts/legal_year/judicial_sitting_days.htm);

accessed at 20:20 hours, 29<sup>th</sup> July, 2009). There, Court of Appeal and High Court judges are expected to devote themselves to judicial business throughout the legal year

*“..which usually amounts to somewhere in the region of 185-190 days....Circuit judges are expected to sit for a minimum of 210 days, although the expectation is for between 215-220 per year....District judges are expected to sit for a minimum of 215 days....Judges also have out of court duties to perform such as reading case papers, writing judgments, and keeping up to date with new developments in the law.”*

82. In a report (“*Too many cases*” Vol. 26, issue No. 1, January 3-16, 2009, “The Frontline”) a commentator – Nick Robinson noted that the Supreme Court of India heard 57,000 “admission” matters, and accepted 6900 for hearing in 2007, when it decided 5000 cases. The report noted that in the United States, an appeal to the Supreme Court is “fairly easy”, yet, the court accepts about 1 per cent of those appeals and “*generally hears less than a hundred cases each year.*” The report noted that curtailing court’s vacation was not a good idea:

*“Judges in India though appear far more days in court than their counterparts in most other countries (the Supreme Court heard arguments for 190 days in 2007, while the U.S. Supreme Court sat for only 38 days). Additionally, many judges use their “vacation time” to research and write major decisions, go through briefs to prepare for cases, and engage in professional development such as reading recent legal publications or attending conferences...”*

83. The intervening events after the hearings were concluded in this case, has seen some developments; the Full Court of the Supreme Court has resolved to place the information in the Court website, after modalities are duly worked out. A statement to this effect was made by the petitioner’s counsel, who has, in the meanwhile been appointed as the Attorney General for India. Some High Courts, including the Delhi High Court, have resolved similarly to make the information public. This judgment does not wish to comment on those developments; the findings in this case, should place everything in their legal and contextual perspective. In the ultimate analysis, the faith

and confidence of the people in the institution of the judiciary cannot depend only on whether, and to what extent judicial ethics are evolved, or adhered to; that is no doubt important, in a modern democracy. Yet what really matters is that impartiality and diligence are an inalienable part of every judge's function; he or she has the responsibility of unceasing commitment to these values, and unwavering fidelity to the rule of law. It would be useful to quote Dr. Barrack, from "*The Judge in a Democracy*" again, as it summarizes the values which every judge is committed to live by:

*"As a judge, I do not have a political platform. I am not a political person. Right and left, religious and secular, rich and poor, man and woman, disabled and nondisabled, all are equal in my eyes. All are human beings, created in the image of the Creator. I will protect the human dignity of each. I do not aspire to power. I do not seek to rule. I am aware of the chains that bind me as a judge and as the president of the Supreme Court. I have repeatedly emphasized the rule of law and not of the judge. I am aware of the importance of the other branches of government – legislative and executive – which give expression to democracy. Between those two branches are connecting bridges and checks and balances.*

*I view my office as a mission. Judging is not a job. It is a way of life. Whenever I enter the courtroom, I do so with the deep sense that, as I sit at trial, I stand on trial."*

To this court, this case and the present judgment has been a humbling experience; it required distancing from subjective perceptions to various issues, and a detached analysis of each point argued, by the parties. The task was not made any lighter, since it involved balancing of varied sensitivities. That the court was called upon to decide these issues, is an affirmation of the rule of law, and the intervener uncharitably characterized the petitioners as lacking *locus standi*. That these issues have to be addressed by courts – which are required to interpret the law and the Constitution, cannot be denied by anyone. That the petition involved consideration of serious and important legal issues, was also not disputed by the parties to these proceedings. In these circumstances, dismissal of the petition on the narrow ground of lack of standing, would have resulted in the court failing to discharge its primary duty.

84. The above discussion and conclusions in this judgment are summarized as follows:

Re Point Nos. 1 & 2 *Whether the CJI is a public authority and whether the CPIO, of the Supreme Court of India, is different from the office of the CJI; and if so, whether the Act covers the office of the CJI;*

*Answer:* The CJI is a public authority under the Right to Information Act and the CJI holds the information pertaining to asset declarations in his capacity as Chief Justice; that office is a “public authority” under the Act and is covered by its provisions.

Re Point No. 3: *Whether asset declaration by Supreme Court judges, pursuant to the 1997 Resolution are “information”, under the Right to Information Act, 2005;*

*Answer:* It is held that the second part of the respondent’s application, relating to declaration of assets by the Supreme Court judges, is “information” within the meaning of the expression, under Section 2 (f) of the Act. The point is answered accordingly; the information pertaining to declarations given, to the CJI and the contents of such declaration are “information” and subject to the provisions of the Right to Information Act.

Re Point No. 4: *If such asset declarations are “information” does the CJI hold them in a “fiduciary” capacity, and are they therefore, exempt from disclosure under the Act*

*Answer:* The petitioners’ argument about the CJI holding asset declarations in a fiduciary capacity, (which would be breached if it is directed to be disclosed, in the manner sought by the applicant) is insubstantial. The CJI does not hold such declarations in a fiduciary capacity or relationship.

Re Point No. 5: *Whether such information is exempt from disclosure by reason of Section 8(1) (j) of the Act.*



Answer: It is held that the contents of asset declarations, pursuant to the 1997 resolution – and the 1999 Conference resolution- are entitled to be treated as personal information, and may be accessed in accordance with the procedure prescribed under Section 8(1)(j); they are not otherwise subject to disclosure. As far as the information sought by the applicant in this case is concerned, (i.e. whether the declarations were made pursuant to the 1997 resolution) the procedure under Section 8(1)(j) is inapplicable.

Re Point No. (6) *Whether the lack of clarity about the details of asset declaration and about their details, as well as lack of security renders asset declarations and their disclosure, unworkable.*

Answer: These are not insurmountable obstacles; the CJI, if he deems it appropriate, may in consultation with the Supreme Court judges, evolve uniform standards, devising the nature of information, relevant formats, and if required, the periodicity of the declarations to be made. The forms evolved, as well as the procedures followed in the United States, - including the redaction norms- under the Ethics in Government Act, 1978, reports of the US Judicial Conference, as well as the Judicial Disclosure Responsibility Act, 2007, which amends the Ethics in Government Act of 1978 to: (1) restrict disclosure of personal information about family members of judges whose revelation might endanger them; and (2) extend the authority of the Judicial Conference to redact certain personal information of judges from financial disclosure reports may be considered.

85. In this case, the appellate authority had recorded *inter alia*, that:

*“A perusal of the application dated 10.11.2007 discloses that the appellant had sought for information relating, to the declaration of assets by the Hon’ble Judges of the Supreme Court as well as the Chief Justice of the States.”*

In view of the findings recorded above, the first petitioner CPIO shall release the information sought by the respondent applicant,- about the declaration of assets, (and not the contents of the declarations, as that was not sought for) made by judges of the Supreme Court, within four weeks. The writ petition is disposed of in terms of this direction; in the circumstances, the parties shall bear their own cost.

Copies of this judgment be given Dasti to counsel for the parties.

**S. RAVINDRA BHAT  
(JUDGE)**

**SEPTEMBER 2, 2009**

**Equivalent Citation:** 2009(1)ALD522

**IN THE HIGH COURT OF ALLAHABAD**

Decided On: 14.11.2008

Appellants: **Surendra Singh S/o Sri Shanker Singh**  
**Vs.**

Respondent: **State of U.P. through its Secretary, Ministry of Education (Madhyamik) and Ors.**

**Hon'ble Judges:**

V.M. Sahai and Sanjay Misra, JJ.

**Subject: Constitution**

**Disposition:**

Appeal dismissed

**JUDGMENT**

**V.M. Sahai and Sanjay Misra, JJ.**

1. This Special Appeal has been preferred against the order dated 18.8.2008 passed by learned Single Judge in writ petition No. 41740 of 2008 Committee of Management v. State of U.P. and Ors. By the order dated 18.8.2008 the learned Single Judge has required the State respondents to file counter affidavit and has issued notice to the respondent No. 6 and 7 and further till the next date of listing it has been provided that no action shall be taken against the petitioner under the Right to Information Act 2005.

2. Learned Counsel for the petitioner/respondent in this Special Appeal has been duly served with notice of this appeal on 25.9.2008.

Learned Counsel for the appellant has assailed the order on the ground that the controversy as to whether the Committee of Management of an Educational Institution or its members can be required to give information on an application made under the Right to Information Act 2005 has been considered by a Division Bench of this court in the case of Committee of Management Ismail Girls National Inter College, Meerut v. State of U.P. and Ors. 2008(8) ADJ 345. According to him the District Inspector of Schools, Ghazipur by the letter dated 4.8.2008 had forwarded the query made by the appellant from the Committee of Management of the institution known as Shanti Niketan Inter College, Barahi, District Ghazipur for replying and furnishing information point wise to the appellant.

3. The Committee of Management preferred the writ petition against the said letter of the District Inspector of Schools wherein the impugned order was passed. The appellant submits that the Committee of Management of the institution is covered under the definition of Section 2(h) of the Right to Information Act and is a public authority since the scheme of administration of the institution has been framed under Section 16-A of the Intermediate Education Act and the

management and functions are clearly regulated by the provisions of Intermediate Education Act 1921 and Regulations framed thereunder.

4. The institution is engaged in providing education to the society and is receiving grant in aid from the State for payment of salary to the entire teaching staff, non teaching staff and other employees. It has been stated that information sought by the appellant is not exempted under Section 8(j) of the Act inasmuch as the institution is engaged in public activity and it cannot be said that it would be an invasion of privacy of any individual of the Committee of Management or other. According to him the information sought by the appellant was relating to the appointment/educational certificates of six Assistant teachers named therein and employed in the institution which cannot be brought within the exemption of Section 8(j) of the Right to Information Act.

5. We have considered the submission of learned Counsel for the appellant and find that in so far as the Committee of Management of the private managed institutions are concerned they are covered under the definition of Section 2(h) of the Right to Information Act being public authority as has been held by a Division Bench of this court in the case of Committee of Management Ismail Girls National Inter College, Meerut v. State of U.P. and Ors. (supra). The appellant is right in saying that the information sought by him from the Committee of Management was bound to be given as per provisions of Right to Information Act 2005 and the District Inspector of Schools had rightly required the Committee of Management of the Shanti Niketan Inter College, to provide such information to the petitioner.

6. In so far as the exemption from disclosure of information as provided in Section 8 of the Act is concerned the provisions of Section 8(j) exempts 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. The provisions of Sub-clause (J) of Section 8 of the Act also provides that the Information Officer or appellant authority as the case may be can record his satisfaction for disclosure of such information in the larger public interest.

7. The provisions therefore has been enacted by the legislature for non disclosure of information only when there is no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual. However, it has further been provided in the Sub-section that such information can be disclosed if the Officer is satisfied that the larger public interest justifies the disclosure of such information.

8. Section 11 of the Act relates to Third party Information. Third party has been defined under Section 2(n) to mean a person other than the citizen making a request for information and includes a public authority. It is only when the third party treats the information required to be disclosed as confidential that the authority is required to give a written notice to such third party of the request. In case such information is not held as confidential no written notice is required to be given. Such provisions in Section 11 appear to be for the purpose of preventing the Act from becoming a tool in the hands of a busy body only for the purpose of settling personal scores or other oblique motives.

9. The information sought by the appellant in the present case relates to six Assistant teachers of the institution in question and the educational certificates submitted by them for being appointed as Assistant teachers. Since the institution in question and the Committee of Management managing the institution is a public authority as defined in the Act the Assistant

teachers working therein are also performing the duties of imparting education to the society. Consequently when the Assistant teachers are performing public activity the information sought by the applicant is with relation to such activity and it cannot be said that the teaching work done by the six Assistant teachers has no relationship to any public activity or interest.

10. The information sought by the appellant cannot also be said to cause unwarranted invasion of the privacy of such Assistant teachers in the institution inasmuch as their educational certificates are matter of record of the institution on the strength of which they have obtained appointments as Assistant teachers and are performing public activities by imparting education in the institution. By no stretch of imagination can it be held that the information regarding their appointment and educational certificates would be an unwarranted invasion of their privacy.

11. Their educational qualifications are not privy to them but are records available with the institution which is a public authority within the meaning of the Act.

The information sought in the present case cannot also be brought within the meaning of being confidential to the third party. The records of educational certificates of the six Assistant Teachers are available with the public authority and have relationship to their performing their duties as such. They were appointed by virtue of their qualifications and hence such qualifications have direct relationship to their duties. As such the exemption from disclosure of information under Section 8(j) is not available in the present case.

12. Consequently the District Inspector of Schools has rightly required the Committee of Management of the institution to divulge the information regarding appointment and educational certificates of the six Assistant teachers named therein who are working in the Shanti Niketan Inter College, Barahi, District Ghazipur which is a duly recognized institution by the Board of High School and Intermediate and it receives grant in aid from the State. The provisions of the Payment of Salaries Act 1971 are also applicable on the institution which is a clear stand taken by the Committee of Management in paragraph 3 of the writ petition. Consequently, even the exemption under Section 8(j) of the Right to Information Act cannot come to the help of the Committee of Management/institution.

13. For the aforesaid reasons we find that the interim order passed by the learned Single Judge preventing such information to be elicited from the Committee of Management of Shanti Niketan Inter College, Barahi, District Ghazipur requires to be set aside and since the writ petition had been filed for quashing the order dated 4.8.2008 passed by the District Inspector of Schools requiring the information to be given under the Right to Information Act 2005 the writ petition itself stands decided by this order. Since we have held that the information is to be divulged/given and the third parties or the institution or its Committee of Management cannot claim any exemption from disclosure of information sought in the present case under the Act, the writ petition itself having no merit shall stand dismissed.

14. In the result the Special Appeal succeeds, the interim order dated 18.8.2008 is set aside and the writ petition itself stands dismissed.

No order is passed as to costs.

[MANU/KA/0274/2008](#)

**Equivalent Citation:** ILR2008KAR3830

**IN THE HIGH COURT OF KARNATAKA**

Writ Petition No. 11713/2006

Decided On: 03.07.2008

**Appellants: The Bidar District Central Co-op Bank Limited represented by its  
Managing Director and Public Information Officer**

**Vs.**

**Respondent: The Karnataka Information Commission represented by State Chief  
Information Commissioner and Anr.**

**Hon'ble Judges:**

K. Bhakthavatsala, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Shantesh Gureddy, Adv.

For Respondents/Defendant: Subramanya, Adv. for Ashok Haranahalli, Adv. for R2 and R.B. Sathyanarayan Singh, HCGP for R1

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 2, 5(1), 5(2), 18(1) and 19(1); Co-operative Societies Act

**Disposition:**

Petition allowed

**Case Note:**

**Right to information Act, 2005 - Sections 2(h), 2(h)(d), 2(h)(d)(1), 18(1) and 19(1)--  
Information sought by the second respondent--Direction of the first respondent to  
the petitioner to furnish the information as sought by the second respondent--  
Impugned direction--Challenge to--Held, According to Section 2(h)(d) of the Act,  
the appropriate Government may include any body owned, controlled or  
substantially financed by it by issuing Notification - The petitioner/Bank has  
remitted back the share capital received from the State Government--The  
supervisory control over the co-operative societies by the Registrar under the Act,  
cannot be construed as a control of such nature, so that the petitioner/Bank can  
be brought within the definition of Section 2(h)(d)(1) of the Act--The Petitioner  
Bank is not an authority within the meaning of Section 2(h)(d) of the Act.--The  
respondent No. 1/Commission has mechanically accepted the complaint and erred  
in directing the petitioner/Cooperative Bank to furnish the details by respondent**

**No. 2 who is just a citizen and he is nothing to do with the petitioner/Bank. Therefore, the impugned order is not sustainable in law.**

**Writ Petition is Allowed.**

## **ORDER**

**K. Bhakthavatsala, J.**

1. The petitioner/Co-operative Bank is before this Court praying for quashing the impugned order dated 18.7.2006 on the file of respondent No. 1 at Annexure-D.

2. The brief facts of the case leading to the filing of the Petition may be stated as under:

The respondent No. 2 filed a complaint dated 26.4.2006 (Annexure-A) under Section 18(1) of the Right to Information Act, 2005 (in short, 'the Act') before the Karnataka Information Commission/respondent No. 1 seeking information regarding:

(a) the names of the borrowers, who have opted for one time settlement in the last five years and

(b) the names of the 160 employees appointed during the year 2005-06.

The petitioner/Bank filed objections to the complaint stating that the complainant is neither a Director nor a Member of the petitioner/Bank and the Bank is not a "Public Authority" and there was no obligation on the petitioner/Bank to give the information as sought for by respondent No. 2. It is also stated that the Bank had not appointed 160 employees as alleged in the complaint. Notwithstanding the objections filed, the respondent No. 1 directed the petitioner/Co-operative Bank by the impugned order, to furnish the information as sought for by respondent No. 2. Therefore, the petitioner is before this Court praying for quashing the impugned order.

3. The petitioner/Co-operative Bank has produced a memo along with a copy of remittance challan dated 27.5.1993 to the effect that the Government's share capital amount of Rs. 71,00,000/- was remitted back in favour of the Government and thus the petitioner/Bank is not substantially financed by the Government. It is contended that the Notification dated 22.9.2005 issued by the registrar of Co-operative Societies as Annexure-C is not applicable to the petitioner/Society. It is further submitted that merely because the Registrar of Co-operative Societies has supervisory control over the Co-operative Bank, it cannot be said that the petitioner/Co-operative Bank is an authority within the scope Section 2(h)(d) of the Act.

4. Learned Counsel for respondent No. 2 submits that since the Registrar of Co-operative Societies has got control over the Co-operative Bank, though it is not substantially financed, it is an authority within scope of Section 2(h) of the Act. It is further submitted that the petitioner has not challenged the Notification of the Registrar dated 22.9.2005 at Annexure-C and there is no illegality or infirmity in the impugned order made by the respondent No. 1.

5. Learned Government Pleader has not disputed the remittance of share capital amount of Rs. 71,00,000/- on 27.5.1993 by the petitioner/Bank in favour of the Government.

6. Even before the Act came into force, the petitioner/Society has remitted back the share capital received from the Government. Section 2(h) of the Act defines "public authority". According to Section 2(h)(d) of the Act, the appropriate Government may include any body owned, controlled or substantially financed by it by issuing Notification. The notification dated 22.9.2005 issued by the registrar of societies can be said one issued under Sub-section (1) and (2) of Section 5 and not under Section 2(h)(d) of the Act. In other words, by issuing the Notification, the Registrar of Co-operative societies has named Public Information Officers and the authority to which appeal shall lie under Section 19(1) of the Act. Consequently, directed the CEO and the Presidents of all Co-operative Institutions in the State to take immediate action to carry out such duties and responsibilities and perform such functions assigned to them under the Act in their designated capacities as per the Notification at Annexure-C. As the Notification dated 22.9.2005 (annexure-C) has not been issued under Section 2(h)(d) of the Act, the petitioner is justified in not challenging the Notification. The supervisory control over the Co-operative societies by the registrar under Co-operative Societies Act, cannot be construed as a control of such nature, so that the petitioner/Co-operative bank can be brought within the definition of Section 2(h)(d)(i) of the Act. The respondent No. 1/Commission has mechanically accepted the complaint and erred in directing the petitioner/Co-operative bank to furnish the details by respondent No. 2 who is just a citizen and he is nothing to do with the petitioner/Bank. Therefore, the impugned order is not sustainable in law.

