RTI ADHINIYAM PRAMANIK VYAKHYA

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GUIDE TO FILE RTI APPEAL HINDI

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A GUIDE TO EFFECTIVELY FILE RIGHT TO INFORMATION APPEALS

PROLOUGE

Right to Information is a fundamental right under Article 19(1)(a) of our Constitution. It was envisaged when passing the RTI ACT in 2005, that citizens would get most information suo moto in Section 4, but that alas has not happened. Though the law – in line with the constitutional mandate,- recognizes that the default mode must be disclosure of information, subject only to denial of exempt information under Section 8 or 9, many adjudicators are denying citizens their fundamental right by gross misuse of its provisions often displaying no reasoning. Most citizens give up at this stage since they find it difficult to draft appeals and argue the matter in terms of the law.

Other facts/references required to be placed in the appeal: some other points are to be placed in appeal and we have discussed them as beloow

The differences of provisions or interpretations in any law can be overcome only by the preamble of the law which is the conclusion of that law. In respect of which the Hon'ble Supreme Court has mentioned this in Golaknath v State of Punjab, 1967 AIR 1643, 1967 SCR (2) 762 and Iru Berubari v Government of India, AIR 1960 SC 845, 1960 3 SCR 250 while giving historical judgment on the Constitution, which is still in effect at present.

Therefore, the appellants are dependent on the object of the RTI Act, for effective compliance of which the subject matter of this appeal is also directly related to the public interest. The objective clearly states that:

“To promote transparency and accountability in the working of every public authority, ensuring access to information to citizens, ‘It is imperative to make government agencies accountable for preventing corruption’, ‘Maintaining the supremacy of the democratic ideal’.

It has been a time-honored principle since the decision of Taylor v. Taylor (1ch. D426 1876) that if the Act prescribes a specific way of doing an act, then that act was only said to be done. done in the specified manner shall prevail and all other methods shall be prohibited. Which the Hon’ble Supreme Court has also recognized the above principle in Deep Chand v. State of Rajasthan, 1996 CriLJ 54, 1996 (1) WLC 572 and State of UP Vs Singhara Singh, 1963 AIR 358, 1964 SCR (4) 485. That is, the method which is against the law will be arbitrary and against the equality before the law. In this respect the decision given by the Hon’ble Supreme Court in Maneka Gandhi Vs Union of India, 1978 AIR 597, 1978 SCR (2) 621 case is important.

Therefore, the appellant registers the objection in public interest, because the arbitrary method adopted by the respondent public servant is not in the legislation. Since government money is spent on the training of these civil servants, who cannot get any exemption of not being aware of the relevant law, because they learn the process of giving information in training, not to refuse. Due to which the money, labor and time of the citizens seeking information including the appellant are being lost.

Hon’ble Supreme Court of J.K. Cotton Mill Vs State of U.P. 1961 AIR 1170 In “The Court has always held that the Legislature has attached each part to a purpose and that the legislative intent is that every part of the law should be effective.” And in Commissioner Information Commission, Manipur Vs State of Manipur, AIR 2012 SC 864 “It is well known that the legislature does not do anything for wasting words or uttering in vain or without purpose.” Parliament enacted the

Act keeping in mind the rights of an informed citizenry in which transparency of information is vital in curbing corruption and making the Government and its instrumentalities accountable. The Act is to mean to harmonize the conflicting interests of the Government to preserve the confidentiality of sensitive information with the rights of citizens to know the functioning of the Governmental process is such a way as to presence the paramount of the democratic ideal. The preamble would obviously shows that the Act is based on the concept of open society. It is clear from the above decisions of the constitutional benches that the right to information, which is an intrinsic part of the fundamental right to free speech and expression. The 2005 Act was, thus enacted to consolidate the fundamental right of free speech.

Therefore, the appellant is dependent on every provision of the RTI Act where the information is to be provided to the Public Information Officer within 30 days under section 7(1) or to reject the request for any of the reasons specified in section 8 and 9. Arbitrary procedures on which a three-member bench of the Central Information Commission has warned in DOPT against Arvind Kejriwal that no level of government is more than the provisions of the Act passed by the Parliament to handle the request.

That the appellant, in addition to the prevailing RTI Act, has presented only the reference of the Hon’ble Supreme Court’s adjudication, in which there is no appeal/objection/reconsideration remaining, which is the only valid law.

Therefore, until the law is amended, it is the duty of every public servant and the entire executive to abide by the Act in letter and spirit. The RTI Act is a selective law in which there is a provision for penalty and disciplinary action on the Public Information Officer, as well as the first appeal to remove any legal error, has been made in the same public authority, so that according to the objective, the functioning

of the public authority can be improved. Let there be transparency. This is the reason why the Central Information Commission has written in the decision of Mangal Ram Jat Vs PIO, Banaras Hindu University, Decision No. CIC /OK/A/2008/00860/SG/0809 that:

“The Commission, which has been created in the Act as an adjudicating body, has no authority to impose new exemptions and in the process limit the basic right to information of citizens.”

Hence there is a need to implement the provisions given in the Right to Information Act 2005 sincerely, honestly. And the information held in any form in the public authorities should be made available to the applicants within the time limit and should be called to inspect the detailed information. Governance will develop a sense of accountability and responsibility towards the people.

Therefore the appellant who accepts to state even on the affidavit that corruption is at its peak in your authority, who maintains secrecy by not giving information to save himself and his associates, and will not hesitate to give legal penalty. . On which the 28th President of America Woodrow Wilson also said that “everyone knows that corruption is where there is secrecy”.

This is a small attempt to make it easier to file appeals. These may be used directly or modified depending on the specific case. If there are any flaws or mistakes do let me know. These are for generalized cases. Do add your own details.

Shailesh Gandhi Niraj Kumar

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1. **Guide to use the draft of appeals to effectively file RTI appeal(s):**

Every person aggrieved by denial of information or by not being provided sufficient information by the Public Information Officer ('PIO') may use this leaflet as a guide for filing RTIs Appeals. The format for the First Appeals and Second Appeals are similar. A person filing an Appeal must mention the following details:

1. The details of the Application which was filed (e.g.: Date on which the application was filed, whether it was accepted by the PIO and replied or whether no reply was sent by the PIO, etc.)
2. Mention whether the information sought by you was denied by the PIO or whether it was not satisfactorily given. If you are filing a Second Appeal, mention the details of the original Application filed by you, the reply received by PIO, the details of the First Appeal and the Order passed by the First Appellate Authority.
3. Mention the 'Grounds for Appeal':
    1. Under this, you should mention the reason as to why you are aggrieved by reply or inaction of the Public Information Officer ('PIO').
    2. Mention the reason cited, if any, by the PIO for unsatisfactory reply/denial of information.
    3. Mention the excuse stated by the PIO in support of the denial of information.
    4. Lastly, mention how the PIO had erred in interpreting the law.

Note: You may refer to the drafts provided in this leaflet or the table towards the end for additional details pertaining to case law, citations, legal reasonings etc.

4. Mention whether you would like to attend the hearing; OR you would like to attend the hearing by video conferencing; OR whether you do not wish to come for a hearing and hence request the appellate authority to pass an appropriate order based on your written submissions.

5. Attach a copy of the Original RTI Application filed by you as mentioned under Point No. 1.
6. Address the first appeal to the designation and address given by the PIO. In case PIO has not supplied it, address it to the 'First Appellate Authority, c/o Public Information Officer' and write in it that since the PIO has not given the details as per the law, he is now responsible to send it to the First Appellate Authority.
7. For second appeals most Commissions have specific rules. Please read these from their websites and follow them.

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2. **Draft of Appeal if PIO does not provide any response within 30 days:**

If you do not have the details of the First Appellate Authority:

Address it to the First Appellate Authority,

C/o Public Information Officer

Grounds for appeal:

I had filed a RTI application on _____ as per the attached copy which was received by the PIO's office on _____. Though the period mandated in the act of 30 days is over he has sent no response. This is a deemed refusal as per Section 7 (2) of the RTI Act. Since no reason has been given for denying information, this becomes a refusal to provide information without any reason.

As per Section 19 (5) the onus to prove that the denial was justified is on the PIO. Since no reason has been given it is a case of denial of information without any reasonable cause.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons.

Place

Date

Name and Signature of appellant

The PIO is mandated to provide the particulars of the First Appellate authority in Section 7 (8) (iii). Since he has not done this, it is his responsibility to forward this to the FAA.

□ □ □

3. **Draft of Appeal if PIO denies information stating it is confidential or sensitive information**:

Grounds for appeal:

This is a denial not justified by the RTI Act. Section 3 clearly states that “Subject to the provisions of this Act, all citizens shall have the right to information.”. Thus, all citizens are entitled to obtain all information available with public authorities subject to the provisions of the RTI Act.

Section 7 (1) categorically states: “ 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:

Thus, information can only be denied if it falls in the exemptions of Section 8 or 9. These sections do not specify ‘confidential’ information as an exempt category. I would also like to draw your attention to Section 22 of the RTI Act which lays down: “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.”. Thus, this Act overrides all earlier acts and rules and cannot be invoked to deny information.

The denial of information is not in consonance with the law and hence is an error.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the

information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days.If, however you disagree with my contentions please mention in your order the point wise reasons as per the law.

□ □ □

4. **Draft of Appeal for RTI Application not being transferred to appropriate Public Authority OR when Information was denied stating that the information was not available in the PIO's department OR motive was not declared**

Grounds for appeal:

The RTI act permits denial of information only as per Sections 8 or 9 as clearly spelt out in Section 7 (1). The PIO has denied information claiming the information is not with him. As per the provision of Section 5 (4) he should have taken the assistance of the officer who has the information and should have provided the information to me.

In case the information is with another public authority, he is required to transfer the application to the other PIO of the other public authority within 5 days as per Section 6(3). If the PIO has no clue where the information is likely to be, he must state this in his response. The Supreme Court in WP 194 of 2012 Common Cause vs. High Court of Allahabad has ruled:

" As regards the objection that under Section 6(3) of the Act, the public authority has to transfer the application to another public authority if information is not available, the said provision should also normally be complied with except where the public authority dealing with the application is not aware as to which other authority will be the appropriate authority." And also ruled: "Second objection is against requiring of disclosure of motive for seeking the information.

No motive needs to be disclosed in view of the scheme of the Act.”

The denial of information is not in consonance with the law and hence is an error.

[Applicant to mention one of the following:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Kindly direct the PIO to obtain and send the information as mandated by the RTI Act within 7 days, since the denial of information was not as per law.

Direct him to send the information free of charge as per Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons as per the law.

□ □ □

5. **Draft of Appeal for RTI when Information denied by the claim that information is not with the PIO’s department**

Grounds for appeal: The RTI act permits denial of information only as per Section 8 or 9 as clearly spelt out in Section 7 (1). The PIO has denied information claiming the information is not with him. As per the provision of Section 5 (4) he should have taken the assistance of the officer who has the information and sent it to me. In case the information is with another public authority, he is required to transfer the

application to the other PIO of the other public authority within 5 days as per Section 6(3).

The denial of information is not in consonance with the law and hence is an error.

1. I would like to attend the hearing OR
2. I would like to attend the hearing by video conferencing OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.

Relief Sought: Please direct the PIO to send the information within 7 days, as the denial is not as per law. Direct him to send the information free of charge as per Section 7(6) since the information has not been provided within the mandated period of 30 days.

If however you disagree with my contentions please mention in your order the point wise reasons

□ □ □

6. **Draft of Appeal for RTI Application not being transferred to multiple public authorities on the ground that section 6(3) envisages transfer only to a single public authority**

Grounds of appeal:

The PIO has refused to transfer the application to multiple public authority on the ground that Section 6 (3) mentions the transfer to ‘another public authority’ which is in singular. This is an incorrect stand taken by the PIO.

Section 13 of the General Clauses Act, 1897 categorically states:

“In all1[Central Acts] and Regulations, unless there is

anything repugnant in the subject or context,–

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa.”

This principle of law has been well- established and applied by the Supreme Court of India from time to time viz. in K. Satwant Singh v. State of Punjab 1960 SCR (2) 89, Narashimaha Murthy v. Susheelabai & Ors. AIR 1996 SC 1826 and J. Jayalalitha v. UOI & Anr. AIR 1999 SC 1912, as well as by several High Courts while interpreting various statutory provisions.

There is nothing in the Act which would show that Parliament intended that the transfer should only be to one public authority. [If a DOPT OM has been quoted: The DOPT’s office memorandum is in contravention of the General Clauses Act 1987 and interpreted Section 6(3) of the RTI Act wrongly.] If the General Clauses Act is not taken into consideration by accepting that the masculine word would include feminine and the singular word includes plural in the RTI Act consider the absurdity of this proposition:

Section 20(1) states regarding imposing penalty on the PIO: 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:

If the General Clauses Act is not applied, it would be taken to mean that only male PIOs would be given a reasonable opportunity of being heard and not female PIOs, which is absurd. Hence the Act requires that information request must be transmitted to as many Public authorities as required. This can be done very easily by email.

The denial of information is not in consonance with the law and hence is an error.

[Applicant to mention one of the following:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Kindly direct the PIO to obtain and send the information as mandated by the RTI Act within 7 days, since the denial of information was not as per law.

Direct him to send the information free of charge as per Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons as per the law.

CIC Order on the subject Decision No. CIC/SM/A/2011/000278/SG/12906 enclosed.

□ □ □

Annexure 6.1

Mr. Chetan Kothari vs Cabinet Secretariat on 16 June, 2011

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SM/A/2011/000278/SG/12906

Appeal No. CIC/SM/A/2011/000278/SG

Relevant Facts emerging from the Appeal:

Appellant: : Mr. Chetan Kothari

52, Oceanic Apartment, Dr. Rajabali Patel Lane,

Off B. Desai Road, Mumbai 400 026

Respondent: : Mr. K. J. Sibichan

Under Secretary & CPIO

Cabinet Secretariat,

Rashtrapati Bhawan,

New Delhi

RTI application: 21/09/2010; 27/9/2010 transferred

PIO reply: 12/10/2010

First appeal 22/10/2010

FAA order 16/11/2010

Second appeal 30/11/2010

Information sought:

The appellant had filed the RTI application with PIO of the Lok Sabha Secretariat asking:

Please provide the details. Name wise break up of state ministers and cabinet ministers of central government petrol & diesel consumption & amount with opp party leader.

(b) Please provide the details of each state ministers &

cabinet ministers of central government (Name wise break up) how many cars.

(c) Please provide the details of each state ministers & cabinet ministers of central government each of them how many staff provided. (Give name wise ministers break up)

PIO's reply:

On 27/09/2010 PIO of Lok Sabha Secretariat transferred the RTI application to PIO, Cabinet Secretariat and PIO, Leader of Opposition.

On October 4 Office of the Leader of Opposition provided this information:

"The staff car to Hon'ble Leader of Opposition in Lok Sabha is provided by Lok Sabha Secretariat and accordingly, all matters/records relating to the maintenance/ running, including the expenditure on petrol/diesel, etc. of the car are being dealt/maintained by the concerned branch of Lok Sabha Secretariat. The information required by the applicant is not available in the office of Leader of Opposition in Lok Sabha and hence the CPIO is not in a position to give the required information to the applicant.

4. It is, therefore, requested that the CPIO, Lok Sabha Secretariat may he requested to give the information directly to the applicant. The application forwarded with the OM dated 27.9.2010 is returned herewith."

On 12 October 2010 PIO, Cabinet Secretariat provided this information:

"2. The information sought is scattered among a large number of public authorities, including Central Government Ministries/ Departments. Therefore, in terms of the provisions contained in O.M. No. 1012/2008-IR dated 12.6.2008 issued by Ministry of Personnel, Public Grievances & Pensions

(Department of Personnel & Training), you are required to file separate applications with the CPIOs of each of the Ministries/Departments concerned individually, for obtaining the required information.

3. In so far as the Cabinet Secretariat is concerned, the information may be treated as NIL."

On 29/10/2010 PIO of the Lok Sabha Secretariat gave information that no information was available.

Grounds for First appeal:

Information not provided.

FAA order:

After carefully considering all the relevant documents, the Appellate Authority upholds the decision of CPIO as referred in para 2 above and direct the CPIO to provide a copy of list of Ministries/Departments which contains the office addresses of the public authority, within 10 working days.

Grounds for Second appeal:

Information not provided. Section 4 of the RTI Act not properly implemented.

Submissions dated 04/06/2011 of appellant received by email :

(1) CPIOs not transfer application within the stipulated period as per provision under Section 6 (3) & delay inform to applicant.

(2) Applicant unable to send same application to 85 department of Central Govt. Which is waste of time & money.

(3) Applicant sent RTI application to nodal CPlOs of 'Loksabha Secretariat' because that department provide car, staff etc to opposite party leader.

(4) CPIOs violate the RTI Act & holding the information but misleads to applicant & wasting the public money & time & increasing the work load for higher authority.

(5) CPIOs failure to Act according to under provision of Section 4(3) for the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public. Also CPIOs failure to Act according to under provision of Section 5(3) & (4).

(6) PIO's failure to Act according to under provision of Section 2(f), 4(1)d & 5.

Appellant quoted two orders for support of his written submission.

(1) It will be in context to quote the observation made by the Division Bench of the Hon'ble Delhi High Court in LPA 501/2009, pronounced on 12.1.2010 (matter relating to Asset Declaration of Judges of the Apex Court):

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 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. Section 4 spells out various obligations of public authorities and Sections 6 and 7 lay down the procedure to deal with request for obtaining in formation.

(2) In fact the Hon'ble High Court of Madras even went a step further and stated that administrative difficulties and

shortage of manpower cannot be cited as reasons for denying information. While dismissing WP No. 20372 of 2009 and MP No. 1 of 2009, in a Judgment dated 7.1.2010, the Hon'ble court ruled:

The other objections that they are maintaining a large number of documents in respect of 45 departments and they are short of human resources cannot be raised to whittle down the citizens' right to seek information. It is for them to write to the Government to provide for additional staff depending upon the volume of requests that may be forthcoming pursuant to the RTI Act. It is purely an internal matter between the petitioner archives and the State Government. The right to information having bee!? guaranteed by the law of Parliament, the administrative difficulties in pro v/ding information cannot be raised. Such pleas will defeat the very right of citizens to have access to information. Hence the objections raised by the petitioner cannot be countenanced by this court. The writ petition lacks in merit."

Relevant Facts emerging during Hearing:

The following were present:

Appellant: Mr. Chetan Kothari on video conference from NIC-Mumbai-Studio;

Respondent: Mr. K. J. Sibichan, Under Secretary & CPIO;

The RTI application had been filed by the Appellant to the Lok Sabha Secretariat seeking information about consumption of Petrol and Diesel by State Ministers and Cabinet Ministers including the leader of the opposition and staff. The appellant has sought this information for a period of 10 years which appears excessive, since it is unlikely that information would be maintained in this format for 10 years. The PIO of the Lok Sabha Secretariat transferred the RTI application to the Cabinet Secretariat and to the PIO of the office of Leader of Opposition. No information has been provided by both the

PIOs since they said they do not have the information. The PIO of the Cabinet Secretariat has taken the position that he cannot transfer the RTI application to PIOs of various ministries and is depending on an office memorandum issued by DOPT no. 10/02/2008-IR dated 12/06/2008 which states that Section 6(3) of the RTI Act mentions public authority in the singular and therefore the RTI application can only be transferred to one public authority as per the RTI Act. The Appellant disputes this and states that the RTI application should have been transferred wherever required and he also quotes a Madras High Court Judgment in support of his contention.

Section 6(3) of the RTI Act state,

"Where an application is made to a public authority requesting for an information,-

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

(ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application."

The point to be determined is whether Section 6(3) means that the transfer should only be made to one public authority or to multiple public authorities, if required. Section 13 of the General Clauses Act, 1897 stipulates inter alia that in all central legislations and regulations, unless there is anything repugnant in the subject or context, words in the singular

shall include the plural, and vice versa. Section 13 of the General Clauses Act, 1897 enacts a general rule of construction that words in the singular shall include the plural and vice versa but the rule is subject to the proviso that there shall be nothing repugnant to such a construction in the subject or context of the legislation which is to be construed. This principle of law has been well- established and applied by the Supreme Court of India from time to time viz. in K. Satwant Singh v. State of Punjab 1960 SCR (2) 89, Narashimaha Murthy v. Susheelabai & Ors. AIR 1996 SC 1826 and J. Jayalalitha v. UOI & Anr. AIR 1999 SC 1912, as well as by several High Courts while interpreting various statutory provisions.

There is nothing in the Act which would show that Parliament intended that the transfer should only be to one public authority. It also appears that DOPT's office memorandum is in contravention of the General Clauses Act 1987 and interpreted Section 6(3) of the RTI Act wrongly. The whole purpose of the RTI Act has been to facilitate flow of information to the Citizens. In the instant case it has been shown that whereas the Appellant applied to the Lok Sabha Secretariat, the Lok Sabha Secretariat itself believed that the information would be available with the Office of the Leader of the Opposition and with the Cabinet Secretariat. Both these offices have admitted that they have no information in this matter. Thus even in this case, the Lok Sabha Secretariat was not aware who would hold the information being sought by the Appellant. The law does not put any restriction on the public authorities to which the RTI application could be transferred. The Commission does believe that an appellant should seek information from a public authority which he can reasonably believe may have the information. In the instant case the Appellant appears to have exercised reasonable care and applied and to a public authority which an average citizen may believe will hold the information.

There are numerous instances where RTI applications have been transferred by one public authority to another and none of them appears to know where the information is. In this scenario for public authorities to take a position that they will only transfer to one public authority is unreasonable and the law certainly does not state this. Public Authorities claim that it would be difficult to transfer RTI applications to multiple authorities since it would mean putting a lot of resource. Section 4(1)(a) of the RTI Act has talked of computerization of records and functions in various public authorities. Various Prime Ministers since 1985 have been promising to computerize operations in Government. This is a promise and commitment which is not being followed by various public authorities. If the records and operations were computerized, transferring an RTI application to even 50 or 100 public authorities could be done with a click of mouse by email. If public authorities do not meet commitments implied in the RTI Act, the citizen cannot be denied his fundamental right.

The Commission rules that DOPT's office memorandum no. 10/02/2008-IR dated 12/06/2008 is not consistent with the law. The Commission explained to the Appellant that seeking information for 10 years would definitely disproportionately divert the resources of the public authorities. He has agreed that information could be furnished to him for the last two years.

Decision:

The Appeal is allowed.

The PIO is directed to transfer the RTI application to various public authorities before 25 June 2011, who must provide information for the last two years to the Appellant as per the provisions of the RTI Act.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

16 June 2011

(In any correspondence on this decision, mention the complete decision number. (DW))

□ □ □

7. **Draft of Appeal for RTI Application when Information Denied on the ground that Queries are in the form of Questions or they start with the words Why, When, or How**

Grounds of appeal: The PIO has denied the information on the grounds that the queries were prefixed with 'Why, When or How or were framed as a question. This denial is not as per the law.

The law clearly states in section 7 (1) that PIO will provide the information or reject the request for any of the reasons in section 8 and 9. Thus it is clearly spelt out that only the provisions in Section 8 and 9 can be used to deny information. What I have sought is certainly information as defined under Section 2 (f). If there is no record available for what I am seeking this should be stated but if the information exists on record it must be provided.

[Applicant to mention one of the following:

I would like to attend the hearing; OR

I would like to attend the hearing by video conferencing; OR

I do not wish to come for a hearing and request you to pass an

appropriate order based on my written submission.]

Relief Sought:

Kindly direct the PIO to send the information as mandated by the RTI Act within 7 days, since the denial of information was not as per law. If there is nothing on record , that should be stated.

Direct him to send the information free of charge as per Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons as per the law.

2 CIC Order on the subject Decision No. CIC /SG/A/2008/00347+00277/1554 and Decision No. CIC/SG/A/2010/001035/7966 enclosed

□ □ □

Annexure 7.1

Mr. T. B. Dhorajiwala vs Indian Institute Of Technology … on 9 February, 2009

CENTRAL INFORMATION COMMISSION

Room No. 415, 4th Floor,

Block IV, Old JNU Campus,

New Delhi -110067.

Tel: + 91 11 26161796

Decision No. CIC /SG/A/2008/00347+00277/1554

Appeal No. CIC/SG/A/2008/00347+00277

Relevant Facts emerging from the Appeal

Appellant
: Mr. T. B. Dhorajiwala,

232, Maulana Azad Road,

2nd Floor, Room No. 26,

Mumbai – 400008.

Respondent 1 :
Dr. Indu Saxena,

Deputy Registrar(Admn) & P.I.O,

Indian Institute of Technology Bombay,

Powai, Mumbai – 400076.

RTI application filed on :
25/08/2008

PIO replied : 24/09/2008

First appeal filed on : 06/10/2008

First Appellate Authority order :
03/11/2008

Second Appeal filed on :
01/12/2008

The appellant had asked in RTI Application regarding Tender for disposal of Unserviceable equipments of Chemical Engineering Department, IIT Powai. Tender No. MD/CD/DISP/001/07/REG/L/ due were on 24/08/2007.

Detail of required information:-

1. What happened of Tender No. MD/CD/DISP/001/07/REG/L/ which was due on 24/08/2007. for disposal of Unserviceable equipments.
2. Let me know why you had not Re-Invite of above tender.

3. Let me know what stage the matter is at present.
4. Let me know what action you had taken against offender.
5. Let me know person name who had involved in this matter.

The PIO replied.

“The RTI Act does not cast on the Public Authority any obligation to answer queries, in which a petitioner attempts to elicit answer to the questions with prefixes, such as, why, what, when and whether. The petitioner’s right extends only to seeking information as defined in section 2(f) either by pinpointing the file, document, paper or records, etc, or by mentioning the type of information as may be available with the specified public authority.

You may only ask for specific information under RTI Act, 2005 rather than questioning the action of public authority.

Please note that the appellate authority for IIT Bombay, under the Right to Information Act, is Shri B.S. Punalkar, offg. Registrar, IIT Bombay and your appeal, if any, should reach with in 30 days from the receipt of this letter.

The First Appellate Authority ordered:-

“With reference to your appeal as mentioned above, it is stated that the CPIO has taken right stand in dealing with your application dt. 25/08/2008.

However, you may mention what exact information as defined under Section 2(f) read with section 2(i) & 2(j) of the RTI Act, which will be provided.

The IPO’s No. 68 E 009314 & 68 E 009315 dt. 05/09/2008 submitted with the appeal is being return..”

Relevant Facts emerging during Hearing:

The following were present

Appellant: Absent

Respondent: Absent

The respondent has sent a written submission in which he repeats the grounds for denying the information by the PIO and also adds that the appellant had stated in his appeal that he was seeking ‘clarification of his queries’.

The PIO and the first appellate authority have erred in their interpretation of what constitutes ‘information’ as defined under the RTI act. Section 2 (f) of the act states,

“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 PIO has stated, ‘The RTI Act does not cast on the Public Authority any obligation to answer queries, in which a petitioner attempts to elicit answer to the questions with prefixes, such as, why, what, when and whether. The petitioner’s right extends only to seeking information as defined in section 2(f) either by pinpointing the file, document, paper or records, etc, or by mentioning the type of information as may be available with the specified public authority.

You may only ask for specific information under RTI Act, 2005 rather than questioning the action of public authority.’

The RTI act does not state that queries must not be answered, nor does it stipulate that prefixes such as ‘why, what, when and whether’ cannot be used. The PIO is right in accepting that what is asked must be a matter of record, but errs in imposing a new set of non-existent exemptions.

The Commission now looks at the queries of the appellant:

- What happened of Tender No. MD/CD/DISP/001/07/REG/L/ which was due on 24/08/2007. for disposal of Unserviceable equipments.
- Commissions direction: If there was such a tender, it will be on records and the PIO must provide the information.
- Let me know why you had not Re-Invite of above tender.
- Commission’s direction: If the tender was there and there are any reasons on record why it was not re-invited, the PIO must provide them.
- Let me know what stage the matter is at present.
- Commission’s direction: If there is any record of this it must be given.
- Let me know what action you had taken against offender.
- Let me know person name who had involved in this matter.
- Commission’s direction: If there is any offender identified in the matter details of point 4 and 5 would have to given based on the records.
- On the other hand if there are no records about any of the above points, the PIO must state this categorically.

Decision:

The Appeal is allowed.

The PIO will give the information as outlined above to the appellant before 25 February 2009.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Shailesh Gandhi

Information Commissioner

February 09, 2009.

(In any correspondence on this decision, mentioned the complete decision number.)

□ □ □

Annexure 7.2

Mr. Rakesh Yadav vs Government Of Nct Of Delhi on 2 June, 2010

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2010/001035/7966

Appeal No. CIC/SG/A/2010/001035

Relevant Facts emerging from the Appeal

Appellant
:
Mr. Rakesh Yadav

52/59-A, Gali No.18,

New Delhi-110005

Respondent
:
Mr. Pramod Kumar

Public Information Officer & SDM

GNCTD

O/o Deputy Commissioner (West District)

Old Middle School Complex,

Rampura, Delhi -110035.

RTI application filed on : 17/11/2009

PIO replied : 16/12/2009

First appeal filed on : Not enclosed

First Appellate Authority order : 04/02/2010

Second Appeal received on : 22/04/2010

Information Sought:

1. i) Whether DDA is the owner of the land in Anand Parvat Industrial Area, Delhi.
2. ii) Whether it is legal to buy and sell land in Gali No.4, Anand Parvat Industrial Area, Delhi.

iii) Name of the owner of Plot No.4/43 or 43/4 in Anand Parvat Industrial Area, Gali No.4.

iv)Whether it is a legal offence to buy land for Rs 77 lakh and register it for Rs 5 lakh in the

above mentioned area.

1. v) If yes, then who all are held guilty in this case.

Reply of PIO:

The queries asked by the Applicant were not covered as information under Section 2(f) of RTI

Act 2005. Further the Applicant had not mentioned the name of the Revenue Estate so

information could not be provided.

Grounds for the First Appeal:

Information was denied by the PIO.

Order of the First Appellate Authority (FAA):

The FAA upheld the decision of the PIO that the queries asked by the Appellant were not

covered as information under Section 2 (f) of RTI Act 2005.

Grounds for the Second Appeal:

Unfair disposal of the appeal by the FAA.

Relevant Facts emerging during Hearing:

The following were present:

Appellant: Mr. Rakesh Yadav;

Respondent: Mr. P. C. Sahoo, Tehsildar on behalf of Mr. Pramod Kumat, PIO & SDM;

The PIO and the FAA had erred in holding that merely because information was through questions this was not seeking information as defined under Section 2(f) of the RTI Act. It is important to note that Section 2(f) defines, ""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;" thus in simple

words information must exist in the form of a record or sample or as data in electronic form.

The Act nowhere states that if a question is framed it would not be replied. The PIO must think carefully if what is sought is held by the public authority or by another public authority. It is important that PIOs applies their mind very carefully and see whether the information is available or not. In the instant case the information was available with different offices of the public authority.

The PIO is directed to obtain the assistance of the other officers under Section 5(4) and supply the information to the Appellant.

Decision:

The Appeal is allowed.

The PIO is directed to provide the complete information to the Appellant before 20 June 2010.

The issue before the Commission is of not supplying the complete, required information by the PIO within 30 days as required by the law.

From the facts before the Commission it is apparent that the PIO is guilty of not furnishing information within the time specified under sub-section (1) of Section 7 by not replying within 30 days, as per the requirement of the RTI Act.

It appears that the PIO’s actions attract the penal provisions of Section 20 (1). A show cause notice is being issued to him, and he is directed give his reasons to the Commission to show cause why penalty should not be levied on him.

He will give his written submissions showing cause why penalty should not be imposed on him as mandated under Section 20(1) before 25 June 2010. He will also submit proof of having given the information to the appellant.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

02 June 2010

(In any correspondence on this decision, mention the complete decision number.)(AG)

□ □ □

8. **Draft of Appeal if Information is not transferred of RTI application under Section 6(3)**

At times PIOs and even Information Commissioners take a stand that transfer of RTI application under Section 6(3) shall be made only to one public authority since the words in Section 6(3) are " 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:" Since the word is authority it is claimed that transfer will only be to a single public authority. This is also sought to be justified by DOPT Office Memorandum no. 10/02/2008-IR dated 12/06/2008 which states that Section 6(3) of the RTI Act mentions public authority in the singular and therefore the RTI application can only be transferred to one public authority as per the RTI Act.

This can be contested thus:

Grounds for appeal: Section 13 of the General Clauses Act, 1897 categorically states:

“In all1[Central Acts] and Regulations, unless there is anything repugnant in the subject or context,–

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and vice versa.”

This principle of law has been well- established and applied by the Supreme Court of India from time to time viz. in K. Satwant Singh v. State of Punjab 1960 SCR (2) 89, Narashimaha Murthy v. Susheelabai & Ors. AIR 1996 SC 1826 and J. Jayalalitha v. UOI & Anr. AIR 1999 SC 1912, as well as by several High Courts while interpreting various statutory provisions.

There is nothing in the Act which would show that Parliament intended that the transfer should only be to one public authority. The DOPT’s office memorandum is in contravention of the General Clauses Act 1987 and interpreted Section 6(3) of the RTI Act wrongly. If the General Clauses Act is not taken into consideration by accepting that the masculine word would include feminine and the singular word includes plural in the RTI Act consider the absurdity of this proposition:

Section 20(1) states regarding imposing penalty on the PIO: 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:

If the General Clauses Act is not applied, it would be taken to mean that only male PIOs would be given a reasonable opportunity of being heard and not female PIOs, which is absurd. Hence the Act requires that information request must be transmitted to as many Public authorities as required. This can be done very easily by email.

The denial of information is not in consonance with the law and hence is an error.

I would like to attend the hearing OR I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.

Relief Sought: Please direct the PIO to send the information within 7 days, as the denial is not as per law. Direct him to send the information free of charge as per Section 7(6) since the information has not been provided within the mandated period of 30 days.

If however you disagree with my contentions please mention in your order how you disagree with the grounds mentioned above.

□ □ □

9. **Draft of Appeal If RTI filed and no response is received in 30 days – Deemed Refusal under Section 7**

Grounds for appeal:

I had filed a RTI application as per the attached copy which was received by the PIO's office on ……. Though the period mandated in the act of 30 days is over he has sent no response/. This is a deemed refusal as per Section 7(2) of the RTI Act. Since no reason has been given for denying information, this becomes a refusal to provide information without any reason. As per Section 19(5) the onus to prove that the denial was justified is on the PIO. Since no reason has been given it is a case of denial of information without any reasonable cause.

1. I would like to attend the hearing OR
2. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Direct him to send the information free of charge as per Section 7(6) since the information has not been provided within the mandated period of 30 days.

If however you disagree with my contentions please mention in your order how you disagree with the grounds mentioned above.

□ □ □

10. **Draft of Appeal if Information is denied on the grounds that it is confidential or sensitive – Section 8**

Grounds for appeal:

This is a denial not justified by the RTI Act. Section 3 clearly states that "Subject to the provisions of this Act, all citizens shall have the right to information.". Thus all citizens are entitled to obtain all information available with public authorities subject to the provisions of the RTI Act.

Section 7(1) categorically states: " 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:

Thus information can only be denied if it falls in the exemptions of Section 8 or 9. These sections do not specify 'confidential' information as an exempt category. I would also like to draw your attention to Section 22 of the RTI Act which lays down: "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.”. Thus this Act overrides all earlier acts and rules and cannot be invoked to deny information.