7. For the reasons stated above, the Petition is allowed and the impugned order dated 18.7.2006 on the file of respondent No. 1 at Annexure-D is quashed no order as to costs.



**Equivalent Citation:** AIR2009AP73, 2009(1)ALT700

**IN THE HIGH COURT OF ANDHRA PRADESH AT HYDERABAD**

Writ Petition No. 16717 of 2008

Decided On: 04.12.2008

Appellants: **The Public Information Officer/Joint Secretary to Chief Commissioner of Land Administration and The Appellate Authority/Secretary, Chief Commissioner of Land Administration**

**Vs.**

Respondent: **A.P. Information Commissioner, (under Right to Information Act, 2005), rep. by its Chief Information Commissioner and Smt. Gousinnisa Baig D/o Late Nawab Khaja Moinuddin Khan W/o Syed Mehmood Samiullah**

**Hon'ble Judges:**

V.V.S. Rao, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: Adv. General

For Respondents/Defendant: P. Venugopal, Adv. for Respondent No. 2

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 2, 3 to 11, 18(1), 22 and 23; Evidence Act, 1872 - Sections 41, 74 and 123; Freedom of Information Act, 2002; Official Secrets Act, 1927; Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952 - Section 2; Constitution of India - Articles 14, 19, 19(1), 21 and 226

**Disposition:**

Petition dismissed

**ORDER**

**V.V.S. Rao, J.**

1. Whether denial of certified copy of Muntakhab<sup>1</sup> to a person on the ground that he/she is not a legal heir of Muntakhab holder is justified under the provisions of Right to Information Act, 2005 (RTI Act, for short)? This interesting question of considerable significance falls for consideration in this writ petition filed by two public authorities of Revenue Administration of Government of Andhra Pradesh, namely, the Public Information Officer/Joint Secretary to Chief Commissioner of Land Administration, Nampally, Hyderabad, and the Appellate Authority/Secretary, Chief Commissioner of Land Administration, Nampally, Hyderabad.

2. Second respondent, Smt. Gousinnisa Begum (wrongly described as Smt. Gousinnisa Baig) filed an application before first respondent requesting for a copy of Muntakhab No. 3232 of 1304F under RTI Act. By an order dated 28.6.2007, first petitioner refused to give certified copy on the ground that her name does not figure in Muntakhab nor she produced legal heir certificate issued by competent civil court establishing her succession. First petitioner also opined that Muntakhab is personal in nature, that it has no bearing of public interest and it need not be disclosed.

3. Second respondent preferred appeal before second petitioner. The same was rejected by an order dated 23.1.2008 in Appeal No. C3/1782/2007, on the ground that Muntakhab is not a public document. Second respondent then preferred further appeal before Andhra Pradesh Information Commission constituted under RTI Act. By order dated 02.7.2008, Chief Information Commissioner directed petitioners to furnish copy of Muntakhab to second respondent.

4. Second respondent filed counter affidavit. Her case is as follows. Sardar Begum in whose favour Muntakhab No. 3232 of 1304F issued died in 1901. In succession case No. 72 of 1344 Fasli (1934 A.D.) in file No. 38/58 of 1339 Fasli-Medak, succession enquiry was conducted. Father of second respondent, Khaja Moinuddin Khan, was declared heir of Muntakhab holder. In this background, if petitioners insist on production of legal heir certificate, it would be highly impossible as Sardar Begum died in 1901. Muntakhab is a public document as defined under Section 74 of Indian Evidence Act, 1872 (Evidence Act, for short) and petitioners cannot deny supply of certified copy of Muntakhab.

5. Learned Special Government Pleader in the office of Advocate General submits that RTI Act impliedly prohibits issue of judgments and decrees in personam. Muntakhab being a decree or succession order issued by competent authority in favour of a person is not a public document and if any person claiming certified copy has to produce legal heir certificate. **Per contra**, learned Counsel for second respondent raised following contentions. Writ petition is not maintainable at the instance of public authorities whose order is set aside. Petitioners did not suffer any legal injury and no principle of natural justice is violated for seeking redressal in extraordinary public law remedy under Article 226 of Constitution of India. Muntakhab is a document in respect of which petitioners cannot claim any privilege nor supply of copy is prohibited under Section 8 of RTI Act.

6. To examine briefly history of RTI Act is a necessary initial step to consider the question. Article 19 of Universal Declaration of Human Rights, 1948 (UDHR) recognizes right to receive information, "every one has 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 area and regardless of frontiers." There is no gainsaying that without participation of citizens, democracy is ineffective. To enable citizens to actively participate in governance information should be made available. Information regarding governmental activities, information about people whom they elected, information about bureaucrats, information about benefits which are conferred on citizens in various walks of life and information about governance itself. In **Association for Democratic Reforms v Union of India** (2002) 5 SCC 294 and **People Union of Civil Liberties v Union of India** (2003) 4 SCC 399 : AIR 2003 SC 2363, Supreme Court emphasized importance of freedom of information. In **People Union of Civil Liberties** (supra), Supreme Court observed as under.

Freedom of speech and expression, just as the equality Clause and the guarantee of life and liberty, has been very broadly construed by this Court right from the 1950s. It has been variously

described as a "basic human right", "a natural right" and the like. It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information, which would help formation of one's opinion and viewpoint and debates on matters of public concern. The importance which our Constitution-makers wanted to attach to this freedom is evident from the fact that reasonable restrictions on that right could be placed by law only on the limited grounds specified in Article 19(2), not to speak of inherent limitations of the right. In due course of time, several species of rights unenumerated in Article 19(1)(a) have branched off from the genus of the article through the process of interpretation by this Apex Court. One such right is the "right to information". The right of the citizens to obtain information on matters relating to public acts flows from the fundamental right enshrined in Article 19(1)(a).

7. Equitable, fair, transparent and justice-ridden administration presupposes that persons be made aware of the Laws, Rules, Regulations and Administrative Guidelines by which their affairs will be governed. Thus right to information has a dynamic role in constitutional governance. All information available with the Government or of information to which the Government/public authorities have access has to be made available to citizens whenever they ask. But like all rights, right to information, which flows from Articles 19(1)(a), 14 and 21 of Constitution, is not at all times and always absolute right. Being a penumbral right to freedom of speech, right to information is subject to State's reasonable restriction on exercise of such right. Interests of sovereignty, integrity, security of India, foreign relations, public order, decency or morality are some of the factors, which might encumber exercise of right to information.

8. The conference of Chief Ministers on "Effective and Responsive Government" held on 24.5.1997 recognised the need to enact law on right to information. Government of India appointed a working group to examine feasibility and need for Right to Information Act to meet ends of open and responsive governance. The working group recommended for enactment of Freedom of Information Act. The issue was deliberated by group of Ministers in accordance with Article 19 of Constitution and Article 19 of UDHR. The Bill enacting Freedom of Information Act, 2002, was passed on 06.1.2003. But the same could not be brought into existence by notifying date of enforcement for various reasons.

9. National Advisory Council deliberated on the issue of ensuring greater and more effective access to information in the background of Freedom of Information Act. They suggested important changes to be incorporated in Freedom of Information Act to ensure smoother and greater actions to information. In tune with Council's suggestion, Government of India decided to make number of changes in the Law, *inter alia*, to include establishment of an appellate machinery with investigating powers, to review decisions of Public Information Officers, penal provisions for failure to provide information, provisions to ensure maximum disclosure and minimum exemptions, consistent with constitutional provisions, and effective mechanism for access to information. In that direction, Right to Information Act, 2005, was enacted repealing Freedom of Information Act, 2002. RTI Act came into force with effect from 21.6.2005. Preamble of RTI Act announces that new Act (RTI Act) is to provide for setting aside 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 working of public authority and to provide for hierarchy of Information Officers, RTI Act also seeks to harmonise conflicting public interests including efficient operations by the Government and revelation of information in actual practice required by citizen.

10. RTI Act has six chapters (31 sections) and two schedules. Chapter-I contains short title and dictionary clause. The heart and soul of RTI Act is chapter-II containing Sections 3 to 11, which

deal with citizens' right to information and obligation of public authorities. Chapters-III, IV and V constitute Information Commissions at various levels and describe powers and functions of these Commissions. Miscellaneous provisions are included in Chapter-VI and Section 22 gives overriding effect to the provisions of RTI Act notwithstanding anything contained in Official Secrets Act, 1927, and any other Law for the time being in force or in any instrument having effected by virtue of any law. Section 23 deals with jurisdiction of Courts to entertain any suit, application or proceeding in respect of any order made under RTI Act. As this case does not involve any controversy with regard to constitution of State Information Commission, Central Information Commission etc., and exercise of power by these Commissions, it is not necessary to refer to those sections.

11. However, it is important to notice provisions of Chapter-II. Section 2(f) of RTI Act defines "information" as to mean 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 3 of RTI Act confers on all citizens right to information. The term "record" as defined in Section 2(i) of RTI Act, include any document, manuscript and file, any microfilm, microfiche and facsimile copy of a document, any reproduction of image or images embodied in such microfilm (whether enlarged or not), and any other material produced by a computer or any other device. As per Section 2(j) of RTI Act, "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 inspection of work, documents, records; taking notes, extracts or certified copies of documents or records; taking certified samples of material; and/or obtaining information in any electronic form. Section 4(1)(a) of RTI Act casts a statutory duty on every public authority to maintain all records duly catalogued and to ensure that all records are appropriated to be computerized and connected to network so as to make them accessible. Every public authority is required to designate Central Public Information Officers or State Public Information Officers in all administrative units. These Officers shall deal with request from citizens seeking information and render reasonable assistance. Section 6 of RTI Act enables a person request for obtaining information.

12. Under Section 7 of RTI Act, Information Officer has to respond within thirty (30) days in default of which, it shall be deemed that information is refused. Even where access to record is required to be provided, Information Officer shall provide assistance. Section 11 of RTI Act contains procedure when information sought relates to a third party, which has been treated as confidential by that third party. In such a case, a notice shall have to be issued to third party for making a representation against disclosure whereupon Information Officer shall take a decision. When information is denied by Public Information Officer, the person can prefer an appeal to such officer, who is senior in the rank to State Information Officer. Even if there is resistance at the appellate stage, Section 18(1)(a) of RTI Act enables aggrieved person to prefer a complaint to State Information Commission. If the State Information Commission comes to the opinion that information was not furnished within the time specified under Section 7(1) of RTI Act or *mala fide* denied request for information, a fine of Rs. 250/- (Rupees two hundred and fifty only) per day (till information is furnished) can be imposed.

13. Sections 8, 9 and 10 of RTI Act are one group of provisions, which provide for exemption from disclosure of information and grounds for rejection to access in certain cases as well as method of applying principle of severability. Section 8(1) of RTI Act is relevant and reads as under.

8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

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

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

(f) information received in confidence from foreign Government;

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

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

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

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

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

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

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

14. Parliament has expressed very clearly on information about which there is no obligation to give such information to any citizen. Even with regard to exemption material under Section 8(1) of RTI Act, as per Section 8(2) of RTI Act, if public interests in disclosure outweighs productive interests, public authority may allow access to information notwithstanding exemptions under Section 8(1) of RTI Act or Official Secrets Act. Section 9 of RTI Act prohibits giving information, which involves infringement of copy right. Under Section 9 of RTI Act, even with regard to exempted information, if a document contains information which is not exempt, public authority may decline to grant exempted information and allow access to other information, which is not exempted.

15. The overview of RTI Act especially Sections 6, 7, 8 read with Sections 2(f) and 2(i) of RTI Act, leads to conclusion that endeavour of legislation is to harmonise conflicting public and private interests. If information is available with public authority, unless and until it is one of the categories mentioned in Section 8(1), there should not be any objection for furnishing information subject to procedural compliance under RTI Act. Even the information regarding private persons can also be made available after Section 11 of RTI Act is complied with. Theory of 'implied bar' does not apply to a Law, which is made to give full scope to fundamental rights. Section 3 of RTI Act, which confers on every citizen the right to information is manifestation of fundamental rights under Article 19(1)(a) of Constitution. Unless such a right is curtailed by Law made by competent Legislature, by executive constructions the purpose of Law cannot be defeated. Parliament has exempted only certain categories of documents as enumerated under Section 8 of RTI Act with regard to which there is no obligation to furnish information. Explicit exemption of documents under Section 8(1) of RTI Act conclusively presupposes that RTI Act does not impliedly bar furnishing of information with regard to any information as defined under Section 2(f) read with 2(i) of RTI Act.

16. Next question is whether a Muntakhab can be given only to legal heir of such Muntakhab holder? Muntakhab is essentially a document with list of names with numbers of fields held by original grantee or his successors. A certificate issued by competent authority recognizing succession forms part of Muntakhab and some times by itself is a Muntakhab. When a document recognizes successors in title and such decision is based on enquiry essentially there is determination of rights. It is certainly not an order or judgment in personam<sup>4</sup>. It is not only between rivals staking claim to property mentioned in Muntakhab but declaration contained therein operates against entire world. In that sense, it is a judgment in rem<sup>5</sup>.

17. In **Satrucharla Vijaya Rama Raju v Nimmaka Java Raju** (2006) 1 SCC 212, Supreme Court explained 'judgment in rem' as follows.

Under the Evidence Act, Section 41 is said to incorporate the law on the subject. The judgment in rem is defined in English Law as "an adjudication pronounced (as its name indeed denotes) by the status, some particular subject-matter by a Tribunal having competent authority for that purpose." Spencer Bower on Res judicata defines the term as one which "declares, defines or otherwise determines the status of a person or a thing, that is to say, the jural relation of the person or thing to the world generally.

18. A Muntakhab declaring the rights of successors and delineating respective shares of such successors is an order/judgment in rem. Even if it is a judgment in personam, a public authority in possession of such. document is bound to give because under Section 2(f) of RTI Act, 'information' means any material in any form and includes *inter alia* information relating to any private body, which can have access by public authority. Copy of Muntakhab No. 3232 of 1304F

is in the custody of Chief Commissioner of Land Administration consequent to abolition of Board of Revenue which used to take care of matters pertaining to succession of the heirs of grantees, who are given land grants by sovereign. Whether it is a judgment in rem or judgment in personam in that sense makes no difference and even a third party who has no direct interest in Muntakhab who might have purchased property from heirs/successors of original grantee are also entitled to seek certified copy of Muntakhab.

19. The matter can also be examined with reference to Section 74 of Evidence Act. Documents forming the Acts or records of the Acts of sovereign authority of official bodies and Tribunals and of public officers, Legislative, Judicial and Executive of any part of India and public records kept in any state of private documents or public documents. Muntakhab is certainly a public document and it cannot be treated as a private document. Under Section 123 of Evidence Act, the State can claim privilege from producing a document as evidence only when such evidence is derived from unpublished official records relating to State unless permission is obtained from Head of Department. A Muntakhab cannot be a privilege document. When Muntakhab is a public document, State cannot claim any privilege under Section 123 of Evidence Act and petitioners cannot refuse supply of Muntakhab asked by second respondent. As already concluded supra, one need not be legal heir for obtaining a copy of Muntakhab.

20. Even if a Muntakhab is considered as privileged document under Section 74 read with 123 of Evidence Act, still public authority as defined under Section 2(h) of RTI Act cannot refuse. By reason of Section 22 of RTI Act, provisions of RTI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. It only means that even if there is a question of privilege involved, RTI Act compels furnishing of information unless and until furnishing of information is barred under Section 8(1) of RTI Act. It is not permissible to read implied prohibitions or invisible mandates in RTI Act.

21. In the result, for the above reasons, writ petition fails and is accordingly dismissed without any order as to costs.

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<sup>1</sup> Muntakhib (in Arabic) an abstract of the documents, in the older survey records system being a list of names, with the numbers of the fields held by each, (p.844 in The Law Lexicon, P. Ramanatha Aiyar, Reprint Edition 1993).

<sup>2</sup> Section 2(c) of Andhra Pradesh (Telangana Area) Atiyat Enquiries Act, 1952 defines "Muntakhabs and Vasikas" as documents issued by competent authorities as a result of Inam or succession enquiries held under the Dastoor-ul-Amal Inams or other Government Orders on the subject and issued by way of continuance or confirmation of Atiyat grants.

<sup>4</sup> **Judgment in personam:** The judgment in personal is, in form as well as in substance, between the parties claiming the right, and that is so inter-parties appears by the record itself, (p.644, The Law Lexicon)

<sup>5</sup> **Judgment in rem** is one pronounced upon status of some particular person or thing and it binds all persons. (P.644, The Law Lexicon)

**Judgment in rem:** A 'Judgment in rem' is an adjudication pronounced upon the status of some particular subject-matter by a Tribunal having competent authority for that purpose. (P.644, The Law Lexicon)



**Equivalent Citation:** [2008]145CompCas248(Mad), (2008)6MLJ737

**IN THE HIGH COURT OF MADRAS**

W.A. No. 811 of 2008 and M.P. No. 1 of 2008

Decided On: 05.08.2008

Appellants: **Tamil Nadu Road Development Co. Ltd.**

**Vs.**

Respondent: **Tamil Nadu Information Commission and Anr.**

**Hon'ble Judges:**

A.K. Ganguly, C.J. and Ibrahim Kalifulla, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: R. Muthukumarasamy, Adv. for V. Ramajegadeesan, Adv.

For Respondents/Defendant: G. Rajagopalan, Adv. for S.R. Associates for respondent No. 1 and D.N. Nagasila, Adv. for respondent No. 2

**Subject: Company**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Section 2; Companies Act, 1956; Constitution of India - Article 311; Companies (Amendment) Act, 1999

**Cases Referred:**

Associated Indent Mechanical P. Ltd. v. W.B. Small Industries Development Corporation Ltd. [2007] 3 SCC 607; Dadaji alias Dina v. Sukhdeobabu [1980] 1 SCC 621; Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. [1987] 61 Comp Cas 663 : [1987] 1 SCC 424; Mahalakshmi Oil Mills v. State of A.P. [1988] 71 STC 285 : [1989] 1 SCC 164; Tamil Nadu Newsprint and Papers Ltd. v. State Information Commission [2008] CDJ MHC 1871; A.K. Bindal v. Union of India [2003] 114 Comp Cas 590 : [2003] 5 SCC 163; Bengal Immunity Co. Ltd. v. State of Bihar [1955] 6 STC 446, 467 : AIR 1955 SC 661, 674; Bengal Immunity Co. Ltd. v. State of Bihar [1955] 6 STC 446 : AIR 1955 SC 661; Heydon's case [1584] 3 Co Rep 7a

**Disposition:**

Appeal dismissed

**JUDGMENT**

**A.K. Ganguly, C.J.**

1. This writ appeal is directed against the judgment and order dated July 17, 2008, passed by a learned judge of the writ court, whereby the learned judge was pleased to dismiss the writ petition and inter alia upheld the order passed by the Tamil Nadu Information Commission dated



May 21, 2008, whereby the State Commission, the first respondent herein, held that the appellant is a "public authority" under Section 2(h) of the Right to Information Act, 2005 (hereinafter referred to as the "RTI Act") and directed the appellant to furnish the required information to the second respondent.