The denial of information is not in consonance with the law and hence is an error.

1. I would like to attend the hearing OR
2. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.

Relief Sought: Please direct the PIO to send the information within 7 days, as the denial is not as per law. Direct him to send the information free of charge as per Section 7(6) since the information has not been provided within the mandated period of 30 days.

If however you disagree with my contentions please mention in your order how you disagree with the grounds mentioned above

□ □ □

11. **Draft of Appeal if Information is denied stating grant of information is exempted as per Section 8(1)(a)**

Section 8(1)(a) exempts “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;

Grounds for appeal: This is a fairly wide exemption, hence I am unable to come up with a common argument. However some CIC Orders are given which may be used and the arguments developed.

Attached CIC order nos. 15434, 16167, 18316, 18674. The first two have been upheld by the Supreme Court.

□ □ □.

CIC Order No 1534

Pradeep D Kashalkar vs Reserve Bank Of India on 24 February, 2018

CENTRAL INFORMATION COMMISSION

Room No. 302, CIC Bhawan, Baba Gang Nath Marg,

Munirka, New Delhi-110067

Decision No. CIC/RBIND/A/2017/147116, dated 22.02.2018

Pradeep D. Kashalkar vs. CPIO, Reserve Bank of India, Mumbai

Relevant dates emerging from the Appeal:

RTI: 01.01.2017 FA: 20.03.2017 SA: 05.07.2017

CPIO: 10.02.2017,

FAAO: 19.04.2017 Hearing: 06.02.2018

Order: 22.02.2017

ORDER

1. The appellant filed an application under the Right to Information Act, 2005 (RTI Act) before the Central Public Information Officer (CPIO), Department of Co-Operative Banking Supervision, Reserve Bank of India, Mumbai seeking information on three points, including, inter-alia, (i) relevant extracts from RBI's annual inspection reports of advances extended by Abhyudaya Co-operative Bank Ltd., Mumbai to M/s Unity Infrastructure Ltd., and its subsidiaries and associate companies from the annual inspection reports for the years 2012-13, 2013-14, 2014-15 and 2015-16 and (ii) if the

irregularities are found to be of serious nature, the action taken by the Bank against the above bank.

2. The appellant filed a second appeal before the Commission on the grounds that the information was denied by the CPIO under Section 8(1)(d) of the RTI Act stating that Abhyudaya Co-operative Bank Ltd has requested not to disclose the information. The appellant requested the Commission to direct the CPIO to provide the information immediately and also to impose penalty of Rs.25000/- on the CPIO for not supplying the information sought by him.

Hearing:

3. The appellant Shri Pradeep D. Kashalkar and the respondent Shri Palav Yadav, legal Officer, Reserve Bank of India, Mumbai attended the hearing through video conferencing.
4. The appellant submitted that Reserve Bank of India conducts annual inspection of banks under Section 35 of the Banking Regulation Act. The contents of the inspection are not furnished by the bank rather it is obtained during the inspection. Hence, the contents pertaining to the bank cannot be said to be information furnished by the bank. RBI conducted inspection of Abhyudaya Co-operative Bank Ltd., Mumbai in the years 2012-13, 2013-14, 2014-15 and 2015-16. A notice under SARFAESI Act was published in Free Press Journal for taking possession of various properties owned by Companies controlled by Shri Kishor Avarsekar of M/s Unity Infrastructure Ltd. He further stated that two Companies M/s JP Shopping Mall & Hotel Private Limited and M/s DG Malls & Multiplex Private Limited have been granted huge facilities by taking collateral of assets owned by the individual companies whose paid up capital is only Rs. One lakh. Thus, Abhyudaya Co-operative Bank Ltd. did not observe due diligence while sanctioning

these advances. The appellant further submitted that these two Companies are under liquidation as per the orders of National Company Law Tribunal (NCLT). In view of this, he had sought relevant extracts from RBI's annual inspection reports pertaining to irregularities/observations regarding advances extended by Abhyudaya Co- operative Bank Ltd., Mumbai to M/s Unity Infrastructure Ltd. However, the respondent has denied information on the grounds that the information sought is related to a third party. The appellant cited the decision of Supreme Court in the matter of Reserve Bank of India vs. Jayantilal N. Mistry [Transferred case (Civil) No. 91 of 2015] dated 16.12.2015 where in it was held that the inspection reports of RBI are disclosable under the RTI Act.

5. The respondent submitted that since the information sought pertained to Abhyudaya Co-operative Bank Ltd., a notice was issued to them under Section 11 of the RTI Act. Abhyudaya Co-operative Bank Ltd. has requested the respondent not to disclose any information as the information sought is exempted from disclosure under Section 8(1)(d) of the RTI Act. The respondent stated that the information sought relates to advances extended by Abhyudaya Co-operative Bank Ltd. to M/s Unity Infrastructure ltd. and its subsidiaries which is related to a third party, the disclosure of which may harm the competitive position of the third party. Hence, its disclosure is exempted under Section 8(1)(d) of the RTI Act.
6. Shri Anthony Norohana, AGM, Abhyudaya Co-operative Bank Ltd., Mumbai, submitted that they do not come under the definition of public authority as defined under Section 2(h) of the RTI Act. He further stated that the bank held information of its customer in a fiduciary capacity and hence, the information is exempted from disclosure under Section 8(1)(e) of the RTI Act.

Decision:

7. The Commission, after hearing the submissions of both the parties and perusing the records, observes that the appellant is seeking relevant extracts from the inspection report of Reserve Bank of India relating to irregularities observed by the Reserve Bank of India in the advances extended by Abhyudaya Co-operative Bank Ltd. to M/s Unity Infrastructure Ltd. The Commission also notes that the appellant has alleged that the irregularities stemmed from non- observance of due diligence by Abhyudaya Co-operative Bank Ltd. The Commission notes that the Hon'ble Supreme Court in case of Reserve Bank of India vs. Jayantilal N. Mistry [Transferred case (Civil) No. 91 of 2015] dated 16.12.2015 has upheld the CIC's order No. CIC/SM/A/2011/001487/SG/ 15434 dated 01.11.2011, wherein it has been observed that:

"RBI being the Central Bank is one of the instrumentalities available to the public which as a regulator can inspect such institutions and initiate remedial measures where necessary. It is important that the general public, particularly, the shareholders and the depositors of such institutions are kept aware of RBI's appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases. This will serve the public interest. The RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the RTI Act, in particular."

8. The Commission, therefore, directs the respondent to provide the information sought on point no. 1 of the RTI application to the appellant, after severing any information relating to personal information of third parties, within a period of four weeks from the date of receipt of a copy of this order.
9. With the above observations, the appeal is disposed of.

10. Copy of the decision be provided free of cost to the parties.

(Sudhir Bhargava) Information Commissioner Authenticated true copy (S.S. Rohilla) Designated Officer

1. The Central Public Information Officer (CPIO), Reserve Bank of India, Deptt. Of Co-operative Bank Supervision, Central Office, C-9, Ground/1st Floor, Bandra Kurla Complex, Bandra (E), Mumbai-400051.
2. Shri Pradeep D. Kashalkar

CIC order nos. 16167

□ □ □

Annexure 11.2

Mr.Raja M Shanmugam vs Reserve Bank Of India on 7 December, 2011

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2011/001966/16167

Appeal No. CIC/SG/A/2011/001966

Relevant Facts

emerging from the Appeal:

Appellant : Mr. Raja M. Shanmugam,

President – Forex Derivative Consumer’s Forum,

33B, Vaikkal Thottam,

Sherieff Colony,

Tiruppur – 641604

Respondent : Central Public Information Officer,

Reserve Bank of India,

Foreign Exchange Department,

Central Office, Central Office Building,

Shahid Bhagat Singh Marg,

P.B. No. 1055, Mumbai – 400001

RTI application filed on : 12/10/2010

PIO replied on : 16/11/2010

First Appeal filed on : 13/12/2010 (Copy not enclosed)

First Appellate Authority order of : 25/01/2011

Second Appeal received on : 07/06/2011

1. Before the Orissa High Court, RBI has filed The information sought is exempted under Sections an affidavit stating that the total mark to 8(1)(a) and (e) of RTI Act. market losses on account of currency derivatives is to the tune of more than Rs. 32,000 crores. Please give bank wise breakup of the MTM losses.
2. What is the latest figure available with RBI of the amount of losses suffered by Indian business houses? Please furnish the latest figures bank wise and customer wise.
3. Please update on action taken against the –

erring banks who sold the exotic derivative products in contravention to FEMA Act and RBI Guidelines as per the RBI's submissions to the Orissa High Court.

4. Recent press reports suggests RBI has also –

issued Show Cause Notices to Several banks that have violated RBI guidelines on the sale of exotic derivative products. Give the list of banks to which show-cause notices were issued along with the copy of the notice issued to banks.

5. Whether any reply received from any of the –

banks in response to the Show Cause Notice?

If so please furnish copies of the same.

6. RBI has listed out several violations of RBI – guidelines by banks in the sale of exotic derivative products in its report filed before Orissa High Court. Whether periodical Audit of Sank branches in the years 2007 and 2008 revealed any such violation? If so please furnish RBI Audit Report indicating the said violation.
7. RBI has issued a circular dated the 29th of – October 2008 asking the banks to park the proceeds on account of derivative losses in a separate account. However, few banks, especially State Bank of India is said to have refused to adhere to the said circular despite repeated demands from the exporters.

Whether R5 has received any complaint stating that any bank is refusing to adhere to the specific circular cited above? If so furnish as copy of the same.

8. Also if any complaint is received by RBI as – stated above, please give the detail of enquiry and action taken by the RBI on the erring banks.
9. Whether the issue of derivative losses to The CPIO, Foreign Exchange Department did not Indian Exporters was discussed In any of the have information on this query.

meetings of Governor I Deputy Governor or senior official of the Reserve Bank of India?

If so please furnish the minutes of the meeting where the said issue was discussed.

10. Any other Action Taken Reports by RBI in The CPIO, Foreign Exchange Department did not this regard. have information on this query.

Grounds for First Appeal:

Incomplete and unsatisfactory information provided by the PIO.

Order of First Appellate Authority (FAA):

The FAA noted that queries 1, 2, 9 and 10 were replied to by the CPIO, FED against which First Appeal was filed by the Appellant. Queries 3 to 8 were replied to by the CPIO, DBS. The FAA observed:

"…I have gone through the papers and also considered the grounds of appeal stated by the appellant. My observations thereon are as under:

Query No. 1:

The appellant has sought for bank wise break up of the MTM losses, CPIO has claimed exemption from disclosure under Sec. 8(1)(a) & (e) of RTI Act.

My observation:

I agree with the CPIO that disclosure of bank wise break up of MTM losses in the derivative transactions would affect the economic interests of the state as such disclosure to the public could be detrimental to the interest of the subject bank and to the banking system in general. Also, information relating to MTM position of banks are obtained by Reserve Bank for discharging the regulatory and supervisory functions and

are held by the Reserve Bank in fiduciary capacity; Therefore, I do not find any infirmity in the exemption claimed by the CPIO under Sec. 8(1)(a) & (e) of the RTI Act. The decision of the Hon'ble Delhi High Court, referred to by the appellant, is not applicable to the facts o this case. The observations of the Full Bench of CIC in the case of Shri Ravin Ranchchodlal Patel & –-. Reserve Bank of India (Decided on December 7, 2006), wherein absolute discretion was granted to the Reserve Bank to assess the desirability of disclosure of Inspection Report in individual cases, are equally relevant to the kind of information sought by the appellant especially when he desires to have bank wise break up. I do not consider that this is a fit case warranting invocation of Sec. 8(2) of RTI Act by the CPIO and accordingly, no fault can be found on the part of CPIO in not disclosing the information sought by the appellant. Query No. 2.

The appellant desired to know the amount of losses suffered by Indian Business Houses and its latest figures, bank wise and customer wise.

My Observations:

CPIO has not given a separate reply to this Query. Instead, he has made a cross reference to his reply to Query No. 1. I direct the CPIO to clarify to the appellant whether the information relating to the losses suffered by Indian Business Houses is available with the Reserve Bank. If available, CP is directed to consider the request of the appellant subject to the exemptions provided under the RTI Act. Query Nos. 9&10:

The appellant wanted to know whether the issue of derivative losses to Indian exporters was discussed in any of the meetings of the Governor/ Deputy Governor or senior official of Reserve Bank and if so, to furnish the minutes of the meeting. In Query No. 10, the appellant sought for Action taken Reports by RBI in the matter. CPIO has replied that no information is available.

My Observations:

Whether a particular state of fact exist or not, ideally has to be replied either in the affirmative or in the negative. Replying that no information is available is not appropriate. In my view, based on the records, CPIO should state whether there were any meetings or action taken reports, as sought by the appellant. Therefore, I direct the CPIO to revisit Query Nos. 9 & 10 and give appropriate replies to the appellant. However, I wish to clarify that disclosure of minutes of meetings or copies of reports, if any, shall be subject to the exemptions provided under the RTI Act."

Grounds for Second Appeal:

Dissatisfied with the order of the FAA.

Relevant Facts emerging during Hearing held on 15 November 2011:

The following were present:

Appellant: Mr. Raja M. Shanmugam via video- conference from NIC Studio – Tiruppur; Respondent: Absent.

"The Appellant gave written submissions to the Commission. The Respondent neither appeared on the said date nor did the Commission receive any submissions. The appellant stated that he wanted to draw the attention of the Commission to the Orissa High Court Judgement in W. P. (Crl.) No. 344/2009." The order was reserved on 15/11/2011.

Decision announced on 7 December 2011:

The Commission has perused the papers including the submissions of the Appellant. The Appellant is now seeking information on queries 1, 2, 9 and 10.

In queries 1 and 2, the Appellant has sought the following information:

1. Before the Orissa High Court, RBI has filed an affidavit stating that the total market to market losses on account of currency derivatives are to the tune of more than Rs. 32,000 crores. Provide bank-wise breakup of the MTM losses; and
2. What is the latest figure available with RBI of the amount of losses suffered by Indian business houses? Provide latest figures bank-wise and customer wise.

The PIO has denied the information on the basis of Sections 8(1)(a) and (e) of the RTI Act. The FAA has upheld the PIO's reply in query 1 and cited the Commission's decision in R. R. Patel v. RBI CIC/MA/A/2006/00406 and 00150 dated 07/12/2006. As regards query 2, the FAA directed the CPIO to consider the Appellant's request subject to the provisions of the RTI Act.

Whether information sought in queries 1 and 2 is exempt from disclosure under Section 8(1)(a) of the RTI Act The Respondent has denied the information sought in queries 1 and 2 under Section 8(1)(a) of the RTI Act. The FAA agreed with the reply of the CPIO in query 1 and observed that disclosure of bank-wise break-up of MTM losses in the derivative transactions would affect the economic interests of the State as such disclosure to the public could be detrimental to the interest of the subject bank and the banking system in general. The FAA relied on the Commission's Full Bench decision in R. R. Patel v. RBI CIC/MA/A/2006/00406 and 00150 dated 07/12/2006. The FAA also stated that it did not consider this as a fit case for invoking Section 8(2) of the RTI Act.

In R. R. Patel's Case, the Full Bench was considering the specific issue of disclosure of RBI's inspection report of a cooperative bank. This is not the issue before this Bench and therefore, this precedent may not be entirely relevant. Nonetheless, this Bench has considered the R. R. Patel Case. One of the issues before the Full Bench was whether the inspection report was exempt from disclosure under Section 8(1)(a) of the RTI Act. The Full Bench relied on a decision of

the Punjab & Haryana High Court in RBI v. Central Government Industrial Tribunal (dated 07/05/1958) which had observed that "In an integrated economy like ours, the job of a regulating authority is quite complex and such an authority has to decide as to what would be the best course of action in the economic interest of the State. It is necessary that such an authority is allowed functional autonomy in decision making and as regards the process adopted for the purpose". Based on the above, the Full Bench, in paragraph 16, ruled inter alia that "In view of this, and in light of the earlier discussion, we have no hesitation in holding that the RBI is entitled to claim exemption from disclosure u/s 8(1)(a) of the Act if it is satisfied that the disclosure of such report would adversely affect the economic interests of the State. The RBI is an expert body appointed to oversee this matter and we may therefore rely on its assessment. The issue is decided accordingly".

From a plain reading of the above, it appears that the Full Bench was of the view that if RBI concluded that disclosure of inspection reports would adversely affect the economic interests of the State, the said information may be denied under Section 8(1)(a) of the RTI Act. There is no observation that the Full Bench had come to this conclusion by itself. Further, the observations of the Punjab & Haryana High Court in RBI v. Central Government Industrial Tribunal (dated 07/05/1958) relied on by the Full Bench were made much before the advent of the RTI Act and cannot therefore, be a guide for deciding on the applicability of exemptions under the RTI Act. Furthermore, the RBI in R. R. Patel's Case claimed that if inspection reports of banks were to be disclosed it would affect the economic interests of the State. The Full Bench decision appears to rely on the submissions of the Deputy Governor of RBI provided vide letter dated 21/09/2006 and were as follows:

"(i) Among the various responsibilities vested with RBI as the

country’s Central Bank, one of the major responsibilities relate to maintenance of financial stability. While disclosure of information generally would reinforce public trust in institutions, the disclosure of certain information can adversely affect the public interest and compromise financial sector stability.

(ii) The inspection carried out by RBI often brings out weaknesses in the financial institutions, systems and management of the inspected entities. Therefore, disclosure can erode public confidence not only in the inspected entity but in the banking sector as well. This could trigger a ripple effect on the deposits of not only one bank to which the information pertains but others as well due to contagion effect.