2. The material facts of the case which are not disputed are that the second respondent in her letter dated October 21, 2007, requested the appellant to furnish the following details:

(i) Who are the contractors for constructing the IT corridor ?

(ii) Copies of contract agreements with the contractors constructing the IT corridor ?

(iii) Copies of documents published by TNRDC or other consultants about the IT corridor ?

3. The appellant refused to furnish those details. The main ground of objection on which the matter was argued before us is that the appellant is not covered under the RTI Act, inasmuch as it is not a public authority within the meaning of Section 2(h) of the RTI Act. Section 2(h) of the RTI Act defines a public authority as follows:

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 organisation substantially financed;

directly or indirectly by funds provided by the appropriate Government.

4. Learned Counsel for the appellant submits that the order of the first respondent dated May 21, 2008, which held that the appellant is a public authority under Section 2(h) of the RTI Act is erroneous and the learned writ court by affirming the said decision committed an error of law. The said error should be corrected by this appeal court. Learned Counsel for the appellant further submitted by referring to the definition under Section 2(h) that the appellant is not established or constituted under the Constitution, by any law of Parliament or any State Legislature, nor by any notification issued or order made by the appropriate Government. He also submitted that the appellant could not be included within the definition of a body owned, controlled or substantially financed, or a non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government. Learned Counsel submitted that the appellant is a limited company incorporated under the provisions of the Companies Act in the year 1998 and was jointly promoted by the Tamil Nadu Industries Development Corporation (TIDCO), which is a public sector undertaking, wholly owned by the

Government of Tamil Nadu, and M/s. Infrastructure Leasing and Finance Services Ltd. (IL & FS), which is a non-Government investment company. Thus, both TIDCO and IL & FS have equal stakes in the appellant-company having 50 per cent, shares. Therefore, it would not fall within the ambit of a public authority under the provisions of Section 2(h) of the RTI Act.

5. When the matter was heard on the first day, viz., July 28, 2008, this Court adjourned it to the next day and directed learned Counsel for the appellant to file the memorandum and articles of association of the appellant-company.

6. Pursuant to such direction, the memorandum and articles of association were filed before this Court. From a perusal of the said memorandum it appears that the appellant-company was incorporated on May 28, 1998, under the Companies Act as a public limited company, and thereafter, its memorandum of association was amended in 1999, as a result the articles of association of the appellant-company was changed and the promoters of the company became TIDCO and IL & FS. It cannot be disputed that TIDCO is a fully owned Government corporation and so far as IL & FS is concerned its shareholding is as follows:

Sl. No.	Shareholder	Number	%
1.	Life Insurance Corporation of India	27,986,818	26.10
2.	ORIX Corporation, Japan	25,542,452	23.82
3.	Housing Development Finance Corporation Limited	14,049,500	13.10
4.	Abu Dhabi Investment Authority	10,972,278	10.23
5.	Central Bank of India	9,843,386	09.18
6.	State Bank of India	8,237,967	07.68
7.	IL & FS Employees' Welfare Trust and others	9,667,160	09.01
8.	UTI-Unit Linked Insurance Plan-UTI Asset Management Co. Pvt. Ltd.	9,46,000	0.88
Total		107,245,561	100.00

From a perusal of the aforesaid shareholding of IL & FS it appears that a little less than 50 per cent. of the shares are held by public sector undertakings or statutory corporation like LIC created by an Act of Parliament. It also appears that as a result of the amendment to the articles of association in 1999 the number of directors of the company shall comprise two directors nominated by TIDCO and two directors nominated by IL & FS. It also appears from the articles of association, as amended, vide its clause 118 that the managing director of the appellant-company shall be nominated by an unanimous agreement between IL & FS and TIDCO, for such period and upon such terms as they may think fit, and the managing director so appointed shall exercise substantial powers of management. From Clause 113 of the articles of association, it further appears that all important matters must be referred to the board and can only be effected by a resolution of the board comprising of the affirmative votes of at least one director representing TIDCO and one director representing IL & FS. It is also not in dispute that the board of directors of the appellant-company consists of the following persons:

Name/Designation	Position
1. Mr. K. Allaudin, IAS,	Chairman

Secretary (Highways) and Chairman/TNRDC  
2. Mr. S. Ramasundaram, IAS Director  
Chairman and Managing Director/TIDCO  
3. Mr. K. RViswanathan, Director  
Director (Projects)/TIDCO  
4. Mr. Hari Sankaran, Director  
Managing Director/IL & FS  
5. Mr. Pradeep Puri Director  
President and CEO/NTBCL  
6. Mr. K. Ramchand Director  
President and CEO/IL & FS Transportation  
Networks Limited  
7. Mr. N. R. Krishnan, IAS (Retd.) Director  
Former Secretary/Government of India

8. It is clear from the aforesaid composition that the chairman is the Secretary to the Government of Tamil Nadu, and out of the seven directors two are from Indian Administrative Service and three are nominated by TIDCO, which is a Corporation wholly owned by the Government of Tamil Nadu. There is one managing director nominated by IL & FS. There is another director also nominated by IL & FS. There is only one director, viz., Mr. Pradeep Puri, who is not nominated by either IL & FS or TIDCO, and Mr. N. R. Krishnan, is also a retired IAS and a former Secretary to the Government of India.

9. The aforesaid composition of the board of directors of the appellant-company makes it clear that the appellant-company is a body which is controlled by the appropriate Government.

10. Now comes the question whether it is substantially financed by the Government. The cost of the project, which is the subject-matter of the writ petition, would be about Rs. 84.41 crores, which includes the cost of construction of Toll Plaza, contingencies and supervision costs, etc. However, the land acquisition cost of Rs. 43 crores has not been included in the project cost. Such cost of land acquisition has obviously been paid by the Government. It appears from page 3 of the typed set of papers, which is a Government Order issued by the Secretary to the Government of Tamil Nadu, Highways Department, that the appellant-company has estimated the project cost at Rs. 84.41 crores. Out of the said project cost a sum of Rs. 34 crores has been sanctioned to the project by the State Government and the same has been routed through the appellant-company so as to make the project bankable and the appellant-company sourced the balance fund of Rs. 50.41 crores through loans at competitive rates and tenor. The terms of the loan given by the State Government to the appellant-company is to be decided later. It also appears from the said Government Order that under ASIDE Scheme, the Ministry of Commerce and Industry, Government of India has also sanctioned a sum of Rs. 12.5 crores for the appellant-company for this project, and, therefore, the State Government's contribution would be to the tune of Rs. 21.5 crores only. As such request was, therefore, made by the Secretary to Government to the CEO of the appellant-company to send necessary proposal in that regard. It also appears from the said Government Order that the State Government modified the detailed project report of the appellant-company and the said modified report has to be brought in the concession agreement to be entered into by the Government with IT Expressway Ltd./appellant-company. The CEO of the appellant-company was requested to send the necessary draft of the concession agreement for the approval of the Government.

11. In the said Government Order the following directions were also given:

3. The Government direct that the project for the Improvement of IT Corridor shall be implemented by a Special Purpose Vehicle, viz., IT Expressway Ltd. (ITEL), created for this purpose.

4. The Government also direct that the proposed IT Corridor shall be extended from Siruseri to Mahabalipuram and that this portion shall be taken up as Phase-II separately.

5. The Government have also decided to constitute an empowered committee to monitor and take appropriate decisions for the implementation of this project. Orders constituting an empowered committee are being issued separately.

6. The CEO, TNRDC is requested to take speedy action at every stage to implement the project early.

7. This order issues with the concurrence of Finance Department vide its U.O. No. 23/ss(LK)/04, dated 23-01-2004.

12. It also appears from page 1 of the typed set that the Government of Tamil Nadu, Highways Department, issued G.O. Ms. No. 81 dated April 24, 2003, in this regard. The text of the said Government Order is set out below:

#### Order

The Government have taken a policy decision to improve the road from Madhya Kailash in Sardar Patel Road to Siruseri in Old Mahabali-puram Road. They accordingly direct that Special Purpose Vehicle be formed to improve the road from Madhya Kailash to Siruseri as a world class 6 lane road by mobilizing resources from the project and to maintain the road thereafter.

2. The Chief Executive Officer, Tamil Nadu Road Development Company, is requested to send necessary proposal to the Government in this regard.

(By Order of the Governor)  
A. Nagarajan  
Secretary to Government.

13. It is clear from the above Government Order that the appellant was implementing the said policy decision of the Government of Tamil Nadu. It is, therefore, very clear that the project of the appellant-company was substantially financed by the Government. Apart from that the activities of the appellant-company is substantially controlled by the Government, both in the composition of the board of directors and also in the manner in which the articles of association of the appellant-company has been amended, and the manner in which the said project has been implemented and monitored by the Government by issuing from time to time various Government Orders referred to herein above.

14. It also appears that of the two promoters of the appellant-company one (TIDCO) is fully owned Government Corporation and the other IL & FS has almost 50 per cent, shareholding by the Government. The board of the directors is therefore totally controlled by these two promoters and consists of I.A.S. officers and government officials.

15. In the background of this admitted factual position, this Court is of the opinion that on a reasonable interpretation of Section 2(h) of the RTI Act, the appellant-company comes within the meaning of public authority as defined by Section 2(h) of the RTI Act.

16. If we look at the definition of Section 2(h), which has been extracted herein above, it is clear that the appellant-company does not come under the provisions of Section 2(h)(a), (b), (c) or (d), but thereafter Section 2(h)(d) of the definition clause uses the word "includes". It is well known that when the word "includes" is used in an interpretation clause, it is used to enlarge the meaning of the words and phrases occurring in the body of the statute. Reference in this connection can be made to G. P. Singh's "Principles of Statutory Interpretation". In the 10th edition of the said treatise, the learned author formulated that when the word defined is declared to "include" such and such, "the definition is prima facie extensive" (page 175 of the book). In support of the aforesaid formulation, the learned author has referred to a number of decisions. The latest decision referred to in support of the aforesaid proposition was rendered in the case of Associated Indent Mechanical P. Ltd. v. W.B. Small Industries Development Corporation Ltd. [MANU/SC/0487/2007](#) of the report, the learned judges held as follows:

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 alias Dina v. Sukhdeobabu* [MANU/SC/0346/1979](#), *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.* [MANU/SC/0073/1987](#) and *Mahalakshmi Oil Mills v. State of A.P.* [MANU/SC/0314/1988](#)).

17. Therefore, obviously the definition of bodies referred to in Section 2(h)(d)(i) of the RTI Act would receive a liberal interpretation, and here the words which fall for interpretation are the words "controlled or substantially financed directly or indirectly by funds provided by the appropriate Government.

18. We are here concerned with the interpretation of the definition clause in the RTI Act. The Act has been enacted "in order to promote transparency and accountability in the working of every public authority". In the Preamble to the Act, it is made clear that "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". From the Preamble to the Act it is clear that revelation of information may cause conflict with the other public interests including efficient operations of the Governments, but the Act has been enacted to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal.

19. The RTI Act thus attempts to inculcate openness in our democratic republic. It has to be accepted that one of the salience of openness in democracy is an access to information about the functioning of the public authorities.

20. While construing whether the Tamil Nadu Newsprint and Papers Ltd. is a public authority under Section 2(h)(d)(i) of the RTI Act, a learned judge of this Court, while holding it a public authority made certain pertinent observations in *Tamil Nadu Newsprint and Papers Ltd. v. State Information Commission* [2008] CDJ MHC 1871. Those observations in paragraph 13 of the judgment run as under:

13. One of the objectives to this right to information is eradication of ineffective governance and corrupt governance. Corruption is now recognised as violation of human rights. Good transparency practices are essential for good governance and it includes maximum disclosure ; obligation to publish ; promotion of open Government ; limited scope of exceptions ; minimum costs ; processes that facilitate access ; open meetings ; precedence of disclosure ; and protection of whistle-blowers. The civil society must be unrelenting in its efforts to ensure that the Government at all levels reaches a reasonable standard in affording public information to the citizens. Sometimes even harmless information is not made available. When what is asked for is just ordinary data, data that any interested tax-paying citizen has a right to know-a human right, even no national secrets that threaten public interest are asked for-it is not furnished. This access to information is more vitally important in developing countries. It is very necessary that the ordinary person is enable to participate in the processes that effect daily life and he has empowered with the information to play an effective role in policy-making and legislative decision-making. To promote broader political participation, there should be accountability and transparency of Government, to prevent the criminalisation of policy, there should be free flow of information. These are the reasons why the Act came into force. The Government should have the will to make the shift from being niggardly in providing access to information. Transparency is essential for a healthy democracy and robust economy....

21. This Court is in respectful agreement with the aforesaid opinion expressed by the learned judge.

22. Learned Counsel for the appellant relied on a decision of the Supreme Court in the case of A.K. Bindal v. Union of India [MANU/SC/0349/2003](#). That was a decision as to what would mean a Government company. On the legal position of a Government company, it was held in that decision that the Government company cannot be identified with the Government itself nor its employees are Government servants, and such employees are to entitled to the protection under Article 311 of the Constitution. We are not concerned with the aforesaid question at all in this case. Here we have only to consider whether in the facts and circumstances of the case the appellant-company comes within the meaning of public authority as defined under Section 2(h)(d)(i) of the RTI Act. Therefore, the ratio in the aforesaid case has no application.

23. The RTI Act is virtually enacted to give effect to citizen's right to know. Citizen's right to know has been construed by the hon'ble Supreme Court as emanating from the citizen's right to freedom of speech and expression, which is a fundamental right. So, a legislation, which has been enacted to give effect to right to know, which is one of the basic human rights in today's world, must receive a purposive and broad interpretation.

24. The principle of purposive interpretation has been explained by Chief Justice S.R. Das in Bengal Immunity Co. Ltd. v. State of Bihar [MANU/SC/0083/1955](#) of the report the learned Chief Justice referred to and adopted the principles in Heydon's case [1584] 3 Co Rep 7a. Those principles are:

(i) What was the common law before the making of the Act;

(ii) What was the mischief and defect for which the common law did not provide ;

(iii) What remedy Parliament hath resolved and appointed to cure the disease of the common law ; and

(iv) The true reason for the remedy.

25. If we go by the aforesaid four principles, it will appear that the constitutional principle of right to know which was virtually a common law principle of universal application was holding the field before the coming into effect of the RTI Act, inasmuch as the hon'ble Supreme Court has held that the right to know is a part of the fundamental right to speech and expression and also a part of the fundamental right to life. But, there was no well-structured Act laying down the procedure on how to exercise one's right to know and right to information, which is why the RTI Act came into existence.

26. The RTI Act has also provided a remedy for facilitating the exercise of the right to information and the reason for the remedy is also indicated in the Preamble to the Act. So going by the direction in Heydon's case [1584] 3 Co Rep 7a followed by the Supreme Court in Bengal Immunity Co. Ltd. v. State of Bihar [MANU/SC/0083/1955](#) such an Act must receive a purposive interpretation to further the purpose of the Act. So any interpretation which frustrates the purpose of RTI Act must be eschewed. Following the said well known canon of construction, this Court interprets the expression "public authority" under Section 2(h)(d)(i) liberally, so that the authorities like the appellant who are controlled and substantially financed, directly or indirectly, by the Government, come within the purview of the RTI Act. In coming to the conclusion, this Court reminds itself of the Preamble to the RTI Act which necessitates a construction which will hopefully cleanse our democratic polity of the corrosive effect of corruption and infuse transparency in its activities. In this context, a few lines from Joseph Pulitzer, in a slightly different context, will be very apt and are reproduced hereunder:

There is not a crime, there is not a dodge, there is not a trick, there is not a swindle which does not live by secrecy. Get these things out in the open, describe them, attack them, ridicule them in the press, and sooner or later public opinion will sweep them away.

27. This Court, therefore, holds that the appellant is a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act, and the learned judge of the writ court came to a correct conclusion, may be on the basis of some different reasons.

We, therefore, do not find any merit in the appeal, and accordingly it is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there will be no order as to costs.

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**IN THE HIGH COURT OF DELHI**

W.P. (C) 6661/2008

Decided On: 16.04.2009

Appellants: **Union of India (UOI)**

**Vs.**

Respondent: **Central Information Commission and Ors.**

**Hon'ble Judges:**

S. Ravindra Bhat, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: S.K. Dubey and Deepak Kumar, Advs.

For Respondents/Defendant: K.K. Nigam, Adv.

**Subject: Civil**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 19, 19(8) and 20; Passport Act; Constitution of India - Article 226

**JUDGMENT**

**S. Ravindra Bhat, J.**

1. Heard counsel for the parties.

2. In the present petition, the Union of India claims to be aggrieved by an order of the Central Information Commission whereby it directed payment of Rs. 5,000/- as compensation to the second respondent, who had applied for information.

3. The brief facts of the case are that on 27.7.2007, the second respondent applied to the Passport Officer, designated as Information Officer claiming disclosure of information, relating to a passport application made by him in December, 2006 as well as the application of his wife. The applicant's grievance at that stage was that even though he applied for passport, for more than eight months, and though the Passport Office's website indicated (in March, 2007) that police report was "OK", yet in July, 2007, different information was posted asking for two specimen signatures on blank piece of paper. The applicant further asked for information pertaining to the time limit within which passports were to be issued.

4. The CPIO by order dated 13.8.2007 responded to the application (dated 27.07.2007) stating, inter alia, that so far as the information placed on the website was concerned, it was updated by the National Informatics Centre (NIC) and the reason for delay in issue of passport had been given in column-1 i.e. that it was for want of fresh passport application along with attested copy of all documents and passport application of his wife and son.



5. The second respondent's appeal was disposed by the appellate authority stating that even though no time limit for disposal of passport application existed, yet broadly a thirty day's limit had to be adhered to. In these circumstances, second respondent appealed to the CIC, which after considering the materials recorded as follows:

Decision:

6. The Commission heard both the sides and noted the following:

(i) The Appellant had applied for passports for self, wife and son on 12 December 2006;

(ii) He did not get the passports even after a period of seven months;

(iii) In March 2007, when he opened the website of the Respondents, he found the information "Police report is okay, Passport will be sent in the first week of April 2007" pasted on the website;

(iv) The Appellant waited for the time to pass and then since he had still not received the Passport, opened the website again in July 2007;

(v) To his great surprise and dismay, he found that the website asked him to send two specimen signatures on a blank piece of paper attested by a Gazetted Officer. Subsequently, he asked for the details of his application through the RTI-application of 27 July 2007;

(vi) In the PIO's reply of 13 August 2007, the Commission found that there was an explanation about the delay. The stand taken was that the documents were incomplete and that the Applicant had to apply afresh together with attested copies of the relevant documents;

(vii) There was no explanation in the PIO's reply about the Passport Office asking for signatures on blank paper.

7. Under the circumstances, the Commission fails to understand:

(i) Why and when once the Applicant has been informed that his Passport would be sent by a particular date, he was asked to apply afresh. In case the Respondents detected some lacunae in his application, they should have informed him much earlier to their making the commitment that the Passport would be sent within a given time;

(ii) The demand for submission of signatures on a blank piece of paper is something which is totally unacceptable. In fact, the Commission is at a total loss to understand how a Government office can ask for signatures of a citizen approaching them for some work to sign on a blank piece of paper. On making enquiries, the Appellant stated that he had not received the passport till date, that is, even after a year and a half of his filing the application.

8. In view of the submissions of the Appellant as well as the Respondents, the Commission decided the following:

(i) The Respondents will ensure that the passports are issued within a week of the Appellant having fulfilled of the requirements of the Passport application;

(ii) The PIO and the RPO will personally conduct an inquiry into the functioning of the website and submit a report about the two different versions about the same case placed on the website. He will report to the Commission with the full details of case by 13 June 2008;

(iii) The Commission awards a compensation of Rs. 5,000/- to the Applicant in view of the mental agony that had has gone through over these one and a half years without any fault of his. The Respondent Department will ensure that this payment is made to the Appellant by 30 May 2008. The Respondent, that is, the PIO will fix responsibility as to the person who was responsible for asking for blank signatures and take necessary measures to recover the full amount from him. In the first instance, however, this payment will be paid by the Department or the person on whom the responsibility is fixed for this major error- whichever is earlier.

6. It is contended by the Union of India that pursuant to the orders; respondent/applicant carried out corrections in the pending applications and was issued the passports. It is contended that the CIC committed an error in granting compensation since the requisite information was furnished within the time period. Learned Counsel relied upon Section 19(8)(b) and submitted that the jurisdiction to direct compensation flows out of an obligation to ensure compliance with provisions of the Act. It was, submitted that in the absence of a finding that information disclosure was not in terms of the enactment or within the time limit specified, penalty or compensation either under Section 19 or Section 20 could not have been imposed.

7. The Court has carefully considered the submissions. The petitioner here is the Union of India. Today no dispute on the part of the following facts:

1. Passport applications were made in December, 2006;

2. Applicants sought for passport were not intimated about the deficiencies till July, 2007, when information was sought for under the RTI Act;

3. The information posted on the website at different points in time, alluded to by the applicant with reference to March, 2007 and July, 2007 - gave conflicting information;

4. When information was sought for, for the first time, the passport officials indicated that a fresh application had to be made since there were several defects in the applications pending since December, 2007.

5. Though initially the CPIO stated that there was no time limit, the appellate authority stated that a time limit of thirty days had to be broadly adhered to.

6. Even before the CIC, there was no explanation why the petitioners wanted a fresh application to be furnished, eight months after the first one.

8. The Union of India is perhaps technically correct in contending as it does that the jurisdiction to impose penalty and compensation stems out of Section 19(8)(b) is on the premise that the information application has not been dealt with correctly and was imposed here by CIC that the applicant had to suffer mental agony due to lack of or withholding of information.

9. However, the facts as they have unfolded in this case cannot be overlooked by this Court. The Jurisdiction to direct compensation under the Act, has to be understood as arising in relation to culpability of the organization's inability to respond suitably, in time, or otherwise, to the information applicant. This is necessarily so, because penalty is imposed on the individual responsible for delayed response, or withholding of information without reasonable cause. To that extent, the Union's complaint about lack of jurisdiction of CIC in this case, is justified. Any other construction on the CIC powers under Section 19 and 20 would result in recognizing wide powers to grant compensation, without indicating the process and procedures normally available and expected, in such cases. Further, clothing CIC with such jurisdiction to compensate applicants for general wrongs, without any statutory guidance about the limits, or method of determining such compensation would lead to highly anomalous and unpredictable consequences which the Act did not intend. A citizen applied for passport and had to wait for more than nine months to be told

what were the deficiencies. He had to seek recourse under the Right to Information Act, 2005. The CIC felt constrained to impose a paltry compensation amount of Rs. 5000. The Union, which is expected to and is duty bound to disclose information - and not merely under the RTI, being the primary authority to issue passports, about the fate of such application - has now chosen to question such imposition of a meager amount of compensation.

10. It is well settled that the jurisdiction under Article 226 is both discretionary and equitable. The existence of technical question and error of jurisdiction need not persuade the Court to exercise such jurisdiction unless it is satisfied that the ends of justice required it to do so. By filing the present Petition, the Union of India has not only disclosed utter insensitivity to its duty as an authority under the Passport Act but also aggravated the agony to a citizen who sought for a passport and was kept completely in the dark. It suggested unreasonably that a fresh application had to be made without, disclosing the fate of the previous application, or why such fresh application was necessary. It has not questioned, in this proceeding, the direction by CIC to issue passports on the basis of the old applications - this establishes that its requirement to the applicant to move afresh was unjustified. In the circumstances, even while allowing the Writ Petition to the extent that award of compensation of Rs. 5000/- is set aside, the Union of India is hereby directed to pay costs to the second respondent to the extent of Rs. 55,000/-. The same shall be paid within four weeks.

Writ Petition is disposed of in terms of above order.

\* 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 : 12<sup>th</sup> August,2009/2<sup>nd</sup> September, 2009.  
Date of Decision : 30<sup>th</sup> 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 OF INDIA & 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 PETITION (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 secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (e) Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.
- (f) Information received in confidence from foreign government;
- (g) Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (h) Information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of

which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over;

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

- (j) information which relates to personal information the disclosure of which has no relationship to any public 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 subsection (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 2<sup>nd</sup> 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 Inv. (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 trial 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 Lexicon*, 3rd Edition, 2005, defines fiduciary relationship as “a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the relationship ....Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer ”

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. 4<sup>th</sup> 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-exist. 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 23<sup>rd</sup> 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 Ministers” is wider than and includes Cabinet Ministers. It is not possible to accept the contention of Mr. A.S. Chandhok , 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 Minister 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 44<sup>th</sup> 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 44<sup>th</sup> 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 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."

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 cautelia*. 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 Crown 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 court 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, 11<sup>th</sup> 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 larger 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 or 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 4<sup>th</sup> November, 2009 and Writ Petition (Civil) No. 7265/2007 titled ***Poorna Prajna Public School versus Central Information Commission & others*** decided on 25<sup>th</sup> 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) WRIT PETITION (CIVIL) NO. 8396 OF 2009**

52. Respondent no.2-P.D. Khandelwal by his application dated 26<sup>th</sup> 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-Sweetie 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 7<sup>th</sup> 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 6<sup>th</sup> 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 12<sup>th</sup> 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 13<sup>th</sup> 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 26<sup>th</sup> August, 1992. On 14<sup>th</sup> 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 Secretary-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 12<sup>th</sup> 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 12<sup>th</sup> 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 7<sup>th</sup> September, 1999 before selection board-II. By letter dated 25<sup>th</sup> 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 7<sup>th</sup> 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 26<sup>th</sup> 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 25<sup>th</sup> 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 7<sup>th</sup> 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) WRIT PETITION (CIVIL) NO. 7930 OF 2009**

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 19<sup>th</sup> 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 2<sup>nd</sup> 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 244<sup>th</sup> 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 7<sup>th</sup> 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 31<sup>st</sup> 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**

**19.**

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

**Decided on: 16.04.2009**

+ W.P. (C) 6661/2008

U.O.I

..... Petitioner

Through: Mr. S.K. Dubey with  
Mr. Deepak Kumar, Advocates.

versus

CENTRAL INFORMATION COMMISSION &ORS

..... Respondents

Through: Mr. K.K. Nigam, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

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

**S.RAVINDRA BHAT, J.**

% Heard counsel for the parties.

2. In the present petition, the Union of India claims to be aggrieved by an order of the Central Information Commission whereby it directed payment of Rs.5,000/- as compensation to the second respondent, who had applied for information.

3. The brief facts of the case are that on 27.7.2007, the second respondent applied to the Passport Officer, designated as Information Officer claiming disclosure of information, relating to a passport application made by him in December, 2006 as well as the application of his wife. The applicant's grievance at that stage was that even though he applied for passport, for more than eight months, and though the Passport Office's website indicated (in March, 2007) that police report was "OK", yet in July, 2007, different information was posted asking for two specimen signatures on blank piece of paper. The applicant further asked for information pertaining to the time limit within which passports were to be issued.

4. The CPIO by order dated 13.8.2007 responded to the application (dated 27.07.2007) stating, inter alia, that so far as the information placed on the website was concerned, it was updated by the National Informatics Centre (NIC) and the reason for delay in issue of passport had been given in column-1 i.e. that it was for want of fresh passport application along with attested copy of all documents and passport application of his wife and son.

5. The second respondent's appeal was disposed by the appellate authority stating that even though no time limit for disposal of passport application existed, yet broadly a thirty day's limit had to be adhered to. In these circumstances, second respondent appealed to the CIC, which after considering the materials recorded as follows: -

**“Decision:**

6. The Commission heard both the sides and noted the following:

(i) The Appellant had applied for passports for self, wife and son on 12 December 2006;

(ii) He did not get the passports even after a period of seven months;

(iii) In March 2007, when he opened the website of the Respondents, he found the information “Police report is okay, Passport will be sent in the first week of April 2007” pasted on the website;

(iv) The Appellant waited for the time to pass and then since he had still not received the Passport, opened the website again in July 2007;

(v) To his great surprise and dismay, he found that the website asked him to send two specimen signatures on a blank piece of paper attested by a Gazetted Officer. Subsequently, he asked for the details of his application through the RTI-application of 27 July 2007;

(vi) In the PIO’s reply of 13 August 2007, the Commission found that there was an explanation about the delay. The stand taken was that the documents were incomplete and that the Applicant had to apply afresh together with attested copies of the relevant documents;

(vii) There was no explanation in the PIO’s reply about the Passport Office asking for signatures on blank paper.

7. Under the circumstances, the Commission fails to understand:

(i) Why and when once the Applicant has been informed that his Passport would be sent by a particular date, he was asked to apply afresh. In case the Respondents detected some lacunae in his application, they should have informed him much earlier to their making the commitment that the Passport would be sent within a given time;



*(ii) The demand for submission of signatures on a blank piece of paper is something which is totally unacceptable. In fact, the Commission is at a total loss to understand how a Government office can ask for signatures of a citizen approaching them for some work to sign on a blank piece of paper. On making enquiries, the Appellant stated that he had not received the passport till date, that is, even after a year and a half of his filing the application.*

*8. In view of the submissions of the Appellant as well as the Respondents, the Commission decided the following:*

*(i) The Respondents will ensure that the passports are issued within a week of the Appellant having fulfilled of the requirements of the Passport application;*

*(ii) The PIO and the RPO will personally conduct an inquiry into the functioning of the website and submit a report about the two different versions about the same case placed on the website. He will report to the Commission with the full details of case by 13 June 2008;*

*(iii) The Commission awards a compensation of Rs.5,000/- to the Applicant in view of the mental agony that had has gone through over these one and a half years without any fault of his. The Respondent Department will ensure that this payment is made to the Appellant by 30 May 2008. The Respondent, that is, the PIO will fix responsibility as to the person who was responsible for asking for blank signatures and take necessary measures to recover the full amount from him. In the first instance, however, this payment will be paid by the Department or the person on whom the responsibility is fixed for this major error- whichever is earlier.”*

6. It is contended by the Union of India that pursuant to the orders; respondent/applicant carried out corrections in the pending applications and was issued the passports. It is contended that the CIC committed an error in granting compensation since the requisite information was furnished within the time period. Learned counsel relied upon Section 19 (8) (b) and submitted that the jurisdiction to direct compensation flows out of an

obligation to ensure compliance with provisions of the Act. It was, submitted that in the absence of a finding that information disclosure was not in terms of the enactment or within the time limit specified, penalty or compensation either under Section 19 or Section 20 could not have been imposed.

7. The Court has carefully considered the submissions. The petitioner here is the Union of India. Today no dispute on the part of the following facts:

1. Passport applications were made in December, 2006;
2. Applicants sought for passport were not intimated about the deficiencies till July, 2007, when information was sought for under the RTI Act;
3. The information posted on the website at different points in time, alluded to by the applicant with reference to March, 2007 and July, 2007 – gave conflicting information;
4. When information was sought for, for the first time, the passport officials indicated that a fresh application had to be made since there were several defects in the applications pending since December, 2007.
5. Though initially the CPIO stated that there was no time limit, the appellate authority stated that a time limit of thirty days had to be broadly adhered to.

6. Even before the CIC, there was no explanation why the petitioners wanted a fresh application to be furnished, eight months after the first one.

8. The Union of India is perhaps technically correct in contending as it does that the jurisdiction to impose penalty and compensation stems out of Section 19 (8) (b) is on the premise that the information application has not been dealt with correctly and was imposed here by CIC that the applicant had to suffer mental agony due to lack of or withholding of information.

9. However, the facts as they have unfolded in this case cannot be overlooked by this Court. The Jurisdiction to direct compensation under the Act, has to be understood as arising in relation to culpability of the organization's inability to respond suitably, in time, or otherwise, to the information applicant. This is necessarily so, because penalty is imposed on the individual responsible for delayed response, or withholding of information without reasonable cause. To that extent, the Union's complaint about lack of jurisdiction of CIC in this case, is justified. Any other construction on the CIC powers under Section 19 and 20 would result in recognizing wide powers to grant compensation, without indicating the process and procedures normally available and expected, in such cases. Further, clothing CIC with such jurisdiction to compensate applicants for general wrongs, without any statutory guidance about the limits, or method of determining such compensation would lead to highly anomalous and unpredictable

consequences which the Act did not intend. A citizen applied for passport and had to wait for more than nine months to be told what were the deficiencies. He had to seek recourse under the Right to Information Act, 2005. The CIC felt constrained to impose a paltry compensation amount of Rs.5000. The Union, which is expected to and is duty bound to disclose information – and not merely under the RTI, being the primary authority to issue passports, about the fate of such application - has now chosen to question such imposition of a meager amount of compensation.

10. It is well settled that the jurisdiction under Article 226 is both discretionary and equitable. The existence of technical question and error of jurisdiction need not persuade the Court to exercise such jurisdiction unless it is satisfied that the ends of justice required it to do so. By filing the present Petition, the Union of India has not only disclosed utter insensitivity to its duty as an authority under the Passport Act but also aggravated the agony to a citizen who sought for a passport and was kept completely in the dark. It suggested unreasonably that a fresh application had to be made without, disclosing the fate of the previous application, or why such fresh application was necessary. It has not questioned, in this proceeding, the direction by CIC to issue passports on the basis of the old applications – this establishes that its requirement to the applicant to move afresh was unjustified. In the circumstances, even while allowing the Writ Petition to the extent that award of compensation of Rs.5000/- is set aside, the Union of

India is hereby directed to pay costs to the second respondent to the extent of Rs.55,000/-. The same shall be paid within four weeks.

Writ Petition is disposed of in terms of above order.

**APRIL 16, 2009**  
**/vd/**

**S. RAVINDRA BHAT, J**

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

**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**

**ORDER**

**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 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 negated 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 sever 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**



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

+ W.P.(C) 10805/2009

UOI ..... Petitioner  
Through Mr.S.K.Dubey, Mr.Deepak  
Kumar, advocates.

versus

CIC & ANR. .... Respondents  
Through

**CORAM:**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

**ORDER**  
**12.08.2009**

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The only defence and objection raised before Central Information Commission was under Section 8(1)(j) of the Right to Information Act, 2005. No other provision/sub-clause of Section 8(1) of the aforesaid Act was relied upon by the petitioner before the Central Information Commission. In these circumstances, I do not think the petitioner is entitled to rely upon Sections 8(1)(e) or (i) of the Right to Information Act, 2005. The petitioner did not rely upon the Sub-sections (e) and (i) of Section 8(1) before the Central Information Commission. In a writ petition, while exercising power of judicial review the court is concerned with the decision making process and a writ court is not an appellate forum where for the first time section 8 (1) (e) and (i) of the said

Act can be relied upon.

The petition does not question the decision of the Central Information Commission rejecting objection relying upon section 8 (1) (j) of the said Act. In these circumstances, the contentions raised in the present Writ Petition relying upon section 8 (1) (e) and (i) do not merit consideration and the same is dismissed.

*sd/*

SANJIV KHANNA, J.

AUGUST 12, 2009.

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

**W.P.(C) No.154 of 2010**

**UNION OF INDIA .....**

**Petitioner**

**Through: Mr. K.P.S. Kohli, Advocate.**

**versus**

**SUNITA DAHAT .....**

**Respondent**

**Through: None**

**CORAM: JUSTICE S. MURALIDHAR**

**ORDER**

**18.08.2010**

**W.P. (C) No.154 of 2010 and CM No. 307 of 2010 (for stay)**

- 1. The Petitioner Union of India aggrieved by a decision dated 24th August 2009 of the Central Information Commission (CIC) only to the extent that the CIC has ordered that on account of delay in responding to the appeal filed by the Respondent, she should be paid a token compensation of Rs. 5,000/-.**
- 2. The first appeal was filed by the Respondent on 4th December 2007. The said appeal was disposed of by an order dated 20th/24th August 2009 of the Appellate Authority. There is no explanation why an appeal filed on 4th December 2007 was not taken up for consideration prior to 8th August 2009 when for the first time, notice of the hearing for 24th August 2009 was issued. This is the only reason for the CIC to award compensation to the Respondent. The power of the CIC towards compensation is contained in Section 19(8)(b) of the Right to Information Act, 2005 (RTI Act). It is not, as erroneously contended by the Petitioner, a penalty under Section 20 of the RTI Act.**

**3. Awarding a compensation of Rs.5000/- to the Respondent in the above circumstances can hardly be characterised as exorbitant or unwarranted.**

**4. Consequently, the writ petition is dismissed. Interim stay is vacated and the application is dismissed.**

**5. The Respondent has not appeared although she sent a letter urging the grounds for the dismissal of this writ petition. Consequently, the litigation expenses deposited by the Petitioner pursuant to this Court`s order dated 12th January 2010 will be refunded to it by the Registry within two weeks.**

**S. MURALIDHAR, J  
AUGUST 18, 2010**



**Equivalent Citation:** 139(2007)DLT608

**IN THE HIGH COURT OF DELHI**

WP(C) No. 17583/2006

Decided On: 17.04.2007

Appellants: **Union Public Service Commission**  
**Vs.**  
Respondent: **Centran Information Commission and Ors.**

**Hon'ble Judges:**

Badar Durrez Ahmed, J.

**Counsels:**

For Appellant/Petitioner/Plaintiff: S.K. Mishra, Sr. Adv. and Anuj Rajput and Rahul Chauhan, Advs.