(iii) While the RBI had been conceding request for information on actions taken by it on complaints made by members of the public against the functioning of the banks and financial institutions and that they do not have any objection in giving information in respect of such action taken or in giving the substantive information pertaining to such complaints provided such information is innocuous in nature and not likely to adversely impact the system.

(iv) However, disclosure of inspection reports as ordered by the Commission in their decision dated September 6, 2006 would not be in the economic interest of the country and such disclosures would have adverse impact on the financial stability.

(v) It would not be possible to apply section 10(1) of the Act in respect of the Act in respect of the inspection report as portion of such reports when read out of context result in conveying even more misleading messages.”

Thus RBI argued that it did not wish to share the information sought as some of it could “adversely affect the public

interest and compromise financial sector stability". RBI was unwilling to share information which might bring out the 'weaknesses in the financial institutions, systems and management of the inspected entities'. It was further contended that 'disclosure can erode public confidence not only in the inspected entity but in the banking sector as well. This could trigger a ripple effect on the deposits of not only one bank to which the information pertains but others as well due to contagion effect'. It appears that the RBI argued that citizens were not mature enough to understand the implications of weaknesses, and RBI was the best judge to decide what citizens should know. Citizens, who are considered mature enough to decide on who should govern them, who give legitimacy to the government, and framed the Constitution of India must be given selective information about weaknesses exposed in inspection, to ensure that they have faith in the banking sector. They must see the financial and banking sector only to the extent which RBI wishes.

It follows that if RBI made mistakes, or there was corruption, citizens would suffer. This appears to go against the basic tenets of democracy and transparency. This Bench would like to remember Justice Mathew's clarion call in State of Uttar Pradesh v. Raj Narain (1975) 4 SCC 428 – "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security".

It is also worthwhile remembering the observations of the

Supreme Court of India in S. P. Gupta v. President of India & Ors. AIR 1982 SC 149:

“It is axiomatic that every action of the government must be actuated by public interest but even so we find cases, though not many, where governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes governmental action is influenced by political and other motivations and pressures…

At times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open government with means, of information available to the public there would be greater exposure of the functioning of government and it would help to assure the people a better and more efficient administration. There can be little doubt that’ exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is clean government and a powerful safeguard against political and administrative aberration and inefficiency…

This is the new democratic culture of an open society towards which every liberal democracy is evolving 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, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands… Even though the head of the department or even the Minister may file an

affidavit claiming immunity from disclosure of certain unofficial documents in the public interest, it is well settled that the court has residual powers to nevertheless call for the documents and examine them. The court is not bound by the statement made by the minister or the head of the department in the affidavit. While the head of the department concerned was competent to make a judgment on whether the disclosure of unpublished official records would harm the nation or the public service, he/she is not competent to decide what was in the public interest as that it the job of the courts. The court retains the power to balance the injury to the State or the public service against the risk of injustice, before reaching its decision on whether to disclose the document publicly or not."

The idea that citizens are not mature enough to understand and will panic is repugnant to democracy. For over 60 years citizens have handled their democratic rights in a mature fashion, punished leaders who showed tendencies of trampling their rights, and again given them power once the leaders had learnt their lessons not to take liberties with the liberties of the sovereign citizens of India. 'We the people' gave ourselves the Constitution of India, nurtured it and will take it forward. The fundamental rights of citizens, enshrined in the Constitution of India cannot be curbed on a mere apprehension of a public authority. The Supreme Court of India has recognized that the Right to Information is part of the fundamental right of citizens under Article 19 of the Constitution of India. Any constraint on the fundamental rights of citizens has to be done with great care even by Parliament. The exemptions under Section 8 and 9 of the RTI Act are the constraints put by Parliament and adjudicating bodies have to carefully consider whether the exemptions apply before denying any information under the RTI framework.

It is pertinent to mention that in R. R. Patel's Case, the Full Bench did not come to any specific conclusion that

disclosure of inspection reports would prejudicially affect the economic interests of the State. Instead it left it to RBI to determine whether disclosure of the said information would attract Section 8(1)(a) of the RTI Act. This was primarily on the basis that RBI is an expert body and that any decision taken by it must necessarily be relied upon by the Commission and be the sole decisive factor. No legal reasoning whatsoever was given by the Full Bench for concluding the above. There is no evidence or indication that the Commission after taking cognizance of RBI's views had come to the same conclusion. If the position of the Full Bench is to be accepted, it would lead to a situation where RBI would have the final say in whether information should be provided to a citizen or not. Extending this logic, all public authorities could be the best judge of what information could be disclosed, since they are likely to be experts in matters connected with their working. In such an event the Commission would have no role to play. Parliament evidently expected that the Commission would independently decide whether the exemptions are applicable. It may take the view of RBI into account, but the ultimate decision on whether any exemption would apply or not must be decided by the Commission. The Full Bench did not give any independent finding that the disclosure of information would affect the economic interests of the State in its decision. This would completely negate the fundamental right to information guaranteed to the citizens under the RTI Act. In the case being considered by the Full Bench, it decided to accept the judgment of RBI. It is open to a Commission to defer to a judgment of another body, but this does not establish any principle of law, and would apply only to the specific matter.

It is apparent from the scheme of the RTI Act that the Commission is a quasi- judicial body which is responsible for deciding appeals and complaints arising under the RTI Act. The Commission cannot abdicate its responsibilities under the RTI Act to RBI on the ground that the latter is an expert body.

The Commission cannot rely solely on the decision of the public authority and must look into the merits of the case itself. It must determine, on its own, whether the denial of information by the PIO was justified as per Sections 8 and 9 of the RTI Act. Since the Full Bench has not recorded any comment which shows that it consciously agreed that Section 8(1)(a) of the RTI Act was applicable in such matters, it does not establish any legal principle or interpretation which can be considered as a precedent or ratio. Thus the decision is applicable only to the particular matter before it, and does not become a binding precedent.

Furthermore, the Full Bench in R. R. Patel's Case was constituted to reconsider two decisions dated 06/09/2006 of Professor M. M. Ansari, then Information Commissioner. As described above, the issues to be reconsidered by the Full Bench included whether the claim of RBI for exemption under Section 8(1)(a) of the RTI Act in respect of inspection of reports could be held justified. The Full Bench relied on the Supreme Court's decision in Grindlays' Bank v. Central Government Industrial Tribunal AIR 1981 SC 606 and noted that when a review is sought due to a procedural defect, the inadvertent error committed by a tribunal must be corrected ex debito justitiae to prevent the abuse of its power and such power is inherent in every court or tribunal. On this basis, the Full Bench proceeded to review the decisions of Professor M. M. Ansari, then Information Commissioner.

The Supreme Court of India in Patel Narshi Thakershi & Ors. v. Sri Pradyuman Singhji AIR 1970 SC 1273 has noted – "It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication". In Kuntesh Gupta v. Mgmt. of Hindu Kanya Mahavidyalaya, Sitapur & Ors. AIR 1987 SC 2186, the Supreme Court observed – "It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute

under which it derives its jurisdiction". It must be noted that a three- Judge Bench of the Supreme Court in Kapra Mazdoor Ekta Union v. Mgmt. of M/s Birla Cotton Appeal (Civil) No. 3475/2003 decided on 16/03/2005 held:

"…it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a

proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again."

From a combined reading of the above decisions, it is clear that a quasi – judicial authority can review a decision on merits only if it is vested with power of review by express provision or by necessary implication. The powers of the Commission are limited under the RTI Act and certainly do not confer upon it the power of review. It is clear from the Full Bench ruling in R. R. Patel's Case that it was reviewing the two decisions of Professor M. M. Ansari, then Information Commissioner on merits. The Full Bench certainly did not have the power to do so given the provisions of the RTI Act and the law laid down by the Supreme Court in this regard. In fact, the Supreme Court in the Kapra Mazdoor Ekta Union Case clearly considered and clarified the ruling in the Grindlays' Bank Case (relied upon by the Full Bench). It appears that the Full Bench reviewed the issues based on merits in R. R. Patel's Case in ignorance of the law laid down by the Supreme Court in Kapra Mazdoor Ekta Union Case. Therefore, for the reasons detailed above, the R. R. Patel Case is per incuriam and is consequently, not binding on this Bench.

Having laid down the above, this Bench has whether the information sought in queries 1 and 2 is protected under Section 8(1)(a) of the RTI Act. While this Bench has considered RBI's reply in the present matter, whether exemption under Section 8(1)(a) of the RTI Act will apply or not, must be decided by the Commission.

Section 8(1)(a) exempts " 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". It is unlikely that disclosure of information sought in queries 1 and 2 would prejudicially affect the sovereignty and integrity of India, the security, strategic or scientific interests of the State, or relation with foreign State, or lead to incitement of an offence. Hence it must be examined whether the economic interests of the State are likely to be prejudicially affected by disclosure of the information. The information sought pertains to bank-wise breakup of the MTM losses and latest figures available with RBI of the amount of losses suffered by Indian business houses with latest figures bank-wise and customer wise.

This Bench is of the considered opinion that even if the information sought was exempted under Section 8(1)(a) of the RTI Act,-as claimed by the Respondent,- Section 8(2) of the RTI Act would mandate disclosure of the information sought. Section 8 (2) of the RTI Act states, "Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests". The RBI is a regulatory authority which is responsible for inter alia monitoring banks and financial institutions along with flow of public funds and forex in accordance with applicable law. In the present matter where MTM losses on currency derivatives are to the extent of more than Rs. 32,000 crores, it is certainly a matter of national importance. There appears to be a large financial scam affecting the economy as a whole and citizens have a right to know about the same. The Orissa High Court in Pravanjan Patra v. Union of India & Ors. W. P. (Crl.) No. 344/2009 had dealt with the present matter and in this context, it would be relevant to quote its observations, as follows:

"14. From the above mentioned facts and circumstances, it

appears that besides serious irregularities as admitted in the report of the CBI, as indicated above, the following criminal actions cannot be ruled out (i) making false declaration deliberately by users/customers in making hedge transactions in excess of their exposures, (ii) IDG has identified violations which are serious in nature and appear to be intentional and deliberate which also forms mensrea in commission of offence, (iii) booking of contracts under past performance basis beyond 50% of eligible limit without obtaining CA certificate, (iv) misuse of transactions by using photocopies of the same underlying to enter into different contracts with different banks. The CBI has specifically observed in its report that there was clear cut violations of the guideline of RBI and it may be said that there is enough in this world for every one needs but not for any one's greed. There are apparent violations of FEMA and if investigation is done by the CBI, the violation of FEMA can also be seen and on that basis criminal offences can also be found out.

15. From the fact that false declarations were made as also from the above mentioned actions, the commission of offences of cheating, fraud and criminal conspiracy cannot be ruled out. The CBI has conducted a thorough enquiry…The instant matter is a matter of national interest. If the allegations are found to be true, then the CBI would be busting a large financial scam affecting the economy of the country."

Whether information sought in queries 1 and 2 is exempt from disclosure under Section 8(1)(e) of the RTI Act Section 8(1)(e) of the RTI Act exempts from disclosure "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;". The traditional definition of a fiduciary is a person who occupies a position of trust in relation to someone else, therefore requiring him to act for the latter's benefit within the scope

of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice- as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

The PIO has denied information on queries 1 and 2 on the basis of Section 8(1)(e) of the RTI Act. This was upheld by the FAA which further observed that information relating to MTM position of banks are obtained by RBI for discharging the regulatory and supervisory functions and are held by RBI in fiduciary capacity.

In the present matter, it is clear that while banks may have given information to RBI in confidence or in trust, there does not appear to be any duty cast upon RBI to act in their benefit. RBI being a regulator of the banking sector obtains/maintains such information in regulatory/ supervisory capacity. Therefore, there is no element of choice as such available to banks. There does not appear to be a creation of any fiduciary relationship between RBI and the banks, as laid down above. Therefore, the PIO’s contention that information in queries 1 and 2 is exempt under Section 8(1)(e) of the RTI Act is rejected. Moreover, for the reasons mentioned above- a larger public interest would be served by disclosing this

information- under Section 8(2) of the RTI Act. In view of the same, this Bench is of the considered opinion that whether information sought in query 1 and 2 is exempted under Section 8(1)(e) of the RTI Act, Section 8(2) of the RTI Act would mandate disclosure of the information sought.

Further, as regards queries 9 and 10, the CPIO has not claimed any exemption either in the initial reply or subsequently for denying the information.

The Appeal is allowed.

The CPIO, FED is directed to provide the complete information as per record on queries 1, 2, 9 and 10 to the Appellant before 5 January 2012.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi Information Commissioner 7 December 2011 (In any correspondence on this decision, mention the complete decision number.)(SU)

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Annexure 11.3

CIC order nos. 18674

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2012/000544/18674

Appeal No. CIC/SG/A/2012/000544

Relevant facts emerging from the Appeal:

Appellant : Dr. S.P. Udayakumar,

42/27, Esankai Mani Veethy,

Parakkai Road Junction,

Nagercoil, Tamil Nadu-629002

Respondent : Mr. S. K. Srivastava,

PIO & Deputy Chief Engineer (Projects),

Nuclear Power Corporation of India Limited,

Vikram Sarabhai Bhawan, Central Avenue

Road, Anushakti Nagar, Mumbai-400094

RTI application filed on : 25/01/2010

PIO replied on : 24/03/2010

First Appeal filed on : 16/04/2010

First Appellate Authority order of : 20/05/2010

Second appeal filed on : 13/08/2010 and 16/02/2012

The Appellant had filed a Second Appeal before the Commission on 13/08/2010. However, it appears that the Commission failed to register the matter and schedule it for a hearing.

Subsequently, this lapse was brought to the Commission's notice by the Appellant's letter received on 16/02/2012 and the matter was registered by the Commission.

Since it appears that the Commission had not registered the

appeal in 2010, when it had been made within time, it was registered since the appellant was not responsible for the delay.

Information sought:

The following information was sought in relation to the Koodankulam Nuclear Power Plant

(KKNPP), Reactor I & II in Tamil Nadu:

1. Copy of Safety Analysis Report for reactor I & II;
2. Copy of Site Evaluation Report for reactor I & II; and
3. Copy of Environment Impact Assessment report for reactor I & II.

Reply of Public Information Officer (PIO):

1. The Environmental Impact Assessment Report was available with the PIO consisting of

339 pages. The Appellant was requested to send a demand draft of Rs.678/- (Rupees six hundred seventy eight only) @ Rs.2/- per page as per the provisions of the RTI Act, in favour of Manager (F&A), NPCIL. On receipt of the fees, a copy of the said report shall be furnished to the Appellant.

2, The Safety Analysis Report and the Site Evaluation Study Report were not public documents and contained design details that are proprietary in nature. As such the information was exempt under Sections 8(1)(a) and (d) of the RTI Act.

Grounds for First Appeal:

Incomplete information furnished by the PIO.

Order of First Appellate Authority (FAA):

The FAA agreed with the PIO and observed that the Safety Analysis Report and the Site

Evaluation Study Report for KKNPP I & II were classified documents held by NPCIL.

Grounds for Second Appeal:

Dissatisfied with FAA's order. Indian citizen's safety and wellbeing are very important and information must be provided.

Relevant Facts emerging during Hearing held on 23 April 2012:

The following were present:

Appellant: Mr. Venkatesh Nayak representing the Appellant;

Respondent: Mr. S. K. Srivastava, PIO & Deputy Chief Engineer (Projects) via video conference from NIC Studio-Mumbai.

Both parties were heard. The Commission observed that copies of the Safety Analysis Report and Site Evaluation Report of reactors I & II (collectively referred to as Reports) of the Koodankulam Nuclear Power Plant in Tamil Nadu have not been provided to the Appellant.

The PIO argued that the Reports were classified information and the concerned public authority had not taken a decision to release it in to the public domain. He submitted that the Reports were protected from disclosure under Sections 8(1)(a) and (d) of the RTI Act. The Commission repeatedly asked the PIO the specific reasons for claiming the said exemptions. As regards Section 8(1)(a) of the RTI Act, the PIO stated that the security, strategic and scientific interests of the State would be affected on disclosure of the information. However, he did not give any explanations as to how the security, strategic and scientific interests of the State would be affected on disclosure of the said reports. Further, in relation to Section 8(1)

(d) of the RTI Act, the PIO claimed that the Reports comprised of commercial confidence. However, he did not explain how disclosure of the said reports could be considered 'commercial

confidence’ and how it could harm the competitive position of a third party. On the other hand, the Appellant contended that the exemptions under Sections 8(1)(a) and

(d) of the RTI Act were not applicable to the present matter. He argued that a larger public interest would certainly be served on disclosure of the Reports. In this regard, reliance was placed upon the agreement between India and the International Atomic Energy Agency (IAEA) which lays down the safety and maintenance standards for nuclear activities. The Appellant further submitted that reports of the same nature were classified as public documents in countries such as USA, UK and Canada in order to ensure public debate. The Appellant gave written submissions along with a CD detailing the arguments mentioned above.

The order was reserved at the hearing held on 23/04/2012.

Decision announced on 30 April 2012:

The Appellant has sought copies of the Safety Analysis Report and Site Evaluation Report of reactors I & II of the Koodankulam Nuclear Power Plant in Tamil Nadu which have been denied. At the outset, the PIO has argued that the Reports were classified information and the concerned public authority had not taken a decision to release it in the public domain. It is legally well-established that information under the RTI Act can be denied only on the basis of Sections 8 and 9 of the RTI Act. The fact that a record has been termed as ‘classified’, or that it shall be disclosed subject only to an executive decision to that effect-have not been stipulated as exemptions under the RTI Act. Therefore, the PIO cannot use such grounds for denying the information sought under the RTI Act; denial of information shall be on the basis of Sections 8 and 9 of the RTI Act only.