For Respondents/Defendant: K.C. Mittal and Mrinal Madhav, Advs. Respondent No. 1, Aman Lekhi, Sr. Adv. and Sumit Kumar, Rajan K. Chourasia, Jaspreet, S. Rai and Rakesh Kumar, Advs. for Respondent Nos. 2-5 and 7-23 and Prashant Bhushan and Devvrat, Advs. for Respondent No. 24

**Subject: Right to Information**

**Acts/Rules/Orders:**

Right to Information Act, 2005 - Sections 8, 8(1), 8(2), 9, 18(1), 19(1) and 19(3); Civil Services Examination Rules, 2006

**Cases Referred:**

Kamlesh Haribhai Goradia v. Union of India and Anr. 1987 (1) Guj LR 157; UP Public Service Commission v. Subhash Chandra Dixit and Ors. 2003 (12) SCC 701; Sanjay Singh and Anr. v. UP Public Service Commission, Allahabad and Anr. 2007 (2) JT 534

**Case Note:**

**Right to Information - Disclosure of information - Section 19(3) of Right to Information Act, 2005 - Application filed by Respondent-candidates for disclosure of cut-off marks of the optional subjects and general studies of the Civil Services (Preliminary Examination), 2006 conducted by the UPSC -Disclosure also sought of model answers to each series of questions of all the subjects - Commission denied the disclosure stating information sought since crucial secrets and constituted intellectual property of the UPSC within the meaning, would undermine the efficacy of the competitive examination and also not in public interest - Appeal challenging the decision rejected by the Appellate Authority - Matter thereafter challenged as second appeal before the Central Information**

Commission - UPSC directed by the Commission to disclose the cut-off marks - Direction challenged by UPSC by way of present petition - Whether disclosure of information by UPSC sought by Respondents would be in public interest - Held, Respondents have sought the information related to an event which has already taken place - Marks obtained in the Preliminary entrance examinations not to be counted for the final selection - No harm would be caused by the disclosure of marks - On model answers to the questions, UPSC may have some rights over them, the disclosure would be in larger public interest as Candidates have the right to know where they went wrong - Petition disposed off accordingly

Ratio Decidendi:

*“Information sought if relates to event already over, disclosure of which is in the larger public interest, would cause no harm.”*

## JUDGMENT

Badar Durrez Ahmed, J.

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1. The Union Public Service Commission (UPSC) has filed this writ petition praying for the setting aside of the order dated 13.11.2006 passed by the Central Information Commission, New Delhi in an appeal under Section 19(3) of the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act').

2. The issue involved in the present petition relates to the disclosure of cut-off marks for the optional subjects as well as for general studies of the Civil Services (Preliminary Examination), 2006, which was conducted by the UPSC. The disclosure of the separate cut-off marks in respect of each subject in the said examination for the different categories of candidates, namely, General, OBC, SC, ST and Physically Handicapped is also in question. The question of disclosure of the individual marks obtained by each of the candidates as well as the disclosure of the model answers to each series of questions for all the subjects is also in issue. The respondent Nos. 2 to 24 are candidates, who had appeared in the Civil Services (Preliminary) Examination, 2006 and had sought this information from the Central Public Information Officer (CPIO) of the UPSC. For this purpose, applications were made sometime in August, 2006. These applications were disposed of by separate orders by the CPIO. One such order dated 07.09.2006 has been placed in the paper book as Annexure-B to the petition. Rejecting the applications for information, the CPIO gave, inter alia, the following reasons:

1) The information sought was in the nature of crucial secrets and constituted intellectual property of the UPSC within the meaning of Section 8(1)(d) of the RTI Act;

2) There was no public interest in requiring the disclosure of such information;

3) The disclosure of the information would undermine the integrity, strength and efficacy and competitive public examination system conducted by the UPSC;

4) The preliminary examination for the Civil Services was only a screening test and it had been specifically notified that no mark sheets would be supplied to candidates and that no correspondence would be entertained by the Commission in this regard.

3. Being aggrieved by the rejection of their applications and consequent non-disclosure of the information sought by them, the respondents 2 to 24 filed two separate appeals on 03.10.2006 and 06.10.2006 before the appellate authority of the UPSC under Section 19(1) of the RTI Act. Apparently, some of the candidates Along with others had also filed complaints before the Central Information Commission under Section 18(1)(b) of the RTI Act. When these applications were being considered by the Central Information Commission, upon learning that the two appeals were pending before the appellate authority of the UPSC, the Central Information Commission directed that the said two appeals be disposed of within a week. Consequent thereupon, the appeals were disposed of by the appellate authority of the UPSC on 20.10.2006 upholding the refusal by the CPIO.

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4. In the order dated 20.10.2006, the appellate authority referred to paragraph 2 Section I, Appendix 1 of the Rules for Civil Services Examination, 2006 as notified by the Department of Personnel and Training on 03.12.2005 to indicate the nature of the examination. The said reference made it clear that the preliminary examination consisted of two papers of Objective Type (Multiple Choice Questions) and would carry a maximum of 450 marks in the subjects specified in Section (A) of Section II of the said Rules for Civil Services Examination, 2006. It was also specified that the examination was meant to serve as a screening test only and that the marks obtained in the Preliminary Examination by the candidates, who are declared qualified for admission to the Main Examination, would not be counted for determining the final order of merit. It was also indicated that the number of candidates admitted to the Main Examination would be about 12 to 13 times the total approximate number of vacancies to be filled in the year in the various services and posts.

5. In the order dated 20.10.2006, it was categorically stated in paragraph 9.3 as under:

9.3 In the Civil Services Examination, no subject-wise cut offs are fixed by the Commission as such. therefore, the information as requested by the applicant is non-existent and cannot be made available.

It was noted in the said order that the UPSC shortlisted 7766 candidates, strictly in order of merit, as laid down under the rules, as against 632 vacancies reported by various participating Ministries for the Civil Services Examination, 2006. It was again mentioned that " No fixed cut-off percentage have been laid down under the rules as such". Accordingly, the appellate authority held that the information with regard to cut-off marks cannot be made available to the applicants.

6. In the order dated 20.10.2006, the appellate authority also noted that the process of evenly evaluating the performance of candidates across different subjects has been developed and designed by the UPSC. It was observed that the disclosure of the individual scores Along with the keys of question papers would result in the derailment of the entire structure and process of Civil Services Examination and that the sharing of the complex intricacies on evaluation of performance in various optional subjects would seriously endanger the process of secrecy and confidentiality of the said examination.

7. It was observed that unpredictability of the methodology of testing was an inherent feature of any system of testing in a competitive examination and that in case the details of selection keys, cut-offs, individual marks and the methodology of scaling were publicly disclosed/shared, with the prospective candidates", the examination itself would lose its most unique feature of unpredictability and competitiveness. The appellate authority also held that the non-disclosure of information desired was also covered under the provisions of Section [8\(1\)\(d\)](#) of the RTI Act. With these observations, the appellate authority rejected the appeals and upheld the orders of the CPIO which amounted to non-disclosure of the information to the respondents 2 to 24. Thereafter, the matter reached the Central Information Commission by way of second appeal under Section [19\(3\)](#) of the RTI Act.

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8. The said appeals were disposed of by the Full Bench of the Central Information Commission by an order dated 13.11.2006 whereby the following directions were made:

i) the UPSC shall, within two weeks from the date of this order, disclose the marks assigned to each of the applicants for the Civil Services Preliminary Examination 2006 in General Studies and in Optional Papers; and

ii) The UPSC, within two weeks from the date of this order, shall also disclose the cut-off marks fixed in respect of the General Studies paper and in respect of each of the Optional Papers and if no such cut-off marks are there, it shall disclose the subject-wise marks assigned to short-listed candidates; and

iii) The UPSC shall examine and consider under Section [8\(1\)\(d\)](#) of the RTI Act the disclosure of the scaling system as it involves larger public interest in providing a level playing field for all aspirants and shall place the matter before the Competent Authority within one month from the date of this order. This will also cover the issue of disclosure of model answers, which we recommend should in any case be made public from time to time. In doing so, it shall duly take into account the provisions of Section [9](#) of the RTI Act.

9. Before the Central Information Commission, various points were taken by the respondents 2 to 24 in support of their appeals. They were, inter alia, that the finding that UPSC does not have any cut-offs is wrong; that the UPSC cannot withhold information under Section [8\(1\)\(d\)](#) and [8\(2\)](#) of the RTI Act; that disclosure of the information sought would not derail the system; since marks of the Main Examination are published, there could be no objection to the marks of the Preliminary Examination being disclosed; the information available with the UPSC was not the intellectual property of the UPSC as UPSC was not involved in any form of commerce or trade. On behalf of the UPSC, it was contended before the Central Information Commission that there was no "pre-prescribed cut-off"; the scaling methodology developed by the UPSC constituted intellectual property under Section [8\(1\)\(d\)](#) of the RTI Act; even if it did not constitute intellectual property, disclosure of the scaling method was protected under Section [8\(1\)\(d\)](#) of the RTI Act as it would adversely affect the competitive position of third parties; the statistical aspects, such as individual marks, cut-off, keys, etc. are vital parts of the methodology and that disclosure of individual marks of thousands of candidates would be time consuming and would make it difficult for the UPSC to conduct examinations on schedule.

10. The Central Information Commission in making the directions, indicated above, observed that UPSC is not an organisation that had been kept out of the reach of the RTI Act and that the

onus lies on the CPIO to demonstrate as to why the information sought ought not to be disclosed. It also observed that the UPSC failed to explain how the individual marks themselves could constitute intellectual property of the UPSC. It was also of the view that there was no reason as to how the assigned marks or scaled marks obtained after applying the scaling methodology (whatever it might be) could be part of the intellectual property of the UPSC. A similar logic was applicable in respect of cut-off marks. With regard to the design of the question papers and the model answers in respect of each such question paper, the Central Information Commission came to the conclusion that the UPSC had the copyright in the same and that, therefore, was part of the intellectual property of the UPSC contemplated under Section [8\(1\)\(d\)](#) of the RTI Act. Consequently, the UPSC was under no obligation to disclose such material, unless the larger public interest warranted the disclosure of such information. It is on the basis of this reasoning that the Central Information Commission made the directions referred to above.

11. Mr. Sudarshan Mishra, the learned senior counsel appearing on behalf of the UPSC, explained that the Civil Services Examination comprises of two parts; the Preliminary Examination and the Main Examination which is followed by an interview. The present writ petition pertains to the Preliminary Examination. This examination is in the nature of a screening test in order to select about 12-13 times the number of vacancies in order of merit. The preliminary Examination, as already noted above, comprises of two papers, one being general studies which is compulsory for all candidates and another optional paper from out of the 23 subjects which are offered. He submitted that since the optional paper is not common to all the candidates and it depends upon the option taken by the candidates, a methodology had to be developed to make the marks obtained in these different subjects comparable across candidates. Through this methodology, scaling of marks is done so as to make the marks obtained in different subjects by different candidates comparable with each other. He submitted that scientific formulae are used for scaling of marks. These scientific formulae have been further adapted and modified by experts by using certain computer sub-routines to suit the needs and requirements of the UPSC for the said Preliminary Examination. He further submitted that insofar as the marks for general studies are concerned, no scaling is applied to them as the paper is common to all the candidates. He submitted that prior to the examination, no cut-offs can be prescribed and the cut-offs that are implemented are only post-examination. He also submitted that the marks obtained in the preliminary examination are not at all counted in the Main Examination. The Preliminary Examination is merely in the nature of a screening test or a qualifying examination.

12. He submitted that revealing the cut-off marks as well as the individual marks and the keys to the question papers would enable unscrupulous persons to reverse engineer and arrive at the scaling system which is kept secret by the UPSC. If the scaling system adopted by the UPSC is disclosed or known to the public, then, according to Mr Mishra, the entire system could be undermined and would defeat the very purpose of selecting the best for the Civil Services.

13. Mr Mishra submitted that the UPSC is a Constitutional body created under Article [320](#) of the Constitution of India and that it is required, inter alia, to be consulted on all matters relating to methods of recruitment to the Civil Services and Civil Posts. Tracing the history of the Civil Services Examinations, Mr Mishra submitted that between 1947 and 1950, a combined competitive examination was held each year for recruitment to the Indian Administrative Service (IAS), the Indian Foreign Service (IFS), the Indian Police Service (IPS) and non-technical Central Civil Services. At that point of time, there were three compulsory papers; General English, Essay and General Knowledge of 150 marks each. The IAS, IFS and Central Civil

Service Examination had three optional subjects, while the IPS had only two. From 1951, two additional optional subjects of the Masters Degree standard were prescribed for the IAS and the IFS. A major review of the examination system was carried out by the Kothari Committee in 1974-77. Thereafter, a Common Unified Examination for the All India and Central Services Class-I was introduced. The examination was split-up into a Preliminary Examination and the Main Examination. The Preliminary Examination had two Objective Type Papers (General Studies of 150 marks and an Optional Subject of 300 marks). The preliminary examination was a screening test for the Civil Services (Main) Examination. This was followed by Main Examination having several papers and thereafter an interview. In 1988-89, the Satish Chandra Committee conducted a review of the Civil Services Examination and consequent thereupon, there were some changes made to the Main Examination and the interview test. He reiterated that a scaling methodology based on appropriate statistical principles is being followed by the Commission. He submitted that the scaling methodology has been developed by the UPSC with the association of renowned experts in the field Along with application software and this was a part of the recommendation of the Kothari Committee. He also reiterated that there are no "pre-prescribed" cut-off marks. Every year, there is likelihood of different cut-offs. He submitted that disclosure of information in the nature of actual marks obtained by each candidate would compromise the integrity and efficacy of the examination system. It can also lead to the deciphering of the scaling system used by the UPSC, which, according to him, constituted intellectual property envisaged under Section [8\(1\)\(d\)](#) of the RTI Act. An argument advanced by Mr Mishra for non-disclosure was that further disclosure would enable short-cut techniques by coaching institutes which would reduce the examination process to the level of mere strategizing rather than being a test of substantive knowledge. According to him, this would lead to distortion and would skew any fair application of the UPSC's process. Consequently, the chances of genuinely meritorious candidates, who happen to be third parties in this context, and who have required thorough and deep understanding of the subjects, would be undermined. therefore, according to Mr Mishra, the larger public interest does not warrant disclosure of such information.

14. Mr Aman Lekhi, the learned senior counsel who appeared on behalf of the respondents 2 to 5 and 7 to 23, submitted that there is no question of the disclosure leading to any undermining of the system. He submitted that the final examination and the interview are yet to be conducted. With regard to the confidentiality argument, he submitted that such an argument had already been rejected by the Gujarat High Court in the case of Kamlesh Haribhai Goradia v. Union of India and Anr. 1987 (1) Guj LR 157. He submitted that this decision Page 1315 has been approved by the Supreme Court in UP Public Service Commission v. Subhash Chandra Dixit and Ors. [MANU/SC/0878/2003](#) in paragraph 28 thereof. Mr Lekhi submitted that, in any event, the scaling system has already been disclosed before the Gujarat High Court and the Supreme Court. He also submitted that the disclosure of information would lead to a better system and in this context, he submitted that it would be in general public interest that a public authority should throw open the process of public scrutiny which would result in evolving a better system. He drew support from the impugned decision wherein the Central Information Commission observed as under:

34. The Commission has carefully considered the aspects of public interest involved in the matter. It has also considered the submissions made by the UPSC and also by the appellants. There is no doubt that the issues involve paramount public interest of selecting the best available brains for manning the Civil Services. Equally important is the need to have a transparent system known to each of the aspirants. Contrary to what the UPSC has claimed, this is the only sure means of ensuring a level playing field. A public authority should not be as possessive of its copyright as an ordinary owner who wants to keep his property to his chest.



Throwing the process open for public scrutiny might probably result in evolving a system better than what has hitherto been followed by the UPSC. In this context, it is pertinent to refer to the provisions of Section 9 of the RTI Act that reads as under:

Without prejudice to the provisions of Section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

Thus, a CPIO is empowered to reject a request for information where such a request for providing access to information would involve an infringement of copyright subsisting in a person. The power of the CPIO does not extend to rejecting such a request if the infringement of copyright involved is belonging to the State. Even Section 8(1)(d) also mandates the competent authority to order disclosure of information, if it is satisfied that larger public interest so warrants.

15. Mr Lekhi also made references to a U.K. White Paper and Wade on Administrative Law and Dias on Jurisprudence.

16. Mr Prashant Bhushan, the learned Counsel who appeared for the respondent No. 24 also submitted that the scaling system already stood disclosed before the Supreme Court. He referred to the counter-affidavit filed by the UPSC in the case of UP Public Service Commission v. Subhash Chandra Dixit (supra) in SLP (c) 23723/2002. In paragraph 3 of the said counter-affidavit, the UPSC has stated that the scaling system being followed by the Uttar Pradesh PSC (UP PSC) is different from that of the UPSC. It was noted that while the UP PSC was following a linear method (also known as the standard deviation method) for its examinations, the UPSC's scaling method was based on the Normalized Equi-Percentile (NEP) method for the optional objective type papers in the Preliminary Examination. Annexure-II to the said counter-affidavit spelt out the scaling methods. The Normalised Equi-Percentile method used by the UPSC has been explained as under:

Normalised-equi percentile method. This method is based on the assumption of comparability among candidates taking various optional subjects. It is fair to assume that the mental ability (and consequent performance) of candidates in all optional subjects are about the same at very score range. We can assume that top 5% of say History candidates are comparable in ability to the top 5% of say Geography candidates. This assumption can be extended to other score range such as 10%, 15%, 20% etc. Thus, it is possible to statistically adjust the scores in various subjects. Further since the number of candidates for each subject is large (over 1000) it is reasonable to assume that the scaled marks should lie on a normal curve. For the normal distribution curve of each optional subject, mean of 150 and standard deviation of 30 (for a paper with maximum marks of 300) have been taken. The scaled marks are computed using the standard Statistical Tables-Areas under the standard normal curve-Annexure II (Colly).

The same Annexure-II (Colly) also contains the statistical tables-areas under the standard normal curve as given in Schuam's Outline Series, Theory and Problems of Statistics SI(metric) edition. Various other works are also referred to in the said Annexure-II to the said counter-affidavit and they include:

i) Research on Examinations in India" issued by the NCERT;

ii) Scaling Techniques, what, why and how" issued by the Association of Indian Universities;

iii) A note on the importance of scaling UPSC Examinations by Standardized Methods" by A. Edwin Harper, Jr., June/Sept., 1978.

17. In view of the contents of the said counter-affidavit and its annexure, Mr Prashant Bhushan submitted that the scaling methods were well-known and, therefore, the argument that the disclosure of the cut-offs and actual marks would result in the revealing of the scaling method is a meaningless argument. Secondly, he submitted that the scaling method would, in any event, be known to everybody and, therefore, the argument that one group would misuse and undermine the system is untenable. He referred to the decision of the Supreme Court in the case of Sanjay Singh and Anr. v. UP Public Service Commission, Allahabad and Anr. 2007 (2) JT 534 which was with regard to the scaling methodology employed for judicial services examination. Mr Bhushan referred to this decision to indicate that the examination system and scaling methodology employed must be under constant review so as to endeavor to evolve a better and more fool-proof system.

18. Mr Mittal, the learned Counsel, who appeared on behalf of the respondent No. 1 submitted that there was no question of this writ petition being maintainable. He submitted that, in any event, the third direction given by the Central Information Commission itself made it clear that it was left to the UPSC to examine as to whether the disclosure of the scaling method and the keys to the question papers would be in public interest or not. Before that could be done, the petitioner has rushed to this Court and filed the writ petition.

19. Since arguments were advanced at length on the question of the scaling method being secret and its public disclosure leading to undermining of the examination system, the UPSC was directed by this Court on 20.03.2007 to file a note prepared by an expert to indicate as to how the disclosure of the marks assigned would undermine the scaling system. The note was required to be filed in a sealed cover. That has been done.