Having established the above, the Commission now examines the PIO’s contention that the Reports were exempt from disclosure

under Sections 8(1)(a) and (d) of the RTI Act. Section 8(1)(a) of the RTI Act exempts from disclosure-"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". At the hearing held on 23/04/2012, the Commission repeatedly asked the PIO to identify and explain the specific interest which might be affected, on the basis of which the exemption under Section 8(1)(a) of the RTI Act was claimed. The PIO merely stated that the security, strategic and scientific interests of the State would be prejudicially affected on disclosure of the information; he gave no reasons whatsoever for claiming that the security, strategic and scientific interests of the State would be prejudicially affected if the Reports were disclosed.

Section 8(1)(d) of the RTI Act exempts from disclosure- "information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;". In order to claim the exemption under Section 8(1)(d) of the RTI Act, the PIO must establish that disclosure of the information sought (which may include commercial or trade secrets, intellectual property or similar information) would result in harming the competitive position of a third party. At the hearing held on 23/04/2012, the Commission repeatedly asked the PIO the specific reasons for claiming the said exemption. The PIO simply stated that the information was commercial confidence; he provided no explanation as to how disclosure of the said reports would harm the competitive position of a third party, except mentioning that the designs were of Russian manufacturers. From this statement and the PIOs contention that the reports contained design details, it appears that the contention was that design details of the plant were in these reports and divulging them may be considered disclosing commercial

confidence, trade secret or intellectual property and such disclosure may harm the competitive position of the supplier.

As per Section 19(5) of the RTI Act, in any appeal proceedings, the onus to prove that a denial of request was justified shall be on the PIO who denied the request. In the instant matter, the PIO has not given any justification for showing how the security, strategic and scientific interests of the State would be prejudicially affected if the Reports were disclosed- under Section 8(1)(a) of the RTI Act. Further, the PIO's argument indicates that exemption under Section 8 (1) (d) may be attracted if the design details of the plant were disclosed. It follows that the burden required to be discharged by the PIO under Section 19(5) of the RTI Act has not been done as far as exemption under Section 8 (1) (a) is concerned.

The Commission has also perused the Appellant's submissions. The appellant has pointed out that the International Atomic Energy Agency (IAEA) is a specialized body of the United Nations facilitating nuclear cooperation. Any country wishing to enter into an agreement with IAEA for the latter's assistance in relation to sites, design, construction, commissioning, operation, etc of a nuclear facility or any other activity is required to follow the safety and maintenance standards of IAEA with regard to the activities covered under the agreement. India is a member of the IAEA and has entered into the Application of Safeguards to Civilian Nuclear Facilities Agreement with IAEA in 2009. The KKNPP-Reactors I & II are included in the list of nuclear power facilities and installations annexed to the agreement for application of the safeguards prescribed by IAEA. IAEA has, in its Safety Standards Series, issued a set of standards to be adhered to while undertaking a site evaluation for nuclear installations. Factors relevant in determining the suitability of a site for a nuclear installation are-effects of external events occurring in the site, characteristics of

the site and its environment that could influence the transfer to persons and the environment of radioactive material that has been released, and population density and distribution that may affect the possibility of implementing emergency measures. IAEA has issued standards for the safety of nuclear power plants vis-à-vis design, operation and mitigating circumstances that could jeopardize safety. It prescribes safety assessment which is carried out in order to identify the potential hazards that may arise from the operation of the plant. IAEA standards also address events that are unlikely to occur, such as severe accidents and external natural factors, that may lead to major radioactive releases and for which it may be appropriate and practicable to provide preventive and mitigatory measures in the design.

The Appellant has also referred to the Vienna Convention on Nuclear Safety, 1994 (Convention), to which India is a signatory. Article 5 of the Convention requires India to submit for review a report on the measures it has taken to implement each of its obligations under the Convention including evaluation of safeguards and safety standards in place for nuclear power plants. The Appellant has cited the report of 2010 for India and referred to certain parts therein. It has been submitted that the report is required to be made in accordance with each Article listed in the Convention. Reporting in relation to Article 17- which refers to 'Siting' makes it clear that site evaluation does not relate to national security matters under Section 8(1)(a) or anything protected under Section 8(1)(d) of the RTI Act. It purely relates to geography, environment, meteorology, geology etc. These are all connected with the environment directly and inextricably and have a huge bearing on public health and safety. Reliance has also been placed upon Article 14- 'Assessment and Verification of Safety' and Article 18-'Design and Construction'. The Appellant has also referred to a Government of India monograph mandating what is involved in site evaluation study and contends that the monograph makes it

clear that the entire exercise of site evaluation is for ensuring safety of the environment and the people from any danger or fallouts.

The Commission finds merit in the Appellant's contention. The purpose of a site evaluation for nuclear installation in terms of nuclear safety is to protect the public and the environment from the radiological consequences of radioactive releases due to accidents, etc. The Commission notes that the site evaluation report not only provides the technical basis of the safety analysis report, it contains technical information useful for fulfilling the environmental impact assessment for radiological hazards. Therefore, it follows that the site evaluation report forms an important basis of the environmental impact assessment report as well. In order to appreciate the conclusions reached in the environmental impact assessment report, a citizen must have access to the site evaluation report as well. This will enable the public to obtain a comprehensive understanding of the likely environmental impact of the KKNP Project.

Moreover, any nuclear installation or site must be designed in a way to account for any unforeseen accidents and natural hazards. This is the basic purpose of a safety evaluation and citizens have a right to know what safety assessment has been of the KKNP Project I & II. If it is disclosed and any deficiencies are pointed out, some corrective actions may be possible. Given the serious implications of the internal and external safety factors relating to nuclear reactors there is a great public interest in disclosing the safety evaluation report of the KKNP Project. Disclosure of the site evaluation and safety assessment reports will enable citizens to get a holistic understanding of the KKNP Project including environment and safety concerns.

It is not denied that the government while formulating policy decisions is guided by its wisdom and priorities for the nation. However, in a democracy, the masters of the government

are the citizens. An argument that public servants will decide policy matters by without involving the masters is specious. The government from time to time sets up various commissions, committees and panels to examine pressing issues facing the nation and provide solutions and recommendations for the same. The Government sets such panels, committees, commissions or groups and selects members whose expertise and wisdom is recognized by it. Significant amounts of public funds are deployed for this purpose in order to address the nation's concerns. It is obvious that the Government sees the need for such advice and has given some thought to its composition, so that its findings may be significant and useful. Citizens individually are the sovereigns of democracy and it is their funds which are used for constituting such commissions, committees and panels and preparation of reports. If such reports are put in public domain, citizens' views and concerns can be articulated in a scientific and reasonable manner. Otherwise, citizens would believe that the Government's decisions are arbitrary or corrupt. Such a trust deficit would never be in the interest of the Nation.

The RTI Act recognises the above mandate and in Section 4 contains a statutory direction to all public authorities "to provide as much information suo moto to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information". More specifically, Section 4(1)(c) of the RTI Act mandates that all public authorities shall- "publish all relevant facts while formulating important policies or announcing the decisions which affect public". It follows from the above that citizens have a right to know about the Safety Analysis Report and the Site Evaluation Study Report report, which has been prepared with public money.

The PIO has not justified the denial of the information in terms of Section 8 (1) (a) as required by Section 19 (5) of the Act. He did not give any reasoning to the appellant

initially, nor did he provide any cogent explanation during the hearing to the Commission. Section 8(2) of the RTI Act states, “Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests”. The Commission is of the view that the denial of Section 8 (1) (a) of the RTI Act has not been established, and there is certainly a larger public interest in the disclosure of these reports. Section 8 (1) (d) may be attracted if the said reports have details of designs of the plant which are specially provided by the suppliers. In that event the PIO can severe such design details which have been provided by the supplier as per the provisions of Section 10 of the Act.

The appellant has mentioned that in USA, UK and Canada, safety evaluation reports are uploaded on the government websites for citizens to access. Where world wide, site evaluation and safety analysis reports of nuclear power plants and installations are being put in public domain to elicit public views, India can have no reason to treat its Citizens differently. International best practices have been geared towards disclosure of information that has a bearing on public safety, health and the environment, and India must strive to follow the same.

Citizens individually are the sovereigns of democracy and it is their funds which are used for constituting agencies which are responsible for site evaluation and safety assessment of a nuclear plant. Therefore it is imperative for citizens to know about the reports so prepared. Moreover, such reports are instrumental in influencing policy decisions as they have a tremendous impact on public health, safety and environment. Therefore, it is only reasonable that citizens express their views on it. Even if the Government decides not to accept the findings, their significance as an important input for policy

making and taking decisions cannot be disregarded arbitrarily. If such reports are put in public domain, citizens' views and concerns can be articulated in a scientific and reasonable manner. If the Government has reasons to ignore the reports, these should logically be put before people. Otherwise, citizens would believe that the Government's decisions are arbitrary or corrupt. Such a trust deficit would never be in the interest of the Nation.

The disclosure of the Reports would provide a comprehensive perspective to the citizens about holistic understanding of the KKNP Project including environment, health and safety concerns. It would enable citizens to voice their opinions with the information made available in the said report. Such opinions will be based on the credible information provided by an agency appointed by the government. This would facilitate an informed discussion between citizens based on a report prepared with their/public money. The Respondent-public authority's unwillingness to be transparent is likely to give citizens an impression that most decisions are taken in furtherance of corruption resulting in a serious trust deficit. This hampers the health of our democracy and the correct method to alter this perception is to become transparent. Such a move would only bring greater trust in the government and its functionaries, and hurt only the corrupt. It follows that the Safety Analysis Report and Site Evaluation Report of KKNP Plant I & II must be displayed suo moto as per the mandate of Section 4 (1) (c) of the RTI Act.

The preceding arguments lead to the conclusion that all Safety Analysis Reports and Site Evaluation Reports and Environmental Impact Assessment reports prepared by the Department before setting up Nuclear Plants must be displayed suo moto as per the mandate of Section 4 (1) (c) & (d) read with 4(2). If parts of such report are exempt as per the RTI Act, this should be stated and the exempt parts could be severed, after providing the reasons for such severance. Such a practice

would be in accordance with the provisions of Section 4 of the RTI Act and would result in greater trust in the Government and its actions. The Appeal is allowed.

The PIO is directed to provide an attested photocopy of the Safety Analysis Report and Site Evaluation Report after severing any proprietary details of designs provided by the suppliers to the appellant before 25 May, 2012.

Further, the PIO will also ensure that the complete Safety Analysis Report and Site Evaluation Report and the Environmental Impact report are placed on website before 30 May, 2012.

The Commission directs that the Nuclear Power Corporation Of India shall publish all Safety Analysis Reports and Site Evaluation Reports and Environmental Impact Assessment reports prepared by the Department before setting up Nuclear Plants within 30 days of receiving them, unless it feels that any part of such report is exempt under the provisions of Section 8(1) or 9 of the RTI Act. If it concludes that any part is exempt, the reasons for claiming exemptions should be recorded and the report displayed on the website within 45 days of receipt, after severing the parts claimed to be exempt. There should be a declaration on the website about the parts that have been severed, and the reasons for claiming exemptions as per the provisions of the RTI Act. This direction is being given by the Commission under Section 19(1)(b)(iii) of the Act to the Managing Director of Nuclear Power Corporation of India Limited.

This decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi Information Commissioner 30 April 2012 (In any correspondence on this decision, mention the complete decision number.)(SS)

□ □ □

12. **Draft of Appeal if Information is denied claiming exemption based on saying that the matter is subjudice as per Section 8(1)(b)**

For Section 8(1)(b) :If Information is denied claiming exemption based on Section 8(1)(b) saying that the matter is subjudice.

Grounds for appeal: This claim for exemption is completely wrong, since the law exempts “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 law does not say that information on subjudice matters is exempt. The exemption specifically requires that there should be an express order saying that certain information must not be disclosed. In the absence of such a specific order from a court or tribunal, the information cannot be denied and must be provided. If there was any specific order against disclosure of this information it should have been cited and quoted.

The denial of information is not in consonance with the law and hence is an error.

1. I would like to attend the hearing OR
2. I would like to attend the hearing by video conferencing OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.

Relief Sought: Please direct the PIO to send the information within 7 days, as the denial is not as per law. Direct him to send the information free of charge as per Section 7(6) since the information has not been provided within the mandated

period of 30 days.

If however you disagree with my contentions please mention in your order the point wise reasons

Attached CIC order nos. 15434, 16167, 18316, 18674. The first two have been upheld by the Supreme Court

□ □ □

13. **Draft of Appeal if the information is refused stating an exemption under Section 8(1)(c)**

Grounds for appeal:

Section 8 (1)(c) exempts only such “information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature”;

This will primarily apply where there is a legal stipulation to present some information like a report to Parliament or the Legislature. This provision will also apply when a specific order has been given by the Legislature to avoid disclosing some information in public domain or to prohibit some proceedings of the Parliament or Legislature from being made public.

The PIO must explain how the privilege would be breached. If it is a commission of enquiry report which has to be placed on the floor of parliament or State legislature within six months according to the Commission of Enquiry Act, I would bring to your attention, that as per Section 3(4) of the Commissions of enquiry Act the report has to be tabled in the legislature within six months. If the period of six months has elapsed the privilege has already been breached and this exemption cannot be claimed.

In other matters the PIO must show how the privilege would be breached and show evidence to support his claim. Otherwise, the claim for exemption cannot apply.

The denial of information is not in consonance with the law and hence is an error.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days. If, however you disagree with my contentions please mention in your order the point wise reasons for not accepting my arguments.

I am attaching order no. 12498 of CIC on this subject. As below:

CIC Order on the subject Decision No. CIC/SM/A/2011/000375/SG/12498 enclosed

□ □ □

Annexure 13.1

Smt. Anita Chhabra vs Parliment Of India on 24 May, 2011

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SM/A/2011/000375/SG/12498

Appeal No. CIC/SM/A/2011/000375/SG

Relevant facts emerging from the Appeal:

Appellant : Mrs. Anita Chhabra

W/o Shri Rakesh Kumar Chhabra,

House no. 19, Type-3, Sector-1,

Sadik Nagar, New Delhi

Respondent : Mr. Deepak Goyal

Joint Secretary & FAA

Parliament of India

Rajya Sabha Secretariat,

Parliament House/Annexe,

New Delhi

RTI application filed on : 13/05/2010

PIO replied on : 07/06/2010

First Appeal filed on : 23/06/2010

First Appellate Authority order of : ————-

Second Appeal received on : 09/02/2011

Information Sought:

1. Provide copies of question and answers by the Member of Parliament and this Ministry against

Central Information Commission since December 2009 asked as Short Notice Questions and Half- an-hour Discussion for Parliament questioners. How many questions were disallowed or answerless or lapsed. How many were admitted.

2. If above queries are not allowed to be disclosed under the Rajya Sabha working procedures, provide copies of such orders by which it is exempt from disclosure.
3. Provide all communication letters by which information on my two letters 06.03.2010 and 29.04.2010 was not allowed to be disclosed. Provide copies of notings/internal correspondences/orders by which it was considered not to disclose the information.

Reply of the Public Information Officer (PIO):

Information with respect to questions are available on the website www.rajyasabha.nic.in. As far as copies of permissions/ orders etc are concerned the PIO had stated that these are exempt under Section 8(1)(c) of the RTI Act.

Grounds for the First Appeal:

The PIO has not provided complete information. Moreover the information was denied using Section 8(1)(c) of the RTI Act.

Order of the First Appellate Authority (FAA):

Not mentioned.

Ground of the Second Appeal:

The PIO has not provided the complete information. Moreover the PIO has wrongly applied Section 8(1)(c) of the RTI Act unnecessarily

Relevant Facts

emerging during Hearing:

Following were present:

Appellant: Mrs. Anita Chhabra Respondent: Mr. Deepak Goyal, Joint Secretary & FAA;

The appellant has sought information about questions asked by MPs in the Rajya Sabha. The appellant has also sought copies and note sheets of questions which were not placed in the house. The PIO has denied this information claiming exemption under Section 8(1)(c) of the RTI Act. The PIO has represented that the Rajya Sabha Secretariat examines the questions under the Rules of Procedures and Conduct of Business in the Council of States". The PIO contends that this is done on behalf of Hon'ble Chairman of the Rajya Sabha. Hence he states that, "when the secretariat is doing this work it is on behalf of Chairman of the Rajya Sabha. Further, decisions on such like notices received from the member of Rajya Sabha are taken in terms of Rajya Sabha Rules of Procedure and in this process the Secretariat is exercising the powers and functions of Hon'ble Chairman Rajya Sabha. The decisions arrived at in terms of the said rules are privileged and protected from disclosure into the public domain. The control on the business of the house falls with the jurisdiction of the house itself and this is the Parliament Privilege. This being so, it is not felt appropriate to divulge the decision taking process in relation to the business of the house."

The contention of the PIO is that since the Secretariat has been delegated certain work the protection of the Parliament Privilege is extended to the secretariat. This is an interesting proposition but if this is to be accepted, various protection given to certain bodies would be extended far beyond its intended purpose. The Commission at this stage cannot but remember what Justice Mathew stated in his judgment in 1975 in Raj Narain Vs State of U.P. "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 pubic. 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."

Whether the denial of information to the citizen being is done validly, is the question which the Commission has to consider. When any institution or person denies a citizen's fundamental right great care needs to be taken. However, the majesty and privilege of the Parliament also have to be respected with equal care for democracy to function properly. This Commission realizes that there is no exact codification of Parliamentary Privilege. In view of this the Commission requests the Chairman of the Rajya Sabha to consider whether giving this information would be a breach of privilege of the Parliament. If the Hon'ble Chairman comes to the conclusion that giving this information will not be a breach of privilege of Parliament the PIO is directed to provide the information. If the Chairman comes to the conclusion that providing this information would be a breach of privilege of Parliament the Appellant would be informed accordingly by the PIO.

The Appellant is alleging that there is a conflict of interest which is resulting in his not getting proper decision from the PIO, FAA and the Commission. The Commission is not able to see any merit in the appellant's allegation.

Decision:

The Appeal is allowed.

The PIO is directed to send this request with a copy of this order to the Hon’ble Chairman of Rajya Sabha and provide the information to the Appellant within 30 days of the decision given by the Chairman.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi Information Commissioner 24 May 2011 (In any correspondence on this decision, mention the complete decision number.)

□ □ □

14. **Draft of Appeal if information is denied claiming exemption under Section 8(1)(d)**

Grounds for appeal:

Section 8(1)(d) of the RTI Act categorically exempts only such “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;”

To qualify for this exemption, it must be established that it is ‘commercial confidence, trade secret or intellectual property’. It must also be shown that the disclosure would ‘harm the competitive position of a third party’. This would mean if particular information were given which can be identified as a trade secret or commercial confidence and its disclosure would harm its competitive position, then such information could be denied to the applicant.

It is impossible to imagine how anyone's competitive interest would be harmed by the disclosure of the information sought by me. Assuming without admitting that it may cause such harm, the onus lies upon the PIO to prove as to how the information qualifies this test of damage to the competitive interest of the third party likely to be caused by disclosure. To apply this exemption, it is necessary to show that the information is of a nature of commercial confidence AND disclosure would harm the competitive interest of a third party.

In no way would anyone's competitive interest be hurt. The PIO must identify whose competitive interest would be hurt and how it could be hurt.

The denial of information is not in consonance with the law and hence is an error.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons as per the law.

CIC Order on the subject Decision No. CIC /WB/A/2007/00830/SG/

1286 and Decision No. CIC/SG/A/2009/002516/6514 and Decision No. CIC/SG/A/2010/003582/11424 enclosed

□ □ □

Annexure 14.2

CENTRAL INFORMATION COMMISSION

Room No. 415, 4th Floor, Block IV,

Old JNU Campus, New Delhi – 110 066.

Tel.: + 91 11 26161796

Decision No. CIC /WB/A/2007/00830/SG/ 1286

Appeal No. CIC/WB/A/2007/00830

Relevant Facts emerging from the Appeal

Appellant
: Gita Dewan Verma

1356 D-I, Vasant Kunj,

New Delhi-110070

Respondent :
Additional Secretary (UD)

Govt. of NCT Delhi

10th Level, Delhi Sachivalaya,

I.P.Estate, New Delhi-110002

RTI filed on
: 23/04/2007

PIO replied
: 03/05/2007

First appeal filed on : 04/06/2007

First Appellate Authority order : 16/07/2007

Second Appeal filed on : 25/07/2007

Detail of information required:

Detail of information required	**The PIO replied**	**The First Appellate Authority replied**
1. Copy on CD of Delhi Govt's CDP, along with authentication letter and authorization for private publication.	The CDP is also available on the website of this Department; hence, it is not advisable for private publication. The copy of CDP may be obtained after depositing the prescribed fee.	"After going through the records of the case and appeal of the appellant, I am of the opinion that nothing more could have been provided to the appellant than what has already been informed to appellant vide latte dated22/06/2007 In view of the above, Appeal stands disposed off.

2. For each of the 102 individuals name in “List of Individuals invited for CDP workshop” at Annexure – 15.3 of the CDP, information related to decision to invite (including decision to prefer over others similarly qualified/ experienced / situated).	Is regarding inviting individuals for consultation workshop was organized by M/s IL&FS Ecosmart Limited as a part of the preparation of CDP. The firm was free to select the individuals for the workshop. It may be one of the reasons for not inviting you that the firm was unknown about you.	
3. For each of those besides IL&FS who responded to CDP tender dt. 23/02/06 information relating to decision to involve / not involve in the consultation process described in Chapter 15 of CDP. (I specifically request full information relating to decision not to invite me. Text of my response to CDP tender is in Box below).	As Point 2	
4. List of all others named in the list of 102 invitees at Annexure- 15.3 besides Centre for Civil society (Whose Director is named at no. 65) who have given copies of CDP with and without publication authorizations.	As point 2&3	

5. Particulars (date, number, from, to , subject) / copies of the following: a) Letter commissioning CDP to IL&FS Ecosmart Limited. b) Letter by which IL&FS submitted final CDP to Urban Devpt. Deptt. c) Letter /OM by which Deptt submitted the CDP for State Govt. approval. d) resolution/OM by which State Govt. approved the CDP. e) Letter by which State Govt submitted the CDP to GOI	Particulars/copies of the following are enclosed herewith: a, b,c,d,e,.	
6. Particulars of official publication of CDP.	The CDP Delhi is available on the website of this Department at www.delhigovt.nic.in/dept/ud/index.asp. Hence, the applicant may be given information after depositing the fee as per rules.	

Relevant Facts emerging during Hearing:

The following were present

Appellant: Gita Dewan Verma

Respondent: Mr.Hansraj representing PIO Mr. S.K. Saxena and Mr. Manoj Kumar

The first hearing was held on 5th November, 2008, when considering the points raised by the appellant it was decided to adjourned the hearing to 14th November, 2008 at 2.00PM.

On 14th November, 2008 the following persons were present:

Appellant: Gita Dewan Verma

Respondent: Mr.Hansraj representing PIO Mr. S.K. Saxena and Mr. Manoj Kumar

The key issues identified in the appellant's second appeal on page 3 are as follows:

Does the agreement between GNCTD and CDP Consultant come under S.8(1)(d) or could it have been given with the Work Order (based on / in continuation of the Agreement) for complete reply to my request no. 5a ('Letter commissioning CDP to IL&FS Ecosmart Ltd.") ?

= The Commission asked the respondent to justify our Section 8(1)(d) would apply to the agreement between GNCTD & CDP Consultants. The respondent stated that agreements are matters where commercial information of the Consultant is shared. The Commission asked the respondent to give a note giving its arguments in support of using this exemption. The Commission did not see this exemption as very obvious as made out by the respondent. Besides the respondent has not given any reasoning as to how Section 8(1)(d) applies in this case.

Do CDP Consultant submissions for various stages of payment come under S.8(1)(d) or could copies/particulars have been given in reply to my request no.5b ('Letter by which IL&FS submitted final CDP') ?

= The appellant seeks to know if there were covering letters attached to various submissions. The Commission is asked the PIO to supply the covering letters accompanied with any of the submissions. In case there are no covering letters with some of the submissions this will be stated categorically.

Does information about ‘State Level Steering Committee’ and its procedures (whereby notice for its meeting is channel of submission and its ‘endorsement’ in unconfirmed minutes is approval) come under S.4(1)(b) and should it have been given for complete reply to my request nos.5c, d&e (records of submission and approval of CDP)

= The PIO has been asked to give the information to the appellant whether there is any written procedure for the State Level Steering Committee. If there is no such procedure the PIO will state this clearly.

Was GNCTD obliged to obtain under S.2(f) and supply on my requests nos.2 & 3 information “for each of” who were consulted or submitted EOI/myself rather than general remarks about all, as given.?

= The PIO has been asked to send the letter to IL&FS asking if there was any written down criteria by which participants were selected or rejected for the work shop and provide the answer to the appellant.

Is supply of CDP on CD “subject to condition” of no publication (to me) same “without publication authorization” (to Centre for Civil Society, on website of which CDP is published and which has also distributed further copies on CD) and, if CDP copyright “is with the Government”, ought copy on CD to have been refused (to all) under Section 8(1)(d)?

= The appellant’s query insisting that the PIO must give a reply authorising her to publish the CD given to her can not be considered as a request for information as defined under the Act. The appellant is actually seeking a decision from the PIO and the way she has worded it can not be construed as seeking information under the Act.

The PIO has been asked to send the answers to a,b,c& d to the appellant with a copy marked to the Commission by 30th November, 2008. The appellant may send the rejoinder to the

Commission and to the Respondent by 10th December, 2008. After this matter will be decided finally by the Commission.

Notice of this be given free of cost to the parties.

Decision on 27 January 2009:

As directed by the Commission in its interim order of 14 November 2008, the respondent had given written submissions on all the four points. The appellant has also given her rejoinder.

The appellant has been given the information on point b), c) and d) as per her rejoinder.

On point a) the respondent claimed exemption under section 8 (1) (d) on the following grounds. Section 8 (1) (d) of the Act states:

" 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;"
In its written submission dated 28/11/2008, the respondent has reiterated its stand and stated that
"In terms of section 8 (1) (d), of the RTI Act, 2005, there is no obligation to give any citizen an information, the disclosure of which could harm the competitive position competitor. The IL & FS Ecosmart Limited for preparation of plan providing for a perspective and reason for the development of the city of Delhi under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM), sponsored by the Gov. of India, a copy of which has been asked for by the appellant, is one of he ten firms of the consultant empanelled by the Ministry Of Urban Developments, Gov. of India, which has applied for the job and was invited to make the presentation. The terms and conditions of the said agreement were settled after negotiations. These terms and condition were much more

favourable to the Government as compared to those as offered by the other consultancy firm. If such terms are made public, the firm may be put at disadvantage in negotiating the terms in the matter of any other similar job for which it may be competitor in future. It is with this aspect in view that the copy of the agreement was denied to the appellant. The IL & FS Ecosmart Limited was bound of confidentiality that it shall not at anytime, without the consent of the government, disclose or divulge or make public any information regarding the city development plans prepared by it as one of the terms of the reference. Therefore, as a gesture of reciprocity, the Urban Developments department also considered itself morally bound not to divulge any information on the agreement, which may harm the interest of the consultancy firm.

However the Commission is of the view that the stand taken by the respondent is not tenable in law.

The PIOs contention that 'If such terms are made public, the firm may be put at disadvantage in negotiating the terms in the matter of any other similar job for which it may be competitor in future.' is not supported by any reasoning. If the terms are not in the interests of the Public good, this argument could well be used to hide corrupt dealings and agreements which are against Public interest. Even if we take the argument that some very favourable terms have been obtained by the Public authority, there certainly is a larger Public interest in disclosing these, so that the Public authority could get such favourable terms from others as well. The objective of the RTI act is to promote transparency and accountability and contain corruption. The objectives of the Act would be defeated if Public authorities claim exemption based on a claim that 'terms and condition were much more favourable to the Government', and therefore these must be kept away from the Public. Infact Public feels that quite often the contrary is the case. Citizens own the Government and all information belongs to them. The claim of 'commercial

confidence’ in denying access to agreements between private parties and the masters of the Public authorities,- Citizens, – runs counter to the principles of the Right to Information.

The second reason for not disclosing the information given by the PIO is that since IL & FS Ecosmart Limited was bound of confidentiality not to disclose the city development plans prepared by it, the Urban development department also felt obliged to reciprocate, has not been justified by any law. The Public authority cannot read exemptions into the RTI act which do not exist.

Under the Constitution of India which is the paramount law of the land it is the people of India who are supreme and the Government is nothing more than a legal agent of the people who have given to themselves the Constitution and the methodology of governance prescribed therein. Any agreement entered into by the Government is an agreement deemed to have been entered into on behalf of the and in the interest of “We the people” hence if any citizen wants to know the contents of such an agreement he is in the position of a principal asking his agent to disclose to him the terms of the agreement entered into by the agent on behalf of the principal. No agent can refuse to disclose any such information to his principal. Hence it is inconceivable that the Government should deny a citizens request for disclosure of an agreement entered into by the Government. Such a denial goes against the established constitutional principles apart from being untenable under the provisions of the Right to Information Act, 2005.

Any so called imaginary moral or reciprocal obligation cannot be permitted to subvert a solemn constitutional and legal obligation.

The appeal is allowed.

The Commission directs the PIO to supply the copy of “the agreement between GNCTD and CDP Consultant” to the appellant

before 15 February 2009.

Notice of this be given free of cost to the parties.

Shailesh Gandhi

Information Commissioner

27 January 2009

□ □ □

Annexure 13.3

Mr. Mukesh Kumar vs NDMC, GNCT of Delhi on 21 January, 2010

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2009/002516/6514

Appeal No. CIC/SG/A/2009/002516

Relevant Facts emerging from the Appeal:

Appellant : Mr. Mukesh Kumar

BC-141/A (East), Shalimar Bagh,

Delhi – 110088

Respondent : Mr. A.K.Joshi

Public Information Officer & SE(E)

NDMC, GNCT of Delhi

Electricity Department,

Palika Kendra, New Delhi

RTI application filed on
: 25/04/2009

PIO replied
: 20/05/2009

First appeal filed on : 23/06/2009

First Appellate Authority order : Not mentioned

Second Appeal received on : 05/10/2009

Date of Notice of Hearing : 15/10/2009

Hearing Held on : 23/11/2009

The Appellant had sought information regarding work of construction of NDCC Phase-II, Jai Singh Road, New Delhi.

Sl.	Information Sought	PIO's Reply

1.	Copies of all the documents given by M/s. Décor India Pvt. Ltd., C-197, Defence Colonly, New Delhi – 110024 for pre-qualification of the Sub-contractor for the Sound Reinforcement and Stage Lighting Systems.	M/s. Décor India Pvt. Ltd. has represented not to pass any of its document/correspondence and the department has considered this request.
2.	Copies of all the correspondence made between NDMC & M/s. Décor India Pvt. Ltd., C-197, Defence Colonly, New Delhi – 110024 with regard to pre-qualification of the Sub-contractor for the Sound Reinforcement and Stage Lighting Systems.	You are requested to deposit Rs.14/- (7 nos. Page @ 1/- each) in the NDMC treasury so that copy of the correspondence may be given.
3.	Copies of all the correspondence made between NDMC & M/s. Raja Aederi Consultants Pvt. Ltd., 2nd Floor, Hotel Meridien Commercial Complex, Windsor Place, Janpath, New Delhi with regard to pre-qualification of the Sub-contractor for the Sound Reinforcement and Stage Lighting Systems.	

First Appeal:

Complete Information not provided by the PIO.

Order of the FAA:

Not mentioned

Ground of the Second Appeal:

Complete Information not provided by the PIO.

Relevant Facts emerging during Hearing on 23 November 2009:

"The following were present:

Appellant : Mr. Haresh on behalf of Mr. Mukesh Kumar;

Respondent : Mr. N.S.Sagar, Public Information Officer & SE(E);

The PIO has stated that the appellant has asked at qeuery-1 communication from M/s Décor India which were not given during the tendering process and the third party has sought exemption from disclosure under Section 8(1)(d) of the RTI Act. The Commission will have to given M/s Décor India and opportunity of being heard in this matter to determine whether their commercial interests are likely to be affected."

The matter is adjourned to 22 December 2009:

The third party M/s Décor India Pvt. Ltd. are also given an opportunity to present their case showing how there commercial interests are likely to be affected in a way that there completive position would be harmed. NDMC is directed to serve notice of this to a third party M/s Décor India Pvt. Ltd.

Relevant Facts emerging during Hearing on 22 December 2009:

The following were present:

Appellant : Mr. Haresh on behalf of Mr. Mukesh Kumar;

Respondent : Mr. A.K.Joshi, Public Information Officer & Superintendent Engineer(Electrical);

Third Party: Mr. Anil Dhingra, Managing Director, DÉCOR India Private Ltd.;

The third party Mr. Anil Dhingra is claiming that the information sought by the Appellant should not be given since it is exempt under Section 8(1)(d). He has given written submissions and claims that the documents and annexure focus on his company's working methodology, strategy, support systems, partners, vendors, special arrangement, flow charts, formulas, drawings etc. and that revealing these would affect his competitiveness. The Commission asked Mr. Dhingra if he had brought the papers so that the Commission could evaluate his claim. He says he has not brought the papers.

The Commission directs the PIO to submit a copy of the documents submitted by DÉCOR India Pvt. Ltd. for the pre-qualification of sub-contractors to the Commission before 30 December 2009. The Commission will then take a decision as to whether all or part of the documents should be exempt and fall in the category claimed by the third party.

The appellant claims that the documents he is seeking are meant to be a part of the tender documents and these are shown to all the tenderers. The PIO claims that these documents are obtained after awarding the tender and cannot be considered to be a part of the tender documents.

The third party and the Appellant may also made written submission before 30 December 2009 if they wish.

The decision was reserved to get the documents from the PIO.

Decision on 21 January 2010:

The PIO Mr. A. K. Joshi has sent the copies of the documents furnished by Ms. Décor India Pvt. Ltd. for the subcontractor for Sound reinforcement and Stage lighting systems. These consist of a covering note by Décor listing the documents relating to its subcontractor Ms. Esco Audio Visual Pvt. Ltd.. The total number of pages is 53 and consists of the following:

1- "Purchase order Copy from M/s SATYAM for USD 12,

66, 253.00 (Rs.63 lacs approx).

2- Completion Certificate from M/s SATYAM alongwith A-1- Certificate of Practical Completion, A-2-Certificate of Final Completion, A-3- Certificate of Training Completion, A-4- Certificate of Handover of Built Drawings and Operations and Maintenance Manuals, A-5- Certificate of Handover of Remote Controls spare parts and other loose items.

3- Company profile of M/s ESCO including details of technical manpower, experience and relationship with major manufactures of relevant equipment (20 pages). Includes testimonials from TATAS (TCS) fro Rs.482 lacs and ISRO Rs.180 lacs)

4- Clarification regarding ESCO Singapore and ESCOS India: (Clarification letters dated 6th and 15th April attached.)

A large portion of M/s ESCO customers are from the I.T., ITES and Hospitality Industry who enjoy exemption from Custom Duty by virtue of their being deemed exporter i.e. having RTPI/EPCG benefits. As such, ESCO's Singapore subsidiary ships the equipment directly to the customer so that they can get benefit of duty exemption and the installation, integration commissioning and testing maintenance is done by ESCO India which as overall responsible and liability. Certificate to this effect is attached herewith. Mr. Sunil Mehan (Who made the presentation to NDMC on 08.04.2009) is common director in ESCO India as well as ESCO Singapore.