20. I have examined the contents of the material placed on behalf of the UPSC in the sealed cover. I shall refer to that shortly. Before doing that, it would be necessary to recount that the scheme of the Civil Services (Preliminary) Examination indicates that it comprises of two objective papers. A paper in General Studies, which is common to all the candidates, carries 150 marks. A Second paper out of 23 optional papers carries 300 marks. Both the common papers (General Studies) and the optional paper are objective type papers and are machine-evaluated by optical mark readers and computers. It is also clear that the Civil Services (Preliminary) Examination is only a screening test and carries no weightage towards the final merit order which is determined solely by the marks obtained by the candidates in the Civil Services (Main) Examination and the interview. There are no "pre-prescribed"1 cut-off marks to shortlist the candidates in the Civil Services (Preliminary) Examination. The cut-off marks are fixed on the basis of the marks obtained by the candidates in the said examination so as to clear 12-13 times the number of vacancies in a particular year.

21. It is also clear that upon the recommendations of the Kothari Committee, a scaling methodology was employed since 1979 for the Civil Services (Preliminary) Examination. The scaling methodology is employed only with respect to the optional paper so as to provide a fair and level-playing field for the candidates of all the optional papers which include papers from Humanities, Social Science, Life Science, Physical Science, Engineering, Medical Science, etc. The marks obtained by the candidates in the optional papers are, according to the UPSC,



subjected to scaling using computer sub-routines without any manual intervention so as to ensure that the acceptability of the scaled marks is 100% accurate. As revealed in the counter-affidavit filed before the Supreme Court, referred to above, the scaling method utilized by the UPSC is the Normalized Equi-Percentile Method with, perhaps, some customization. The scaled marks obtained in the optional paper is added to the marks (raw) obtained in the General Studies paper. If the total is below the cut-off, the candidate fails the screening test. If the total is equal to or above the cut-off, he is selected for the Main Examination. An example would illustrate. Let us assume that 'A' is a candidate and he obtained 100 marks in General Studies and scaled marks of 200 in optional paper. So, his total would be 300 (100 + 200). If the cut-off mark is more than Page 1318 300, then he would fail. Otherwise, he would be selected for the Main Examination.

22. The argument advanced on behalf of the UPSC is that if the cut-off mark and the individual marks obtained by the candidates are revealed, then the scaling methodology would become known to the public at large and that would undermine the entire examination system. I have examined the contents of the sealed cover which comprises of two parts: Part-A and Part-B. Part-A purports to be a brief description of the scheme of the Civil Services (Preliminary) Examination and the scaling methodology employed by the UPSC. Part-B is a note on as to how the disclosure of the information sought by the respondents shall undermine the examination system of the UPSC. On an examination of both Part-A and Part-B of the contents of the sealed cover, I am of the view that the scaling methodology indicated therein is already known to the public because of the disclosure of the UPSC itself in the counter-affidavit filed before the Supreme Court as aforesaid. There is nothing new that is mentioned in the contents of the sealed cover with regard to the methodology which is not mentioned in the said counter-affidavit filed before the Supreme Court. It was argued in court, without going into the specifics of any data, that if the information sought is revealed, then a possible fall out would be that a large number of dummy candidates would be pressed into service by some unscrupulous coaching institutes which would result in the alteration of the scaled marks of certain specific papers and thereby deprive meritorious students in other papers from qualifying as the presence of dummy candidates would influence the cut-off mark. I am unable to agree with this submission made on behalf of the UPSC. The scaled marks, employing the methodology revealed by the UPSC before the Supreme Court, is clearly dependent upon the number of candidates. This is inherent in the formula employed itself. However, what the UPSC seems to ignore is that the cut-off mark itself would change. The scaling methodology adopted by them, which seeks at normalizing the distribution curve, would take care of the abnormalities (skewness) caused by the dummy candidates, if any.

23. It is important to note that prior to the examination, the cut-off mark would not be known. Nor would it be known to any of the coaching institutes as to how many candidates are going to appear in each of the optional papers. Apart from this, it would also not be known to anybody as to what the performance of any candidate would be in each of the papers. It is, therefore, unfathomable that the coaching institutes would be able to undermine the system of examination by disclosure of the cut-off mark of the previous year and the actual marks of the candidates of the previous year when the marks obtained in any year by different candidates is independent of the marks obtained by candidates in any other year. The examination for each year is entirely independent of the examinations of the other years. So, the data of one year would have no bearing on the data for the next year. The question papers would be different; the candidates would be different; the composition of the number of candidates taking each of the optional papers would be different. The cut-off mark would not be known prior to the examination and, therefore, revealing the data sought by the respondents 2 to 24 in the Page

1319 present case would, in my view, have no bearing on the sanctity of the examination system.

24. What the respondents 2 to 24 have sought is information with regard to an event which has already taken place. Apparently, these persons have already failed to qualify in the screening test. In other words, they have not made the cut-off. The events of determination of the cut-off mark and of screening are already over. These marks, which have been obtained by the candidates who appeared in the Civil Services (Preliminary) Examinations, are not to be counted for the final selection which would be based entirely on the Main Examination and the interview to follow. therefore, I see no harm in the disclosure of the marks, as directed by the Central Information Commission.

25. As regards the disclosure of the scaling system, nothing further needs to be done as, in my view, the same already stands disclosed by the UPSC in the affidavit filed by them before the Supreme Court.

26. With respect to the disclosure of the model answers to the questions, I am of the view that though the UPSC may have some rights over them, the disclosure would be in larger public interest. Candidates have the right to know where they went wrong. One sure way of informing them in this regard is by disclosing the model answers.

27. As regards the stand taken by the UPSC of taking cover under Section 8(1)(d) of the RTI Act, I feel that that is wholly inappropriate. First of all, the information that is sought by the respondents 2 to 24 does not fall within the expression of "intellectual property". The data collected by the UPSC is of an event which has already taken place and its disclosure would have no bearing whatsoever on the next years examination. thereforee, even if it is assumed that it is "information" within the meaning of Section 8(1)(d) of the RTI Act, its disclosure would not harm the competitive position of any third party. In any event, the UPSC being a public body is required to act and conduct itself in a fair and transparent manner. It would also be in public interest that this fairness and transparency is displayed by the revealing of the information sought. Moreover, Section 8(2), read in its proper perspective, indicates that access to information ought to be provided by a public authority even where it is otherwise entitled to withhold the same, if the public interest in disclosure outweighs the harm to the protected interests. The disclosure of information, as directed by the Central Information Commission, does not, in any way, in my view, harm the protected interests of UPSC or any third party. In any event, the public interest in disclosure is overwhelming and I am of the view that the Central Information Commission has approached the matter in the correct perspective and has issued the directions for disclosure of the information. Directions (i) and (ii) given by the Central Information Commission do not call for any interference except to the extent that in Direction (ii) there is reference to cut-off marks for General Studies and each of the optional papers whereas, in point of fact, there is only one cut-off mark for the combined total of raw General Studies marks and scaled optional paper marks. Thus, that cut- off needs to be disclosed. As regards direction No. (iii), the same is modified to the extent that the UPSC shall disclose the model answers. As regards the disclosure of the scaling system, Page 1320 it is apparent that the same already stands disclosed, as indicated above, and, thereforee, nothing further needs to be done in that regard.

With these modifications in the directions given by the Central Information Commission, the writ petition is disposed of. No costs. The contents of the sealed cover mentioned above be re-sealed and retained in the record.

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

**Judgment delivered on:17.04.2007**

**WP(C) No.17583/2006**

**17.04.2007**

**UNION PUBLIC SERVICE COMMISSION ...Petitioner**

**- versus -**

**CENTRAN INFORMATION COMMISSION and OTHERS ...Respondents**

**Advocates who appeared in this case:**

**For the Petitioner : Mr S.K. Mishra, Sr Advocate with Mr Anuj Rajput**

**and Mr Rahul Chauhan**

**For the Respondent No.1 : Mr K.C. Mittal with Mr Mrinal Madhav**

**For the Respondent Nos. 2-5, 7-23 : Mr Aman Lekhi, Sr Advocate with Mr Sumit**

**Kumar, Mr Rajan K. Chourasia, Mr Jaspreet, Mr S. Rai and Mr Rakesh Kumar.**

**For the Respondent No.24. : Mr Prashant Bhushan with Mr Devvrat**

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**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**

**1. The Union Public Service Commission (UPSC) has filed this writ petition praying for the setting aside of the order dated 13.11.2006 passed by the Central Information Commission, New Delhi in an appeal under Section 19 (3) of the Right to Information Act, 2005 (hereinafter referred to as 'the RTI Act').**

**2. The issue involved in the present petition relates to the disclosure of cut-off marks for the optional subjects as well as for general studies of the**

**Civil Services (Preliminary Examination), 2006, which was conducted by the UPSC. The disclosure of the separate cut-off marks in respect of each subject in the said examination for the different categories of candidates, namely, General, OBC, SC, ST and Physically Handicapped is also in question. The question of disclosure of the individual marks obtained by each of the candidates as well as the disclosure of the model answers to each series of questions for all the subjects is also in issue. The respondent nos. 2 to 24 are candidates, who had appeared in the Civil Services (Preliminary) Examination, 2006 and had sought this information from the Central Public Information Officer (CPIO) of the UPSC. For this purpose, applications were made sometime in August, 2006. These applications were disposed of by separate orders by the CPIO. One such order dated 07.09.2006 has been placed in the paper book as Annexure-B to the petition. Rejecting the applications for information, the CPIO gave, inter alia, the following reasons:-**

**?1) The information sought was in the nature of crucial secrets and constituted intellectual property of the UPSC within the meaning of Section 8 (1) (d) of the RTI Act;**

**2) There was no public interest in requiring the disclosure of such information;**

**3) The disclosure of the information would undermine the integrity, strength and efficacy and competitive public examination system conducted by the UPSC;**

**4) The preliminary examination for the Civil Services was only a screening test and it had been specifically notified that no mark sheets would be supplied to candidates and that no correspondence would be entertained by the Commission in this regard.?**

**3. Being aggrieved by the rejection of their applications and consequent non-disclosure of the information sought by them, the respondents 2 to 24 filed two separate appeals on 03.10.2006 and 06.10.2006 before the appellate authority of the UPSC under Section 19 (1) of the RTI Act. Apparently, some of the candidates alongwith others had also filed complaints before the Central Information Commission under Section 18 (1) (b) of the RTI Act. When these applications were being considered by the Central Information Commission, upon learning that the two appeals were pending before the appellate authority of the UPSC, the Central Information Commission directed that the said two appeals be disposed of within a week. Consequent thereupon, the appeals were disposed of by the appellate authority of the UPSC on 20.10.2006 upholding the refusal by the CPIO.**

**4. In the order dated 20.10.2006, the appellate authority referred to paragraph 2 Section I, Appendix 1 of the Rules for Civil Services Examination, 2006 as notified by the Department of Personnel and Training on 03.12.2005 to indicate the nature of the examination. The said reference made it clear that the preliminary examination consisted of two papers of Objective Type (Multiple Choice Questions) and would carry a maximum of 450 marks in the subjects specified in Section (A) of Section II of the said Rules for Civil Services Examination, 2006. It was also specified that the examination was meant to serve as a screening test only and that the marks obtained in the Preliminary Examination by the candidates, who are declared qualified for admission to the Main Examination, would not be counted for determining the final order of merit. It was also indicated that the number of candidates admitted to the Main Examination would be about 12 to 13 times the total approximate number of vacancies to be filled in the year in the various services and posts.**

**5. In the order dated 20.10.2006, it was categorically stated in paragraph 9.3 as under:-**

**?9.3 In the Civil Services Examination, no subject-wise cut offs are fixed by the Commission as such. Therefore, the information as requested by the applicant is non-existent and cannot be made available.?**

**It was noted in the said order that the UPSC shortlisted 7766 candidates, strictly in order of merit, as laid down under the rules, as against 632 vacancies reported by various participating Ministries for the Civil Services Examination, 2006. It was again mentioned that ?No fixed cut-off percentage have been laid down under the rules as such?. Accordingly, the appellate authority held that the information with regard to cut-off marks cannot be made available to the applicants.**

**6. In the order dated 20.10.2006, the appellate authority also noted that the process of evenly evaluating the performance of candidates across different subjects has been developed and designed by the UPSC. It was observed that the disclosure of the individual scores alongwith the keys of question papers would result in the derailment of the entire structure and process of Civil Services Examination and that the sharing of the complex intricacies on evaluation of performance in various optional subjects would seriously endanger the process of secrecy and confidentiality of the said examination.**

**7. It was observed that unpredictability of the methodology of testing was an inherent feature of any system of testing in a competitive examination and that in case the details of selection keys, cut-offs, individual marks and the**

methodology of scaling were publicly disclosed / shared, with the prospective candidates?, the examination itself would lose its most unique feature of unpredictability and competitiveness. The appellate authority also held that the non-disclosure of information desired was also covered under the provisions of Section 8 (1) (d) of the RTI Act. With these observations, the appellate authority rejected the appeals and upheld the orders of the CPIO which amounted to non-disclosure of the information to the respondents 2 to 24. Thereafter, the matter reached the Central Information Commission by way of second appeal under Section 19 (3) of the RTI Act.

8. The said appeals were disposed of by the Full Bench of the Central Information Commission by an order dated 13.11.2006 whereby the following directions were made:-

- i) the UPSC shall, within two weeks from the date of this order, disclose the marks assigned to each of the applicants for the Civil Services Preliminary Examination 2006 in General Studies and in Optional Papers; and
- ii) The UPSC, within two weeks from the date of this order, shall also disclose the cut-off marks fixed in respect of the General Studies paper and in respect of each of the Optional Papers and if no such cut-off marks are there, it shall disclose the subject-wise marks assigned to short-listed candidates; and
- iii) The UPSC shall examine and consider under Section 8 (1) (d) of the RTI Act the disclosure of the scaling system as it involves larger public interest in providing a level playing field for all aspirants and shall place the matter before the Competent Authority within one month from the date of this order. This will also cover the issue of disclosure of model answers, which we recommend should in any case be made public from time to time. In doing so, it shall duly take into account the provisions of Section 9 of the RTI Act.?

9. Before the Central Information Commission, various points were taken by the respondents 2 to 24 in support of their appeals. They were, inter alia,

that the finding that UPSC does not have any cut-offs is wrong; that the UPSC cannot withhold information under Section 8(1) (d) and 8 (2) of the RTI Act; that disclosure of the information sought would not derail the system; since marks of the Main Examination are published, there could be no objection to the marks of the Preliminary Examination being disclosed; the information available with the UPSC was not the intellectual property of the UPSC as UPSC was not involved in any form of commerce or trade. On behalf of the UPSC, it was contended before the Central Information Commission that there was no 'pre-prescribed cut-off?'; the scaling methodology developed by the UPSC constituted intellectual property under Section 8(1) (d) of the RTI Act; even if it did not



constitute intellectual property, disclosure of the scaling method was protected under Section 8(1) (d) of the RTI Act as it would adversely affect the competitive position of third parties; the statistical aspects, such as individual marks, cut-off, keys, etc. are vital parts of the methodology and that disclosure of individual marks of thousands of candidates would be time consuming and would make it difficult for the UPSC to conduct examinations on schedule.

10. The Central Information Commission in making the directions, indicated above, observed that UPSC is not an organisation that had been kept out of the reach of the RTI Act and that the onus lies on the CPIO to demonstrate as to why the information sought ought not to be disclosed. It also observed that the UPSC failed to explain how the individual marks themselves could constitute intellectual property of the UPSC. It was also of the view that there was no reason as to how the assigned marks or scaled marks obtained after applying the scaling methodology (whatever it might be) could be part of the intellectual property of the UPSC. A similar logic was applicable in respect of cut-off marks. With regard to the design of the question papers and the model answers in respect of each such question paper, the Central Information Commission came to the conclusion that the UPSC had the copyright in the same and that, therefore, was part of the intellectual property of the UPSC contemplated under Section 8(1) (d) of the RTI Act. Consequently, the UPSC was under no obligation to disclose such material, unless the larger public interest warranted the disclosure of such information. It is on the basis of this reasoning that the Central Information Commission made the directions referred to above.

11. Mr Sudarshan Mishra, the learned senior counsel appearing on behalf of the UPSC, explained that the Civil Services Examination comprises of two parts; the Preliminary Examination and the Main Examination which is followed by an interview. The present writ petition pertains to the Preliminary Examination. This examination is in the nature of a screening test in order to select about 12-13 times the number of vacancies in order of merit. The preliminary Examination, as already noted above, comprises of two papers, one being general studies which is compulsory for all candidates and another optional paper from out of the 23 subjects which are offered. He submitted that since the optional paper is not common to all the candidates and it depends upon the option taken by the candidates, a methodology had to be developed to make the marks obtained in these different subjects comparable across candidates. Through this methodology, scaling of marks is done so as to make the marks obtained in different subjects by different candidates comparable with each other. He submitted that scientific formulae are used for scaling of marks. These scientific formulae have been further adapted and modified by experts by using certain computer sub-routines to suit the needs and requirements of the UPSC for

the said Preliminary Examination. He further submitted that insofar as the marks for general studies are concerned, no scaling is applied to them as the paper is common to all the candidates. He submitted that prior to the examination, no cut-offs can be prescribed and the cut-offs that are implemented

are only post-examination. He also submitted that the marks obtained in the preliminary examination are not at all counted in the Main Examination. The Preliminary Examination is merely in the nature of a screening test or a qualifying examination.

12. He submitted that revealing the cut-off marks as well as the individual marks and the keys to the question papers would enable unscrupulous persons to reverse engineer and arrive at the scaling system which is kept secret by the UPSC. If the scaling system adopted by the UPSC is disclosed or known to the public, then, according to Mr Mishra, the entire system could be undermined and would defeat the very purpose of selecting the best for the Civil Services.

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He submitted that the scaling methodology has been developed by the UPSC with the association of renowned experts in the field alongwith application software and this was a part of the recommendation of the Kothari Committee. He also reiterated that there are no 'pre-prescribed' cut-off marks. Every year, there is likelihood of different cut-offs. He submitted that disclosure of information in the nature of actual marks obtained by each candidate would compromise the integrity and efficacy of the examination system. It can also lead to the deciphering of the scaling system used by the UPSC, which, according to him, constituted intellectual property envisaged under Section 8(1) (d) of the RTI Act. An argument advanced by Mr Mishra for non-disclosure was that further disclosure would enable short-cut techniques by coaching institutes which would reduce the examination process to the level of mere strategizing rather than being a test of substantive knowledge. According to him, this would lead to distortion and would skew any fair application of the UPSC's process. Consequently, the chances of genuinely meritorious candidates, who happen to be third parties in this context, and who have required thorough and deep understanding of the subjects, would be undermined. Therefore, according to Mr Mishra, the larger public interest does not warrant disclosure of such information.

14. Mr Aman Lekhi, the learned senior counsel who appeared on behalf of the respondents 2 to 5 and 7 to 23, submitted that there is no question of the disclosure leading to any undermining of the system. He submitted that the final examination and the interview are yet to be conducted. With regard to the confidentiality argument, he submitted that such an argument had already been rejected by the Gujarat High Court in the case of Kamlesh Haribhai Goradia v. Union of India and Another: 1987 (1) Guj LR 157. He submitted that this decision has been approved by the Supreme Court in UP Public Service Commission v. Subhash Chandra Dixit and Others: 2003 (12) SCC 701 in paragraph 28 thereof. Mr Lekhi submitted that, in any event, the scaling system has already been disclosed before the Gujarat High Court and the Supreme Court. He also submitted that the disclosure of information would lead to a better system and in this context, he submitted that it would be in general public interest that a public authority should throw open the process of public scrutiny which would result in evolving a better system. He drew support from the impugned decision wherein the Central Information Commission observed as under:-

34. The Commission has carefully considered the aspects of public interest involved in the matter. It has also considered the submissions made by the UPSC and also by the appellants. There is no doubt that the issues involve paramount public interest of selecting the best available brains for manning the Civil Services. Equally important is the need to have a transparent system

known to each of the aspirants. Contrary to what the UPSC has claimed, this is the only sure means of ensuring a level playing field. A public authority should not be as possessive of its copyright as an ordinary owner who wants to keep his property to his chest. Throwing the process open for public scrutiny might probably result in evolving a system better than what has hitherto been followed by the UPSC. In this context, it is pertinent to refer to the provisions of Section 9 of the RTI Act that reads as under:

'Without prejudice to the provisions of Section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.'