5- Balance Sheet of ESCO."

Section 8(1)(d) which has been cited to claim exemption for disclosure of information exempts, "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;".

Commercial confidence or trade secretes would cover information which is generally not made public and would reveal certain details of a Company which give it the competitive advantage. It is therefore necessary that when Section 8(1)(d) exemption is claimed the information must be of a nature which is generally not likely to be revealed publicly and not generally known to the public. It is also necessary that the competitive edge of a Company can be related to the information being protected. The claim made by Mr. Anil Dhingra of DÉCOR at the time of hearing was that the information for which he was claiming exemption related to, "company's working methodology, strategy, support systems, partners, vendors, special arrangement, flow charts, formulas, drawings etc." None of the information in the list made above appears to be of the nature that was claimed during the hearing.

Sl. No.-1 which is purchase order of M/s SATYAM is an order of 2007 and does not give details of any pricing or any commercially sensitive information.

Sl. No.-2 is only the list of completion certificates.

Sl. Nos. 3 & 4 give information of a nature that is likely to be available in the brochures and websites of a number of companies.

Sl.5. The Balance sheet of ESCO would be available to anyone through the Registrar of Companies since it is a private limited company.

Hence the claim for exemption under Section 8(1)(d) has not been substantiated and cannot apply to the documents supplied in the pre-qualification. The Commission rules that the pre-qualification documents submitted by M/s DÉCOR India Pvt. Ltd. are not covered by Section 8(1)(d) of the RTI Act.

The Appeal is allowed.

The PIO is directed to provide this information to the Appellant before 10 February 2010.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

□ □ □

Annexure 13.4

Mr.Mukesh Bhardwaj vs Directorate Of Education, Gnct, … on 11 March, 2011

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2010/003582/11424

Appeal No. CIC/SG/A/2010/003582

Relevant Facts emerging from the Appeal:

Appellant : Mr. Mukesh Bhardwaj

Satguru6666, RZ-C-52, Gopal Nagar,

Behind Railmaster Factory,

Dhasa Road, Najafgarh

Delhi – 110043.

Respondent 1. :
Mr. Anjum Masood

Public Information Officer HQ & ADE

Directorate of Education,

Government of N.C.T. of Delhi

RTI Cell, Room No. 220, Old Secretariat,

New Delhi-110054

2. **:** Nitya Nand

Deemed PIO & ADE(CEP),

Directorate of Education,

Government of N.C.T. of Delhi

Old Patrachar Building: Lucknow Road,

Timarpur, New Delhi-110054.

Third Party **:**
Mr. Subhendu Kar,

APTECH Ltd., A-37,

Second Floor, Sector-4,

Noida.

RTI application filed on :
15/04/2010

PIO replied
: 15/04/2010

First appeal filed on : 25/08/2010

First Appellate Authority order : 27/11/2010

Second Appeal received on : 15/12/2010

Information Sought:

It has been intimated to the Chief Secretary, Delhi Secretariat by the implementing agency that out of 428 labs are functional and balance would become operational soon but it has been informed by the same implementing agency that 69 computer laboratories were operational.

Information required

- Copy of the clarification submitted by the implementing agency to the Directorate of Education letter F-DE-45/17/2004/7402-04 dated 2-11-2004.
- Date on which the clarification was made.
- Details of the action taken against misrepresentation of implanting agency in letter F-DE-45/17/2004/7402-04 dated 2-11-2004.
- Details of the penalty imposed on the agency or implementing agency was not favoured by the Directorate of Education.
- Details of the amount of penalty imposed on point 4

If no penalty was put then

B.1- copy of the clarification submitted by the implementing agency on letter F DE 45/17/2004/6884-86 dated 1-11-2004.

B.2- date of the clarification submitted.

B.3- actions taken on letter F DE 45/17/2004/6884-86 dated 1-11-2004.

C.1-copy of the reply sent by the implementing agency to Directorate of Education letter no DE45(652)/VE/CEP/2002-03/Pt.File 5921dated 14-10-2004.

C.2-Details of the penalty imposed on the agency or implementing agency was not favored by the Directorate of Education.

C.3-Details of the amount of penalty imposed on point 4.

Reply of the PIO(not enclosed)

1-5. This is 3rd party information hence NOC is required from concerned agency. It is not known whether NOC is sought by PIO

B I- It is 3rd party information and hence require NOC it is not known whether NOC is sought by PIO

B2-3.This is 3rd party information hence NOC is required from concerned agency. It is not known whether NOC is sought by PIO.

C1-4.This is 3rd party information hence NOC is required from concerned agency. It is not known whether NOC is sought by PIO

First Appeal:

Denied information by CEP Cell hence demands complete information.

Order of the FAA:

The PIO has already given the reply However PIUO/ADE (CEP)has

not obtained the information from the third party hence directed to provide the desired information to the appellant within 15 working days.

Reply of CPIO:

Enclosed the copies of letter F 45/83/CED/06/r11/851 by the CEP Cell.

Ground of the Second Appeal:

Provide information within a stipulated time period and take suo motto action against PIO for giving any false or misleading information.

Relevant Facts emerging during Hearing held on 31 January 2011:

The following were present:

Appellant: Mr. Mukesh Bhardwaj;

Respondent (1): Mr. Anjum Masood, Public Information Officer HQ & ADE, Old Secretariat, Delhi;

Respondent (2): Mr. Nitya Nand, Deemed PIO & ADE(CEP), Timar Pur, Lucknow Road, Delhi;

"The PIO has stated that the third party M/s Aptech has objected to releasing the information. The PIO should decide whether the information can be disclosed or not based on the exemptions of Section 8(1) of the RTI Act. The Commission however given an opportunity to M/s Aptech as to why the information sought by the Appellant should not be disclosed and how it is covered by the exemptions under section 8(1) of the RTI Act.

The Commission adjourns the hearing to **11 March 2011 at 10.00AM** and directs the PIO, Appellant and the Third Party to appear before the Commission on 11/03/2011 at 10.00AM to

present their views on this. The PIO will serve a notice of this hearing to the third parties. **The PIO is also directed to inform the third party/parties to appear before the Commission on 11/03/2011 at 10.00AM alongwith their submissions as to why the information should not be disclosed to the Appellant Mr. Mukesh Bhardwaj."**

Relevant Facts emerging during Hearing on 11 March 2011:

The following were present:

Appellant: Mr. Mukesh Bhardwaj;

Respondent (1): Mr. S. S. Malik, Superintendent on behalf of Mr. Anjum Masood, Public Information Officer HQ & ADE (RTI Cell), Old Secretariat, Delhi;

Respondent (2): Mr. Nitya Nand, Deemed PIO & ADE(CEP), Timar Pur, Lucknow Road, Delhi;

Third Party: Mr. Subhendu Kumar Kar, APTECH Ltd., A-37, Sector Floor, Sector-4, Noida;

The Appellant has sought information about action taken by the Department for the delay in installation as per the agreed schedule. The third part Mr. Subhendu Kumar Kar states that this information is exempt under Section 8(1)(d) of the RTI Act. Section 8(1)(d) of the RTI Act exempts, "*information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;*". The Commission asked Mr. Kar to explain how the information sought by the Appellant could be termed as commercial confidence, trade secret or intellectual property. Mr. Kar claims that if this was disclosed this information could be used in other places to show that there was some delay or action taken against his company in the instant case. Whereas the Commission accepts that information about defaults

would harm the competitive position of the third party, to qualify for exemption under Section 8(1)(d) the information must meet the criteria of being of a nature which can be termed *"commercial confidence, trade secrets or intellectual property".* Details of action taken or not taken for delay in implementation of work certainly does not qualify to be in this category and hence the information sought by the Appellant is not covered under Section 8(1)(d) of the RTI Act. Since the information is not exempt from disclosure it would have to be revealed.

The third party also states that he does not see any larger public interest in the disclosure of this information. As per the RTI Act there is no need to justify any purpose for disclosure of any information. However, the law has provided that if the information sought is exempt under Section 8(1) it could still be provided if a larger public interest could be established. However, when no exemption is applicable there is no question of establishing any larger public interest or asking an appellant the purpose for seeking the information.

Decision:

The Appeal is allowed.

The PIO is directed to provide the complete information to the Appellant before 30 March 2011.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

11 March 2011

(In any correspondence on this decision, mention the complete decision number.)(GJ)

21 January 2010

□ □ □

15. **Draft of Appeal if Information has been denied stating that it is held in a fiduciary relationship and exempt under Section 8 (1)(e)**

Grounds for appeal:

Section 8(1)(e) of the RTI Act exempts from disclosure "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;". The traditional definition of a fiduciary is a person who occupies a position of trust in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g., doctor, lawyer, financial analyst, or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice. When a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor he is free to chose the fiduciary. An

equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. For example, information of a customer's accounts held be a public sector bank or Insurance Company is held in a fiduciary relationship. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

This has been clearly stated in many CIC orders all of which have been upheld by the Supreme Court in RBI vs. Jayantilal Mistry and others. In this judgment the apex court has deprecated such claims of information held be government with the statement:

"58. In the instant case, the RBI does not place itself in a fiduciary relationship with the Financial institutions (though, in word it puts itself to be in that position) because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. In this case neither the RBI nor the Banks act in the interest of each other. By attaching an additional "fiduciary" label to the statutory duty, the Regulatory authorities have intentionally or unintentionally created an in terrorem effect.

59. RBI is a statutory body set up by the RBI Act as India's Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country's banking sector. Under Section 35A of the Banking Regulation Act, RBI has been given powers to issue any direction to the banks in public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far-reaching statutory powers.

60. RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy, and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein. "

In the Aditya Bandopadhyay vs. CBSE case the Supreme stated: "Black's Law Dictionary (7th Edition, Page 640) defines `fiduciary relationship' thus:

"A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships – such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client – require the highest duty of care. Fiduciary relationships usually arise in one of four situations:

(1) When one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first;

(2) When one person assumes control and responsibility over another;

(3) When one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or

(4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a

customer.”

The denial of information is not in consonance with the law and hence is an error.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons as per the law.

Attached CIC Decision on the subject Decision No. CIC/SG/A/2009/002100+001167/6139 and Decision No. CIC/SM/A/2011/001376/SG/15684 and Decision No. CIC/SG/A/2011/002254/15743 enclosed.

□ □ □

Annexure 15.1

Mr. Aman vs Guru Gobind Singh Indraprstha … on 30 December, 2009

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2009/002100+001167/6139

Appeal No. CIC/SG/A/2009/002100+001167

Relevant Facts emerging from the Appeal:

Appellant
: Mr. Aman

2A, DDA Flats, Pocket B,

Hari Nagar, New Delhi – 110064.

Respondent :
Mr. Pankaj Agarwal

Public Information Officer

Guru Gobind Singh Indraprstha University

Kashmere Gate, Delhi.

Third Party
: M/s G.D.Goel & Company

D-14, 2nd Floor, Marg no. 13,

Saket, New Delhi – 110017

RTI application filed on :
23/03/2009

PIO replied
: 28/04/2009; 03/08/2009

First appeal filed on :
Received by the FAA on 18/05/2009

First Appellate Authority order

: 10/07/2009

Second Appeal received on : 28/08/2009

	Information Sought:	Reply of the PIO dated 28/04/2009
1	Details of action taken on letter no. PGC/09/GGSIP/01/21968 dated 10/02/2009.	University has forwarded a letter to Legal Counsel for legal opinion in the light of the PGC's letter No.PGC/09/GGSIP/01/21968 dated 10/02/2009 (copy enclosed)
2	Relevant record of the case i.e. entire orders/comments/proceeding/application/annexure	Concerned records and proceedings may be inspected with prior appointment of PIO
3	Action taken report on recommendations of PGC which it passed against Maharaja Agrasen College, Rohini, Delhi – 110087 acting on the complaint of Mr. Aman Kumar	Legal opinion has been sought and legal counsel has been called for a meeting by Competent Authority so that matter could be placed before the Board of Affiliation
4	Details of letter dated 02/03/2009 vide letter no. IPU/JR/ARP/IC/2009/1415 issued to JR Dr. Suchitra Kumar on behalf of GGSIPU	Same as for Point 1
5	Details of legal opinion obtained from Mr. G.. D. Goel Legal Counsel	Same as for Point 3
6	Complete guideline for applying for Technical College from University	Information available on the website of the University www.ipu.ac.in
7	Complete data of students of Maharaja Agrasen College, Rohini, Delhi, admitted in the year of 2008-09 on the basis of application with GGSIPU	Information enclosed

Grounds of First Appeal:

- Copy of First Appeal not enclosed. However grounds mentioned in the FAA's order

- W.r.t Points 1 and 4- Incomplete information given
- W.r.t Point 2 -Entire file including orders/comments/proceedings/applications/annexures not shown
- W.r.t. Points 5 –Copy of legal opinion not given
- Information regarding the guidelines of affiliation of technical college from foreign university in combination to the GGSIP University in respect of MAIT and Auburn University has not been given
- Data of students of MAIT (Rohini) admitted in the year 2008-2009 in respect to the advertisement for affiliation to foreign university and GGSIP University not provided.

Order of the FAA:

Information with regard to Points 1 and 2 has been provided. Some of the queries raised in the First Appeal were not part of the original RTI Application. However, this is contested by the Applicant. Therefore, the PIO may call the Applicant and get them to reconcile on the basis of the original application and wherever the information has not been provided. Request for inspection of the relevant documents may be entertained.

Reply of the PIO:

On 24/07/2009, the Appellant undertook inspection of files after the order of the First Appellate Authority. The PIO asked the Appellant to deposit Rs.1468/- (@Rs.2/- per page for 734 pages) for the papers identified by him. The PIO further informed that the information to query no. 5 was related to third party and permission was sought from it and said that the information will be provided as per the comments of third party.

Ground of the Second Appeal:

No reply has been received.

Relevant Facts emerging during Hearing on 27 October 2009:

The following were present:

Appellant : Mr. Aman;

Respondent : Mr. Pankaj Agarwal, PIO

The information not provided by the PIO is the legal opinion obtained from the legal counsel in the matter of affiliation of MAIT in respect to Auburn University. The PIO has claimed exemption under Section 8(1)(e) claiming that the information provided by the legal counsel is available in the fiduciary relationship. The PIO was directed to give his written submissions justifying how he was claiming a fiduciary relationship in this matter. The PIO was directed to give his written submission to the Commission and the Appellant before 05 November 2009. The Appellant was asked to give a rejoinder to this to the Commission and the Respondent before 15 November 2009. Based on the submissions the Commission would take a decision on this matter.

The matter was adjourned after hearing on 27 October 2009.

The Commission received submissions dated 12/11/2009 from the Appellant and from the PIO dated 05/11/2009. The Respondent has submitted that it has to be determined whether there is any public interest in disclosing the information sought by the Appellant. Two previous decisions of the Commission have been relied upon by the Respondent in which the Commission has held that the relationship between the counsel and the client is a fiduciary relationship. Opinion provided by the University Legal Counsel is of trust and good faith. If the same is disclosed, it would amount to breach of trust or faith and may harm the interest of third party if the same has any bearing on the third party. Certain advice rendered by the legal counsel is intellectual property of the professional/legal consultant. It was felt that the legal counsel,- the third party,- must also be heard before deciding

on the matter. Hence notice was issued to the third party, M/s G.D.Goel and Company alongwith the appellant and respondent for a hearing on 30 December 2009 on 27/11/2009.

Relevant Facts emerging during Hearing on 30 December 2009:

The following were present:

Appellant : Mr. Aman;

Respondent : Mr. Pankaj Agarwal, PIO & Additional Dy. Registrar;

Third Party: Absent;

The third party has not taken the opportunity of presenting their view as to why the information should not be disclosed. The appellant and the respondent states that there arguments have already been submitted to the Commission and they have nothing to add further.

The Appellant has submitted that there is no breach of trust as the information is required from the client and not the Advocate. The client must disclose the information received as legal advice as it is public interest as the client, GGSIP University is a public body. According to the Appellant, the issue which had been referred for legal opinion was in reference of imposing penalty on MAIT on similar lines as it was imposed on JIMS (Rohini). Penalty was finally not imposed on MAIT causing financial loss to the University.

The Commission has considered the submissions made by both the parties. Section 8(1)(e) of the RTI Act provides-

8. (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

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

information;

For Section 8(1)(e) of the RTI Act to apply there must be a fiduciary relationship and holder of information must hold the information in his fiduciary capacity. The traditional definition of a fiduciary is a person who occupies a position of trust in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. financial analyst or trustee. The information must be given by the holder of information when there is a choice- as when a litigant goes to a particular lawyer, or a patient goes to particular doctor. It is also necessary that the principal character of the relationship is the trust placed by the provider of information in the person to whom the information is given. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the provider. It is also a necessary condition in such matters that the fiduciary is not free to disclose the information to anyone, and such a disclosure would be construed as breach of All relationships usually have an element of trust, but all of them cannot be classified as fiduciary.

The client lawyer relationship has always been considered a fiduciary relationship as the client reposes trust in the lawyer to act in his interest. The lawyer is expected to protect the interest of the client and not disclose any information that has come to his possession as a result of this relationship as that would constitute a breach of trust with regard to the client.

A lawyer has information/access to records and documents because the same has been made available to him by the client. The exemption under Section 8(1)(e) exempts the disclosure of

this information which is being held by the lawyer in his fiduciary capacity unless the disclosure serves a larger public interest.

In the present case, the information the Appellant is seeking a copy of the legal opinion from the GGSIP University which the University has received from its Legal Counsel. The University had to seek a legal opinion and it chose a particular Legal Counsel for this purpose thereby trusting this Counsel to act on behalf of the University and protect its interests. The response given by the Counsel was, however, not out of choice. As the opinion had been sought by the University, the opinion could only be given to the University and no other entity. Furthermore, while the University trusts the Counsel to act on its behalf, the University is not acting on behalf of or protecting the interests of the Counsel. The relationship of trust in that way is one way and it is only the lawyer who holds the information in a fiduciary capacity and not the University.