Thus, a CPIO is empowered to reject a request for information where such a request for providing access to information would involve an infringement of copyright subsisting in a person. The power of the CPIO does not extend to rejecting such a request if the infringement of copyright involved is belonging to the State. Even Section 8(1) (d) also mandates the competent authority to order disclosure of information, if it is satisfied that larger public interest so warrants.?

15. Mr Lekhi also made references to a U.K. White Paper and Wade on Administrative Law and Dias on Jurisprudence.

16. Mr Prashant Bhushan, the learned counsel who appeared for the respondent No.24 also submitted that the scaling system already stood disclosed before the Supreme Court. He referred to the counter-affidavit filed by the UPSC in the case of UP Public Service Commission v. Subhash Chandra Dixit (supra) in SLP (c) 23723/2002. In paragraph 3 of the said counter-affidavit, the UPSC has stated that the scaling system being followed by the Uttar Pradesh PSC (UP PSC) is different from that of the UPSC. It was noted that while the UP PSC was following a linear method (also known as the standard deviation method) for its examinations, the UPSC's scaling method was based on the Normalized Equi-Percentile (NEP) method for the optional objective type papers in the Preliminary Examination. Annexure-II to the said counter-affidavit spelt out

the scaling methods. The Normalised Equi-Percentile method used by the UPSC has been explained as under:-

?Normalized-equi percentile method

This method is based on the assumption of comparability among candidates taking various optional subjects. It is fair to assume that the mental ability (and

consequent performance) of candidates in all optional subjects are about the same at very score range. We can assume that top 5% of say History candidates are comparable in ability to the top 5% of say Geography candidates. This assumption can be extended to other score range such as 10%, 15%, 20% etc. Thus, it is possible to statistically adjust the scores in various subjects. Further since the number of candidates for each subject is large (over 1000) it is reasonable to assume that the scaled marks should lie on a normal curve. For the normal distribution curve of each optional subject, mean of 150 and standard deviation of 30 (for a paper with maximum marks of 300) have been taken. The scaled marks are computed using the standard Statistical Tables-Areas under the standard normal curve-Annexure II (Colly).?

The same Annexure-II (Colly) also contains the statistical tables-areas under the standard normal curve as given in Schuam's Outline Series, Theory and Problems of Statistics SI(metric) edition. Various other works are also referred to in the said Annexure-II to the said counter-affidavit and they include:-

- i) ?Research on Examinations in India? issued by the NCERT;
- ii) ?Scaling Techniques, what, why and how? issued by the Association of Indian Universities;
- iii) ?A note on the importance of scaling UPSC Examinations by Standardized Methods? by A. Edwin Harper, Jr., June / Sept., 1978.

17. In view of the contents of the said counter-affidavit and its annexure, Mr Prashant Bhushan submitted that the scaling methods were well-known and, therefore, the argument that the disclosure of the cut-offs and actual marks would result in the revealing of the scaling method is a meaningless argument. Secondly, he submitted that the scaling method would, in any event, be known to everybody and, therefore, the argument that one group would misuse and undermine the system is untenable. He referred to the decision of the Supreme Court in the case of Sanjay Singh and Another v. UP Public Service Commission, Allahabad and Another: 2007 (2) JT 534 which was with regard to the scaling methodology employed for judicial services examination. Mr Bhushan referred to this decision to indicate that the examination system and scaling methodology employed must be under constant review so as to endeavour to evolve a better and more fool-proof system.

18. Mr Mittal, the learned counsel, who appeared on behalf of the respondent No.1 submitted that there was no question of this writ petition being maintainable. He submitted that, in any event, the third direction given by the Central Information Commission itself made it clear that it was left to the UPSC to examine as to whether the disclosure of the scaling method and the keys to the question papers would be in public interest or not. Before that could be

done, the petitioner has rushed to this court and filed the writ petition.

19. Since arguments were advanced at length on the question of the scaling method being secret and its public disclosure leading to undermining of the examination system, the UPSC was directed by this court on 20.03.2007 to file a note prepared by an expert to indicate as to how the disclosure of the marks assigned would undermine the scaling system. The note was required to be filed in a sealed cover. That has been done.

20. I have examined the contents of the material placed on behalf of the UPSC in the sealed cover. I shall refer to that shortly. Before doing that, it would be necessary to recount that the scheme of the Civil Services (Preliminary) Examination indicates that it comprises of two objective papers. A paper in General Studies, which is common to all the candidates, carries 150 marks. A Second paper out of 23 optional papers carries 300 marks. Both the common papers (General Studies) and the optional paper are objective type papers and are machine-evaluated by optical mark readers and computers. It is also clear that the Civil Services (Preliminary) Examination is only a screening test and carries no weightage towards the final merit order which is determined solely by the marks obtained by the candidates in the Civil Services (Main) Examination and the interview. There are no pre-prescribed cut-off marks to shortlist the candidates in the Civil Services (Preliminary) Examination. The cut-off marks are fixed on the basis of the marks obtained by the candidates in the said examination so as to clear 12-13 times the number of vacancies in a particular year.

21. It is also clear that upon the recommendations of the Kothari Committee, a scaling methodology was employed since 1979 for the Civil Services (Preliminary) Examination. The scaling methodology is employed only with respect to the optional paper so as to provide a fair and level-playing field for the candidates of all the optional papers which include papers from Humanities, Social Science, Life Science, Physical Science, Engineering, Medical Science, etc. The marks obtained by the candidates in the optional papers are, according to the UPSC, subjected to scaling using computer sub-routines without any manual intervention so as to ensure that the acceptability of the scaled marks is 100 % accurate. As revealed in the counter-affidavit filed before the Supreme Court, referred to above, the scaling method utilized by the UPSC is the Normalized Equi-Percentile Method with, perhaps, some customization. The scaled marks obtained in the optional paper is added to the marks (raw) obtained in the General Studies paper. If the total is below the cut-off, the candidate fails the screening test. If the total is equal to or above the cut-off, he is

selected for the Main Examination. An example would illustrate. Let us assume that 'A' is a candidate and he obtained 100 marks in General Studies and scaled marks of 200 in optional paper. So, his total would be 300 (100+200). If the cut-off mark is more than 300, then he would fail. Otherwise, he would be selected for the Main Examination.

22. The argument advanced on behalf of the UPSC is that if the cut-off mark and the individual marks obtained by the candidates are revealed, then the scaling methodology would become known to the public at large and that would undermine the entire examination system. I have examined the contents of the sealed cover which comprises of two parts: Part-A and Part-B. Part-A purports to be a brief description of the scheme of the Civil Services (Preliminary) Examination and the scaling methodology employed by the UPSC. Part-B is a note on as to how the disclosure of the information sought by the respondents shall undermine the examination system of the UPSC. On an examination of both Part-A and Part-B of the contents of the sealed cover, I am of the view that the scaling methodology indicated therein is already known to the public because of the disclosure of the UPSC itself in the counter-affidavit filed before the Supreme Court as aforesaid. There is nothing new that is mentioned in the contents of the sealed cover with regard to the methodology which is not mentioned in the said counter-affidavit filed before the Supreme Court. It was argued in court, without going into the specifics of any data, that if the information sought is revealed, then a possible fall out would be that a large number of dummy candidates would be pressed into service by some unscrupulous coaching institutes which would result in the alteration of the scaled marks of

certain specific papers and thereby deprive meritorious students in other papers from qualifying as the presence of dummy candidates would influence the cut-off mark. I am unable to agree with this submission made on behalf of the UPSC. The scaled marks, employing the methodology revealed by the UPSC before the Supreme Court, is clearly dependent upon the number of candidates. This is inherent in the formula employed itself. However, what the UPSC seems to ignore is that the cut-off mark itself would change. The scaling methodology adopted by them, which seeks at normalizing the distribution curve, would take care of the abnormalities (skewness) caused by the dummy candidates, if any.

23. It is important to note that prior to the examination, the cut-off mark would not be known. Nor would it be known to any of the coaching institutes as to how many candidates are going to appear in each of the optional papers. Apart from this, it would also not be known to anybody as to what the performance of any candidate would be in each of the papers. It is, therefore, unfathomable that the coaching institutes would be able to undermine the system



of examination by disclosure of the cut-off mark of the previous year and the actual marks of the candidates of the previous year when the marks obtained in any year by different candidates is independent of the marks obtained by candidates in any other year. The examination for each year is entirely independent of the examinations of the other years. So, the data of one year would have no bearing on the data for the next year. The question papers would be different; the candidates would be different; the composition of the number of candidates taking each of the optional papers would be different. The cut-off mark would not be known prior to the examination and, therefore, revealing the data sought by the respondents 2 to 24 in the present case would, in my view, have no bearing on the sanctity of the examination system.

24. What the respondents 2 to 24 have sought is information with regard to an event which has already taken place. Apparently, these persons have already failed to qualify in the screening test. In other words, they have not made the cut-off. The events of determination of the cut-off mark and of screening are already over. These marks, which have been obtained by the candidates who appeared in the Civil Services (Preliminary) Examinations, are not to be counted for the final selection which would be based entirely on the Main Examination and the interview to follow. Therefore, I see no harm in the disclosure of the marks, as directed by the Central Information Commission.

25. As regards the disclosure of the scaling system, nothing further needs to be done as, in my view, the same already stands disclosed by the UPSC in the affidavit filed by them before the Supreme Court.

26. With respect to the disclosure of the model answers to the questions, I am of the view that though the UPSC may have some rights over them, the disclosure would be in larger public interest. Candidates have the right to know where they went wrong. One sure way of informing them in this regard is by disclosing the model answers.

27. As regards the stand taken by the UPSC of taking cover under Section 8 (1) (d) of the RTI Act, I feel that that is wholly inappropriate. First of all, the information that is sought by the respondents 2 to 24 does not fall within the expression of 'intellectual property'. The data collected by the UPSC is of an event which has already taken place and its disclosure would have no bearing whatsoever on the next years examination. Therefore, even if it is assumed that it is 'information' within the meaning of Section 8 (1) (d) of the RTI Act, its disclosure would not harm the competitive position of any third party. In any event, the UPSC being a public body is required to act and conduct itself in a

fair and transparent manner. It would also be in public interest that this fairness and transparency is displayed by the revealing of the information sought. Moreover, Section 8 (2), read in its proper perspective, indicates that access to information ought to be provided by a public authority even where it is otherwise entitled to withhold the same, if the public interest in disclosure outweighs the harm to the protected interests. The disclosure of information, as directed by the Central Information Commission, does not, in any way, in my view, harm the protected interests of UPSC or any third party. In any event, the public interest in disclosure is overwhelming and I am of the view that the Central Information Commission has approached the matter in the correct perspective and has issued the directions for disclosure of the information. Directions (i) and (ii) given by the Central Information Commission do not call for any interference except to the extent that in Direction (ii) there is reference to cut-off marks for General Studies and each of the optional papers whereas, in point of fact, there is only one cut-off mark for the combined total of raw General Studies marks and scaled optional paper marks. Thus, that cut-off needs to be disclosed. As regards direction No.(iii), the same is modified to the extent that the UPSC shall disclose the model answers. As regards the disclosure of the scaling system, it is apparent that the same already stands disclosed, as indicated above, and, therefore, nothing further needs to be done in that regard.

With these modifications in the directions given by the Central Information Commission, the writ petition is disposed of. No costs. The contents of the sealed cover mentioned above be re-sealed and retained in the record.

**BADAR DURREZ AHMED**  
( JUDGE )  
April 17, 2007  
dutt

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

**W.P. (C) 7244/2009, C.M. No.2956/2009 (Stay)**

**VANDANA MITTAL ..... Petitioner**  
**Through: Mr. Sunil Upadhyay, Advocate.**

**versus**

**CENTRA INFORMATION COMMISSION and ORS. .... Respondents**  
**Through: Mr. K.K. Nigam, Advocate for CIC.**  
**Mr. Anjum Javed, Advocate for**  
**Resp-2-4.**

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

**ORDER**  
**02.03.2009**

**The petitioner claims to be aggrieved by order of the Central Information Commission (CIC) dismissing her appeal.**

**The petitioner sought information on the following five issues: -**

**?1. What action has been taken on my complaints dated 18.1.07 and 1.2.07 and who are the officers investigating the matter and provide me the copies of entire proceedings including the copy of report of investigation officer and the copies of the statements of accused or any person recorded, if any, in the aforesaid matter?**

**2. What is the progress in my aforesaid complaints, whether any action has been taken in this regard and if not, what were the reasons for not taking any action though there has been threat to my life and property?**

**3. What action has been taken against a police officer who refused to take any action regarding massive encroachment of public land?**



**4. Why your Department refused to provide access to the public ways that has been stopped by others, that is directly related to my liberty and free movements?**

**5. Why FIR was not registered on my complaint in spite of the complaint was of the nature of the Violation of section 509 of IPC outraging modesty of a woman, Criminal intimidation under section 503 of IPC and the obstruction in the public way under section 283 of IPC??**

**The Public Information Officer designated by the Delhi Police apparently did not make any order; accordingly, the petitioner preferred an appeal which was disposed of on 6.3.2007 by the appellate authority. On 25.3.2007, a response was received from the police authorities. Aggrieved, she preferred an appeal on 30.3.2007 complaining that information furnished was neither according**

**to the application nor correct and satisfactory. She also claims that the information was not exempted under Section 8. The appeal was rejected on 2.4.2007 by the appellate authority affirming the order of the Public Information Officer.**

**It is contended by the petitioner that the CIC did not consider the appeal in its proper perspective and affirmed the reasoning of the respondents on irrelevant considerations. Learned counsel urged that the inapplicability of the exemption clause under Section 8 was expressly taken in the grounds of appeal but the same have not even been adverted to and reflected in the impugned order.**

**The relevant part of the impugned order reads as follows: -**

**?Under the circumstances, we do not see what information is still outstanding that requires to be provided by the DCP (East). Representative of appellant Mr. Mittal has submitted that the information received through the letters of 17.10.07 and 27.7.07 from DCP (East) and JCP New Delhi is contradictory. Whereas the DCP has intimated that the iron gate was to be kept open 24 hours, the JCP has stated that Shri J.K. Mittal too has appeared before him and; had rightly exposed difficulties faced. Even were the stand taken by the DCP and JCP contradictory, resolution cannot be found by resorting to the RTI, since**

**this does not amount a to request for information, whereas it is open to Ms. And Mr. Mittal to make representation to MCD and DCP to redress what is essentially**

**a grievance. Recourse to the RTI Act for settling a grievance is entirely misappropriate. Similarly, if MCD and DCP (East) have been remiss in compliance**

**with the orders of High Court of Delhi, redress lies in approaching that Court and not in seeking a remedy under the RTI Act, 2005.**

**This appeal, in which the issues are of grievance and redress, is outside the jurisdiction of this Commission and is hereby dismissed,**

**Reserved in the hearing to enable us to study various orders cited in this regard, this decision is announced in open chamber on this twenty eighth day of November, 2008.**

**Notice of this decision be given free of cost to the parties.?**

**The petitioner has no doubt articulated the ground about the inapplicability of Section 8, in the appeal preferred before the Central Information Commission. However, neither in the Writ Petition nor the grounds**

**has any advertence been made to the fact that such a contention was pressed into**

**service before the CIC which, despite such position, failed or refused to deal with it. The petitioner also does not dispute the contention recorded with regard to the applicability of the directions in W.P. (C) 152/2007.**

**No doubt, the Central Information Commission being a quasi judicial appellate authority is expected to deal with the grounds urged before it. However, that situation would arise if the grounds taken in the appeal are in fact urged and pressed at the time of hearing. The Court in these circumstances without necessary pleadings or even advertence on the grounds in the Writ Petition about the matters having been urged during the hearing cannot embark on**

**what transpired during the course of hearing, before the CIC.**

**Having regard to the circumstances, the Court is satisfied that no ground for interference in the impugned order is made out.**

**The Writ Petition and accompanying Application is accordingly rejected.**

**S. RAVINDRA BHAT, J**  
**MARCH 02, 2009**  
**/vd/**

**41**

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

**W.P. (C) No.7121/2007**

**DR. MADHU JAIN** Petitioner

**Through: Ms. Madhu Tewatia and Ms. Sidhi Arora, Advocates.**

**Versus**

**CENTRAL INFORMATION COMMISSION and ANR. .Respondents**

**Through: Mr. K.K. Nigam, Advocate.**

**CORAM:**

**HON BLE MR. JUSTICE S. RAVINDRA BHAT**

**ORDER**

**16.04.2009**

**Heard counsel for the parties.**

**The petitioner is aggrieved by orders dated 02.02.2007, 19.02.2007 and 21.08.2007, passed by the Central Information Commission (CIC).**

**The brief facts for the purposes of deciding the case are that one Dr.**

**Subarto Roy applied for information and inspection of the records relating to his transfer on 30.12.2005. The petitioner who was then functioning as the Public Information Officer marked a photocopy**

**Contd ..2**

**of the application to the concerned officer i.e. ADC (Health) and Medical Superintendent, Hindu Rao Hospital. Apparently, reply was received on 10.01.2006 from the Medical Superintendent answering query no. 3 though it was not covered under the RTI Act. The petitioner claims to have sent reminder to ADC (Health) to fix a convenient date and place for inspection of the files. She also answered query no. 1 and 2. The inspection of the files however, was not granted since they were not made available. The petitioner contends that several requests were made by her for this purpose. The complainant/applicant filed an appeal on 14.03.2006, which was forwarded to the Medical Superintendent, who had to give a date and provide inspection on 23.03.2006. The appeal was considered and an order was made on 17.04.2006.**

**The complainant/applicant feeling aggrieved by what he perceives as lack-lustre response by the agency appealed to the CIC. The CIC in its order dated 02.02.2007 recorded as follows:-**

**We find, however, that in first two of the above three cases time limits prescribed u/s 7 (1) for providing information have been digressed. In all three cases appellants have pleaded that information has been delayed without reasonable cause. We find that in the third case the information has been supplied on time. In the first two cases, however, the following are the reasons**

given for the delay;  
Contd .3

In file No. CIC/WB/A/06/00386 Dr. Madhu Jain, PIO stated that the delay of 8 days occurred because the officials were at that time not well versed with the Act and information was required from eleven departments, which could not be supplied in time as mentioned in the response. In light of this and the case being the first of its kind delay of only 8 days need not be held to be unreasonable.

However, in file No. CIC/WB/A/06/00388 where application was moved on 30.12.2005, only a partial response was sent on 16.02.2006 and intimation of date of inspection was given only on 21.04.2006. There has, therefore, been an overall delay of 111 days. The Medical Supdt. Hindu Rao Hospital who had been requested to intimate the date of inspection will show cause either in writing or by personal appearance before us on 19.02.2007 at 10:30 a.m. as to why a penalty @ 250/- per day subject to maximum of Rs.25,000/- should not be imposed starting from 31st January to 20th April, 2006. The delay of 16 days in providing the initial response has been accounted for by the transfer of the then incumbent Commissioner (Health) before the reply could be supplied thus entailing some extra days in providing the information sought.

Announced in the heard. Notice of this decision be given free of cost to the parties.

In the further proceedings held on 19.02.2007, CIC heard Dr. Madhur Kudesia, Hindu Rao Hospital; and Dr. Surendra Kumar, CMO, Nodal Officer, Hindu Rao Hospital. The CIC recorded the following order:-

1. The application was moved on 30.12.2005 to which partial response was sent on 16.02.2006. The time taken between on 30.12.2005 and 23.03.2006 when the information was actually sought from Hindu Rao Hospital thus remains unaccounted for.

Contd 4

2. The APIO Hindu Rao Hospital has responded to the request for information by 31.03.2006 and therefore cannot be held accountable for the delay in response.

3. In this case on not having received a response from the PIO, appellant had filed his first appeal on 16.03.2006. It would, therefore, appear that the information was sought from Hindu Rao Hospital by PIO only on moving of the first appeal, and not on the basis of the original application.

4. Dr. Madhu Jain, DHA, MCD who is also PIO and has been heard by us during the hearing on 02.02.2007 has, therefore, rendered herself liable for the delay in responding to the application from 31.01.2006 to 23.03.2006 when the first appeal was heard when the information sought by appellant Dr. Subroto Rao was actually sought to be accessed. At the last hearing she had sought to place the responsibility for the delay on MS Hindu Rao Hospital u/s 5(4). The

documentary evidence that we have received indicates otherwise. Dr. Jain DHA, SPIO will, therefore, pay a penalty of Rs.250/- per day from 31.01.2006 to 23.03.2006. The delay of 52 days @250/- per day amounts to Rs.13,000/-. This amount will be paid by Dr. Madhu Jain DHA, MCD. The Commission further directs the Commissioner, MCD to cause recovery of the amount of penalty either directly or from the salary of Dr. Madhu Jain DHA, MCD made payable in the name of PandPO, DP and AR in New Delhi, and deposited in the appropriate Account Head by March 3, 2007 under intimation to Shri Pankaj Shreyaskar, Assistant Registrar in this Commission by March 3, 2007.

Announced in the hearing. Notice of this decision be given free of cost to the parties

The petitioner contends that a joint reading of the two orders would show a completely inconsistent approach by the CIC. It is  
Contd ..5

submitted that on 02.02.2007, the Commission was satisfied that the delay of 8 days attributable to her, did not require further investigation or penalty. Yet in the subsequent order, it recorded that she was heard and had rendered herself liable for delay in responding to the application between the period 31.01.2006 to 23.03.2006. This formed the basis of its direction to her to deposit Rs.13,000/- as penalty.

The Court has considered the submissions. A joint reading of the two orders does indicate that show cause notice was issued to other individuals and not the petitioner for the perceived delay in responding to the queries. The said two individuals and not the petitioner were heard on the next date of hearing, in response to the show cause notice. Yet the commission, ignoring its earlier order, absolving the petitioner of any delay proceed to impose Rs.13,000/- as penalty on her. This was completely in ignorance of the previous order which had clearly exonerated any wrong doing by her.

In these circumstances, the petitioner s grievance is well-founded.

For the above reasons, the writ petition has to succeed. It is accordingly allowed.

Contd 6

The order dated 19.02.2007 and the subsequent order rejecting the petitioner s review petition dated 21.08.2007 are hereby quashed.

**April 16, 2009 S. RAVINDRA BHAT, J.**

rs



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 29TH FEBRUARY 2008 / 10TH PHALGUNA 1929

WP(C) No.30963 of 2006(J)  
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PETITIONER:  
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V.B. SANTHOSH, AGED 28 YEARS,  
S/O V.N.SURENDRAN, SORTING ASSISTING,  
SUB RECORD OFFICE (RAILWAY MAIL SERVICE, TRIVANDRUM  
DIVISION), KOTTAYAM, RESIDING AT VAZHATHARA,  
KUDAVECHOOOR P.O., VAIKOM, KOTTAYAM DISTRICT.

BY ADV. SRI T.C. GOVINDA SWAMY.

RESPONDENTS:  
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1. THE CENTRAL PUBLIC INFORMATION OFFICER,  
OFFICE OF THE POSTMASTER GENERAL, KERALA CIRCLE,  
THIRUVANANTHAPURAM-695 033.
2. THE CENTRAL PUBLIC INFORMATION OFFICER,  
GOVT. OF INDIA, MINISTRY OF COMMUNICATIONS &  
INFORMATION TECHNOLOGY, DEPARTMENT OF POSTS,  
DAK BHAVAN, SANSAD MARG, NEW DELHI.
3. THE CHIEF INFORMATION COMMISSIONER,  
CENTRAL INFORMATION COMMISSION, OLD JNU CAMPUS,  
BLOCK IV, 5TH FLOOR, NEW DELHI-110 067.

BY SRI.P.PARAMESWARAN NAIR, ASST.B.G.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 29/02/2008, THE COUNT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



ANTONY DOMINIC, J.

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W.P.(C) No. 30963 OF 2006 J  
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Dated this the 29<sup>th</sup> February, 2008

J U D G M E N T

In this writ petition, the direction sought for is to require the respondents to provide the petitioner copies of the petitioner's answer books of Papers I and III of the Inspector Post Examination 2005, Petitioner has produced Ext. P8, an order of the Central Information Commission by which the Central Public Information Officer is directed to furnish copies of the evaluated answer sheets, as asked for by the appellant therein. Now that in a similar matters there is a direction to issue fresh copies of the evaluated answer sheets, I direct that it will be open to the petitioner to approach the respondents on the strength of Ext. P8 in which case, the benefit granted as per Ext. P8 will be granted to the petitioner also.

Writ petition is closed with the aforesaid direction.

Sd/-  
ANTONY DOMINIC  
JUDGE  
(True copy)

jan/-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

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BY ADV. SRI T.C. GOVINDA SWAMY.

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GOVT. OF INDIA, MINISTRY OF COMMUNICATIONS &  
INFORMATION TECHNOLOGY, DEPARTMENT OF POSTS,  
DAK BHAVAN, SANSAD MARG, NEW DELHI.
3. THE CHIEF INFORMATION COMMISSIONER,  
CENTRAL INFORMATION COMMISSION, OLD JNU CAMPUS,  
BLOCK IV, 5TH FLOOR, NEW DELHI-110 067.

BY SRI.P.PARAMESWARAN NAIR, ASST.B.G.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 29/02/2008, THE COUNT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 30963 OF 2006 J  
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Dated this the 29<sup>th</sup> February, 2008

J U D G M E N T

In this writ petition, the direction sought for is to require the respondents to provide the petitioner copies of the petitioner's answer books of Papers I and III of the Inspector Post Examination 2005, Petitioner has produced Ext. P8, an order of the Central Information Commission by which the Central Public Information Officer is directed to furnish copies of the evaluated answer sheets, as asked for by the appellant therein. Now that in a similar matters there is a direction to issue fresh copies of the evaluated answer sheets, I direct that it will be open to the petitioner to approach the respondents on the strength of Ext. P8 in which case, the benefit granted as per Ext. P8 will be granted to the petitioner also.

Writ petition is closed with the aforesaid direction.

Sd/-  
ANTONY DOMINIC  
JUDGE  
(True copy)

jan/-

**Equivalent Citation:** AIR2009All51, 2009(1)AWC70

**IN THE HIGH COURT OF ALLAHABAD**

Decided On: 23.09.2008

Appellants: **Vikram Simon**  
**Vs.**

Respondent: **State Information Commissioner, U.P. State Information Commission, S.S.P.,  
Deputy S.P. and Station House Officer**

**Hon'ble Judges:**

Ashok Bhushan and Arun Tandon, JJ.

**Subject: Right to Information**

**Disposition:**  
Petition dismissed

**JUDGMENT**

**Ashok Bhushan and Arun Tandon, JJ.**

1. Petitioner before this Court has been arrested in reference to the First Information Report in the case being Case Crime No. 457 of 2007 under Section 452/506 IPC and has been confined to prison.

2. The petitioner made an application under the Right to Information Act, 2005 seeking information in respect of the following two questions:

a. Whether Dr. R.S. Upadhyaya has lodged an F.I.R. with the Station House Officer, Highway, Mathura against the petitioner who is a resident of 883-A, Masihaganj, Sipri Bazar, Jhansi, on 15.07.2007 or not.

b. Whether the petitioner was arrested outside the house of R.S. Upadhyaya and was sent to jail as was reported in the daily newspaper Amar Ujala dated 17.07.2007.

3. The application so made by the petitioner was not replied in time and therefore, he filed an Appeal before the State Information Commissioner, U.P. The Appeal was numbered as Complaint No. S-4/95/(C)/08. The Commissioner under the impugned order dated 11.06.2008 has recorded that the information asked for by the petitioner has been supplied to him as has been admitted by the applicant before the Appellate Authority.

4. However the applicant has further insisted that there was delay in supply of the information and therefore, cost should be imposed. On the aforesaid second prayer the Appellate Authority has recorded that the records shall be examined and the order shall be communicated to the petitioner within twenty days. The appeal was accordingly disposed of.

5. The order dated 11.06.2008 is being questioned before us on two grounds:

(i.) The complete information specifically with reference to question No. 2 i.e. the place where the petitioner was arrested) has not been supplied.

(ii.) The information which was stated to be passed within 20 days has not reached the petitioner till date.

6. So far as the first contention raised on behalf of the petitioner is concerned, we may only record that under Section 8(h) of the Right to Information Act, 2005 such information need not be disclosed as may impede the process initiated as an F.I.R. For ready reference Section 8 (h) is quoted below:

**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.

7. From the aforesaid Section it is clear that that there is any information which may impede the process of investigation or apprehension or prosecution of offenders need not be supplied.

8. From the facts on record it is clear that the petitioner is facing prosecution with reference to the First Information Report, referred to above, the information asked for by the petitioner qua the place of his arrest in the facts of the case is squarely covered by Section 8(h) and, therefore, we are satisfied that there is no right of the petitioner to ask for such information under the Right to Information Act, 2005. The contention raised in that regard by the petitioner is rejected.

9. So far as the payment of penalty for delayed information is concerned, we only provide that the petitioner may make an application before the Appellate Authority along with a certified copy of this order and we request the Appellate Authority to take a decision and communicate the same to the petitioner within two weeks, if not already communicated.

10. Writ petition is disposed of.

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*[CHRI's Comments: It is respectfully submitted that the harm test contained in 8(1)(h) has not been applied. The question as to whether the information requested constitutes information under section 2(f) has also not been considered. It appears that information sought at point#2 is in the nature of an opinion sought in response to a newspaper report. It is respectfully submitted that this request could have been denied on the ground that it does not even constitute information, so the provisions of the RTI Act would not apply. There was no need to invoke section 8(1)(h). However it is respectfully submitted that this information is contained in an arrest memo made in relation to every arrest- it should indicate the place of arrest. Arrest memos are public documents and access cannot be denied to the arrestee. As he/she is required to sign the arrest memo he would be privy to its contents at the time of arrest. As regards penalty it is hoped that the reference to the AA is regards the UPSIC]*

CENTRAL INFORMATION COMMISSION  
Appeal No.CIC/WB/A/2008/01097 Dated 23.5.2008  
Right to Information Act 2005 – Section 19

**Appellant** - Ms. Sushma Jain  
**Respondent** - Cabinet Sectt.

**Facts:**

By an application of 27.10.2007 Ms. Sushma Jain of Karkardooma, Delhi sought the following information from Ministry of Law & Justice:

“Details of the Search-cum-Selection Committee constituted on 9.8.2006.”

The Ministry of Law & Justice through letter of 7.12.2007 of Shri R.C.Gabha CPIO and Addl. Secretary, addressed to Ms. Jain, asked her to approach DOPT / Cabinet Sectt. for copies of the records of the Search-cum-Selection Committee, *“which is available only in the Cabinet Sectt.”* The Cabinet Secretary on the other hand having received this letter on 26.12.2007 responded on 27.12.07 as follows:

“In this connection, it is stated that Para 3(b) of your application is non specific and lacks clarity in the present form, it is incapable of a specific reply.”

Upon this, Ms. Jain, pleading that “the appellant filed an application, under the Act, before the Central Public Information Officer, Ministry of Law and Justice, for being made available the records of the Search-cum-Selection Committee which met on 9.8.06 and considered her case, as also the records of any subsequent Committee, which did so”, moved her first appeal before the Jt. Secretary & F.A.A., Cabinet Sectt. On not receiving any response, she has moved her second appeal before us with the following prayer:

- i) Order dated 27.12.07 passed by the CPIO be quashed and set aside.
- ii) The CPIO be directed consequently to make available to the appellant the records of the Search-cum-Selection

Committee/Committees which considered her case for promotion as Additional Secretary in the Legislative Department, Ministry of Law & Justice on 9.8.06 or thereafter, and

- iii) Pass such order and orders as may be deemed fit in the interest of justice.”

In the meantime, through a letter of 29.5.08, conveyed to Ms. Jain on 30.5.08, First Appellate Authority Shri Rajiv Kumar ordered as follows:

“After carefully considering grounds of the appeal dated 22.1.2008 and orders of CPIO dated 27.12.2007, I have come to the conclusion that the records of Search-cum-Selection Committee meeting consisted of many documents, viz. background papers, the relevant files including the Court proceedings, ACRs and minutes of the ACC meetings etc. and in the absence of the specific nature of the records sought by the appellant, specific decisions could not be taken on the various documents and access to be allowed in respect of each. In view of this, the stand taken by the CPIO seems to be in order, that the application dated 27.10.2007 was incapable of a reply. Hence the appeal is rejected as devoid of merits.”

Consequently Ms. Jain moved a further application before us on 9.7.08 pleading as follows:

“I am still not satisfied by the decision of the J.S. & First Appellate Authority. I again pray to your Honour to hear/consider my appeal at earliest date and direct to the concerned authority to make available the relevant records, particularly the minutes of the meeting/meetings of the Search-cum-Selection Committee/Committees convened as per orders of the Hon'ble Central Administrative Tribunal / Hon'ble High Court of Delhi on 9<sup>th</sup> August, 2006 and thereafter to consider my promotion to the post of Addl. Secretary in the Legislative Department of the Ministry of Law & Justice.”

The appeal was heard on 6.10.2008. The following are present:

**Appellant**

Ms. Sushma Jain  
Dr. Bimal Chand Jain

**Respondents**

Mr. Sunil Mishra, Director & CPIO

Mr. K.S. Achar, Director

Shri Mishra submitted that what has been sought in the application were details of the Search-cum-Selection Committee without specifying what details. When asked why CPIO did not simply ask appellant Ms. Jain for any clarification to allay any such confusion, he submitted that is in fact what had been conveyed to appellant in response to her application in his letter of 27.12.07. He also pleaded that the first appeal had indeed been disposed of.

Besides the above, Shri Mishra also pleaded that much of the information, which would constitute details of the Search-cum-Selection Committee proceedings, would be information exempt from disclosure like ACRs.

### **DECISION NOTICE**

We are constrained to observe that the manner of disposal of the application of Ms. Jain by so august a body as the Cabinet Secretariat, expected to be a model for public authorities, is nothing less than flippant. It would appear from the disposal of this application that this is simply a determined effort not to provide Ms. Jain the information she seeks information rather than finding ways of providing it, which is infact the underlying spirit of the RTI Act 2005. If there were indeed details of the Search-cum-Selection Committee which were either not available with the Cabinet Sectt. or exempted from disclosure u/s 8(1), that could have been conveyed to appellant Ms. Jain, which it has not been. On the other hand the remaining information could still have been provided to Ms. Jain under the principle of severability contained in Sec. 10(1) of the Act. None of these has been done and instead Ms. Jain had been provided with a bald refusal.

On the other hand in her petition of 9.7.08 to us, on receipt of the orders of the First Appellate Authority, appellant Ms. Jain has pleaded that this Commission consider her promotion to the post of Addl. Secretary in the



Legislative Department in the Ministry of Law & Justice. Thus her prayer before us raises two issues – (1) copies of the record of the proceedings of the Search cum Selection Committee and (2) Promotion of Ms. Jain to the post of Addl. Secretary.

The latter issue (No. 2), is clearly outside the pale of the RTI Act 2005 and therefore of the jurisdiction of this Commission. However, on issue No. 1, we have already ruled in the matter of DPCs as follows in case No. since CPIO Shri Mishra has raised the question of disclosure of ACR in the context of the disclosure of the proceedings of the Search-cum-Selection Committee, his attention is invited to the order of Hon'ble Supreme Court of India in **Dev Dutt vs. Union of India & Ors.** Vide **Civil Appeal No. 7631 of 2002** in which Justices H. K. Sema and Markandey Katju in their order of May 12, 2002 have held as follows:

- “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.**<sup>1</sup> This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.
- 40 We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise

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<sup>1</sup> Emphasis added

the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

- 41 We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in *Union of India vs. Major Bahadur Singh* 2006 (1) SCC 368. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants).
- 42 In *Canara Bank vs. V. K. Awasthy* 2005 (6) SCC 321, this Court held that the concept of natural justice has undergone a great deal of change in recent years. As observed in Para 8 of the said judgment:  
"Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values".
- 43 In Para 12 of the said judgment it was observed:  
"What is meant by the term "principles of natural justice" is not easy to determine. Lord Sumner (then Hamilton, L.J.) in *R. v. Local Govt. Board* (1914) 1 KB 160:83 LJKB 86 described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K. v. Spackman* (1943) AC 627: (1943) 2 All ER 337, Lord Wright observed that it was not desirable to attempt "to force it into any Procrustean bed".
44. In *State of Maharashtra vs. Public Concern for Governance Trust & Ors.* 2007 (3) SCC 587, it was observed (vide Para 39):  
"In our opinion, when an authority takes a decision which may have civil consequences and affects the rights of a person, the principles of natural justice would at once come into play".

45 In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, **such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution.**<sup>2</sup>

This Commission has consistently taken the view that proceedings of staff selection/promotion Committees, notably DPCs are disclosable. However we had earlier allowed exemption in certain cases to ACRs. Keeping the above decision of the apex court in view, CPIO Shri Sunil Mishra will provide to Ms. Sushma Jain the copies of the records of the Search-cum-Selection Committee of 9.8.06 and any subsequent consideration of her promotion within ten working days of the date of receipt of this Decision Notice excluding only that information under the principle of severability as contained in Sec. 10(1), that may be exempt from disclosure u/s 8 sub-section (1) of the RTI Act, 2005. **The appeal is allowed.**

Announced in the hearing. Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)  
Chief Information Commissioner  
6.10.2008

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges, prescribed under the Act, to the CPIO of this Commission.

(Pankaj Shreyaskar)  
Joint Registrar  
6.10.2008

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<sup>2</sup> Emphasis ours