Section 8(1)(e) exemption applies to information that is held that by the information holder in his fiduciary capacity i.e. another person has chosen to trust the information holder with that information and the information holder is expected to act in the interest of the information provided. Therefore, the exemption under Section 8(1)(e) cannot apply to the information held by a client in a lawyer-client relationship or with the patient in a doctor-patient relationship.

The Commission is not ruling on the applicability of any other exemption under Section 8(1) of the Act to such information as none has been claimed. The University has stated that certain opinion provided by the lawyer is the intellectual property of the lawyer. This ground had not been relied on by the PIO in his reply to the Appellant and nor was it raised during the hearing before the Commission. Therefore, the Commission will not accept this ground at such a late stage. However, it deems it fit to rule the mere fact that a copyright exists in a

literary work does not mean that its disclosure under the RTI Act would lead to its infringement. Therefore, the Commission finds no merit in the argument raised by the PIO. Section 9 of the RTI Act provides that

> 9. 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.

Section 51 of the Copyright Act 1957 provides the scenarios in which a copyright can be considered to be infringed-

> 51. When copyright infringed. -Copyright in a work shall be deemed to be infringed-

(a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-

(i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright, or

(ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright; or

(b) when any person-

(i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire, or

(ii) distributes either for the purpose of trade or to such an

extent as to affect prejudicially the owner of the copyright, or

(iii) by way of trade exhibits in public, or

(iv) imports into India, any infringing copies of the work

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation.- For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an "infringing copy".

For a copyright to be infringed, the person holding the copyright must be affected prejudicially for there to be an infringement of the copyright. There must be a reason to believe that the reproduction of the work would be used in a manner that would harm the copyright holder. The Commission finds that in the present case, the disclosure of the legal opinion does not harm the lawyer who has given this opinion.

Decision:

The Appeal is allowed.

The information will be given to the Appellant before 15 January 2010.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

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30 December 2009

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Annexure 15.2

Shri. P P Kapoor vs Reserve Bank Of India on 15 November, 2011

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SM/A/2011/001376/SG/15684

Appeal No. CIC/SM/A/2011/001376/SG

Relevant facts emerging from the Appeal:

Appellant :
Mr. P. P. Kapoor,

81/5, Manav Vihar, Jorasi Road,

Samalkha – 132101 – 03,

District Panipat, Haryana

Respondent :
Dr. N. Krishna Mohan,

PIO & Chief General Manager,

Reserve Bank of India,

Dept. of Banking Supervision,

Central Office, Centre – I,

Cuffe Parade, Colaba, Mumbai – 400005

RTI application filed on : 16/08/2010

PIO replied on : 14/10/2010 and 22/10/2010

First Appeal filed on : 03/12/2010

First Appellate Authority order of : 24/12/2010

Second Appeal received on : 11/05/2011

Information sought:

1. Total amount of money deposited by Indian citizens in nationalized Indian banks during the periods 2006, 2007, 2008, 2009 and 2010. Provide information for each year separately;
2. (a) Information till date regarding total amount of loan taken but not repaid by industrialists from Indian nationalized banks and the total amount of interest accumulating on such unpaid loans; and

(b) Details of default in loans taken from public sector banks by industrialists. Out of above list of defaulters, top 100 defaulters, name of the businessman, address, firm name, principal amount, interest amount, date of default and date of availing loan.

(c) Steps being taken for putting information sought in query 2(a) and list of defaulters on the website of the Respondent – public authority.

Reply of Public Information Officer (PIO):

By letter dated 14/10/2010, the CPIO informed the Appellant that query 1 was transferred to DEAP, queries 2(b) and (c) were transferred to DBS and query 2(a) was transferred to DBOD/DBS.

By letter dated 22/10/2010, the CPIO denied information on query 2(b) on the basis that it was held in fiduciary capacity and was exempt from disclosure under Sections 8(1)(a) and (e) of the RTI Act.

Grounds for First Appeal:

Information provided by CPIO was incomplete.

Order of First Appellate Authority (FAA):

The FAA stated inter alia that the CPIO, DEAP had provided certain information vide letter dated 12/10/2010. The Appellant filed the First Appeal as he was dissatisfied with the information received vide letters dated 12/10/2010 and 22/10/2010.

'As regards the contention of the appellant with respect to his query at Point 2(b) (which relate to the default in loans taken by industrialists from Public sector banks and matters associated with them), I find that the CPIO, DBS has specifled that the information received from banks in this regard is held by the Reserve Bank in a fiduciary capacity and as such it cannot be disclosed in terms of clauses (a) and (e) of Section 8(1) of the Act. There can be no doubt that the information on defaulters received from banks are held by the Reserve Bank in a fiduciary capacity and are confidential in nature. Therefore, the exemption claimed under Section 8(1)(e) is, without doubt, proper in the eyes of law. Whether the exemption provided by clause (a) of Section 8(1) would be

attracted in a given case would depend upon the factual position. In this matter, since Section 8(1)(e) is clearly attracted, I do not propose to consider the other exemption which the CPIO, DBS has made use of for withholding the information.'

Grounds for Second Appeal:

Dissatisfied with order of FAA, since information not provided on Query 2 (b) and (c)

Relevant Facts emerging during Hearing held on 8 November 2011:

The following were present:

Appellant: Mr. P. P. Kapoor via video – conference from NIC Studio – Panipat (Haryana);

Respondent: Ms. Mini Kutti Krishnan, Assistant Legal Advisor on behalf of Dr. N. Krishna Mohan, PIO & Chief General Manager via video – conference from NIC Studio- Mumbai.

"The Respondent stated that the information sought by the appellant in query 2 (b) was held by RBI in fiduciary capacity on behalf of the banks. The Commission enquired whether the information is provided by banks to RBI in fulfillment of statutory requirements. The PIO admitted that the Banks were providing the information in fulfillment of statutory requirements. The Commission pointed out that information provided in fulfillment of statutory requirements, cannot be considered to be information held in a fiduciary capacity. The Respondent then submitted that information about customers is held by banks in a fiduciary capacity and hence disclosure of the same would violate the fiduciary – trust placed by borrowers of the banks."

The order was reserved at the hearing held on 8 November 2011.

Decision announced on 15 November 2011:

Based on perusal of papers and submission of parties, it appears that no information has been provided in relation to query 2(c), despite the order of the FAA. As regards query 2(b), the Respondent has contended that the information sought was exempt under Section 8(1) (a) & (e) of the RTI Act. The Commission will first consider the claim of exemption under Section 8 (1) (a) of the RTI Act made by the PIO. The PIO has claimed exemption under Section 8 (1) (a) but not explained how this would apply. The First appellate authority has not given any comment on this. No justification was offered at the time of hearing as well. Section 8 (1) (a) exempts, '*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*;'. It appears that the PIO is claiming that the economic interests of the State would be prejudicially affected. It is impossible to imagine that any of the other interests mentioned in the provision could be affected. This bench rejects the contention of the PIO that the economic interests of India would be affected by disclosing the names and details of defaulters from Public sector Banks. If it means that such borrowers would not bank with public sector banks for fear of exposure, it would infact be in the economic interest of the Nation. This Commission does not accept the claim of exemption under Section 8 (1) (a) by the PIO. It is also unlikely that the economic wellbeing of the Nation could get affected adversely by disclosing the names and details of defaulters. The Indian economy is dependent on far stronger footings.

The Commission will now examine the claim for exemption under Section 8 (1) (e) of the RTI Act.

Section 8(1)(e) of the RTI Act exempts from disclosure "*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".

This Bench, in a number of decisions, has held that the traditional definition of a fiduciary is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice – as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to a particular doctor. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

Information provided by banks to RBI is done in furtherance of statutory compliances. In fact, where RBI requires certain information to be furnished to it by banks and such banks have no choice but to furnish this information, it would appear that such requirement of RBI is directory in nature. Moreover, no specific benefit appears to be flowing to the banks from RBI on disclosure of the information sought by the Appellant. Consequently, no fiduciary relationship is created between RBI and the banks.

The Respondent has also argued that information about customers is held by banks in a fiduciary capacity and hence disclosure of the same would violate the fiduciary – trust

placed by borrowers of the banks. The Commission finds some merit in this argument. Information of customers is held by banks in a fiduciary capacity. If this information is disclosed to the RBI and subsequently furnished to the citizens under the RTI Act- it may violate the fiduciary relationship existing between the customers and the banks. Therefore, the information sought in query 2(b) is exempt from disclosure under Section 8(1)(e) of the RTI Act. However, if a customer defaults in repayment, should the information about the default also be considered as information held in a fiduciary capacity, is a moot question. The lender is likely to take all measures including filing suits to recover the money due, and these actions would mean publicly disclosing the default amounts. In such circumstances the Bank would make these details public, and not feel fettered by the fiduciary nature of the relations.

However, I am not going into delving into this trend of thought and accepting that the information about the default by a borrower may be considered to be information held by a bank in a fiduciary capacity. When the Commission comes to the conclusion that the exemptions of Section 8 (1) of the RTI Act apply, it needs to consider the provision of Section 8(2) of the RTI Act which stipulates as follows:

"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."

Section 8(2) of the RTI Act mandates that even where disclosure of information is protected by the exemptions under Section 8(1) of the RTI Act, if public interest in disclosure outweighs the harm to such protected interests, the information must be disclosed under the RTI Act. There is no requirement for the existence of any public interest to be established when seeking or giving information. However, if an

exemption applies, then it must be considered whether the public interest in disclosure outweighs the harm to the protected interests.

According to P. Ramanatha Aiyar's, The Law Lexicon (2nd edition; Reprint 2007) at page 1557, "*public interest*" '*means those interests which concern the public at large*'. Banks and financial institutions in India heavily finance various industries on a routinely basis. However, it is a fact that large sums of such amounts are sometimes not recovered. In some cases, loans availed of are not repaid despite the fact that the industrialist(s) may actually be in a financial position to pay. Where financial assistance is given to industries by banks, in the absence of financial liquidity, it would result in a blockade of large funds creating circumstances that would retard socio- economic growth of the Nation.

At this stage the Commission would like to quote Thomas J of the High Court of New Zealand 1995, '*The primary foundation for insisting upon openness in government rests upon the sovereignty of the people. Under a democracy, parliament is "supreme", in the sense that term is used in the phrase "parliamentary supremacy",* ***but the people remain sovereign****. They enjoy the ultimate power which their sovereignty confers. But the people cannot undertake the machinery of government. That task is delegated to their elected representatives …*

… the government can be perceived as the agent or fiduciary of the people, performing the task and exercising the powers of government which have been devolved to it in trust for the people.

*… the i****nformation held by government is essentially the people's information being held on their behalf*** *pursuant to this devolution of authority. … The people's sovereignty ultimately determines their right to insist upon openness in government'*

I wish government and its instrumentalities would remember that all information held by them is owned by Citizens, who are sovereign. Further, it is often seen that banks and financial institutions continue to provide loans to industrialists despite their default in repayment of an earlier loan. The Supreme Court of India in *U. P. Financial Corporation v. Gem Cap India Pvt. Ltd*. AIR 1993 SC 1435 has noted that "*Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to private account*". Such practices have led citizens to believe that defaulters can get away and play fraud on public funds. There is no doubt that information regarding top industrialists who have defaulted in repayment of loans must be brought to the citizens' knowledge; there is certainly a larger public interest that would be served on disclosure of the same. In fact, information about industrialists who are loan defaulters of the country may put pressure on such persons to pay their dues. This would have the impact of alerting Citizens about those who are defaulting in payments and could also have some impact in shaming them. RBI had by its circular DBOD No.BC/CIS/47/20.16.002/94 dated April 23, 1994 directed all banks to send a report on their defaulters, which it would share with all banks and financial institutions, with the following objectives:

- To alert banks and financial institutions (FIs) and to put them on guard against borrowers who have defaulted in their dues to lending institutions.
- To make public the names of the borrowers who have defaulted and against whom suits have been filed by banks/FIs.

Many Revenue departments publish lists of defaulters and All India Bank Employees Association has also published list of Bank defaulters. It would be relevant to rely on the observations of the Supreme Court of India in its landmark decision in *Mardia Chemicals Ltd. v. Union of India* (decided

on 08/04/2004). The Supreme Court of India was considering the validity of the SARFAESI Act and recovery of 'non- performing assets' by banks and financial institutions in India. While discussing whether a private contract between the borrower and the financing institution/ bank can be interfered with, the Court observed:

"*…it may be observed that though the transaction may have a character of a private contract yet the question of great importance behind such transactions as a whole having far reaching effect on the economy of the country cannot be ignored, purely restricting it to individual transactions more particularly when financing is through banks and financial institutions utilizing the money of the people in general namely, the depositors in the banks and public money at the disposal of the financial institutions. Therefore, wherever public interest to such a large extent is involved and it may become necessary to achieve an object which serves the public purposes, individual rights may have to give way. Public interest has always been considered to be above the private interest. Interest of an individual may, to some extent, be affected but it cannot have the potential of taking over the public interest having an impact in the socio-economic drive of the country.*" (Emphasis added)

There are times when experts make mistakes, other times when corruption influences decisions. It is dangerous to put complete faith in the judgment of a few wise people to alert everyone. Democracy requires reducing inequality of opportunity. Asymmetry of information deprives the citizens of an opportunity to take proper decisions. The Commission is aware that information on defaulters is being shared by Reserve Bank with an organisation called CIBIL. In such a situation, it is difficult to understand the reluctance to share this information with citizens using RTI. RBI's circular of 1994,- mentioned above,- infact appears to promise to share this information *suo moto* with the public.

In view of the arguments given above, the Commission is of the considered view that the details of defaulters of public sector banks should be revealed since it would be in larger public interest. Revealing these would serve the object of reining in such defaulters, warning Citizens about those who they should stay away from in terms of investments and perhaps shaming such persons/entities. This could lead to safeguarding the economic and moral interests of the Nation. The Commission is convinced that the benefits accruing to the economic and moral fibre of the Country, far outweigh any damage to the fiduciary relationship of bankers and their customers if the details of the top defaulters are disclosed.

Hence, in view of Section 8(2) of the RTI Act, the Commission rules that information on query 2(b) must be provided to the Appellant, since there is a larger public interest in disclosure.

The Commission also directs the Governor, RBI to display this information on its website, in fulfillment of its obligations under Section 4 (1) (b) (xvii) of the RTI Act. This direction is being given under the Commission's powers under Section 19 (8) (a) (iii)

The Appeal is allowed.

The PIO shall provide the complete information as per records on queries 2(b) and 2(c) to the Appellant **before 10 December 2011**.

The Commission also directs the Governor, RBI to display this information on its website, in fulfillment of its obligations under Section 4 (1) (b) (xvii) of the RTI Act. This direction is being given under the Commission's powers under Section 19 (8) (a) (iii). This should be done before 31 December, 2011 and updated each year.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

15 November 2011

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Annexure 15.3

Shri.Subhash Chandra Agrawal vs Reserve Bank Of India on 17 November, 2011

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2011/002254/15743

Appeal No. CIC/SG/A/2011/002254

Relevant facts emerging from the Appeal:

Appellant :
Mr. Subhash Chandra Agrawal,

1775 Kucha Lattushah,

Dariba, Chandni Chowk,

Delhi – 110006

Respondent :

Mr. Jaganmohan Rao,

CPIO & Chief General Manager,

Reserve Bank of India,

Department of Banking Supervision,

Central Office,

Centre 1, Cuffe Parade,

Colaba, Mumbai – 400005

RTI application filed on : 30/04/2011

PIO replied on : 08/06/2011

First Appeal filed on : 14/06/2011

First Appellate Authority order of : 29/07/2011

Second Appeal received on : 17/08/2011

The Appellant enclosed a news clipping along with his RTI application. Information was sought in relation to the news clipping and certain information was provided by the CPIO. These details are as follows:

S.No.	Information sought	Reply of Public Information Officer (PIO)

1.	Complete and detailed information including related documents / correspondence / file noting etc of RBI on imposing fines on some banks for violating rules like also referred in enclosed news clipping.	As the violations for which the banks were issued Show Cause Notices and subsequently imposed penalties and based on the findings of the Annual Financial Inspection (AFI) of the banks, and the information is received by us in a fiduciary capacity, the disclosure of such information would prejudicially affect the economic interests of the state and harm the bank's competitive position. The SCNs/findings / reports/ associated correspondences/ orders are therefore exempt from disclosure in terms of the provisions of Section 8 (1) (a), (d) and (e) of the RTI Act 2005.
2.	Complete list of banks which were issued show-cause notices before fine was imposed as also referred in enclosed news clipping mentioning also default for which show-cause notice was issued to each of such banks.	-do-
3.	List of banks out of those in query (2) above where fine was not imposed giving details like if their reply was satisfactory etc.	-do-

4.	List of banks which were ultimately found guilty and fines mentioning also amount of fine on each of the bank and criterion to decide fine on each of the bank.	The names of the 19 banks and details of penalty imposed on them are furnished in Annex 1. Regarding the criterion for deciding the fine, the penalties have been imposed on these banks for contravention of various directions and instructions – such as failure to carry out proper due diligence on user appropriateness and suitability of products, selling derivative products to users not having proper risk management policies, not verifying the underlying / adequacy of underlying and eligible limits under past performance route, issued by RBI in respect of derivative transactions.
5.	Is fine imposed / action taken on some other banks also other than as mentioned in enclosed news-clipping.	No other bank was penalized other than those mentioned in the Annex, in the context of press release No. 2010-2011/1555 of April 26, 2011.
6.	If yes, please provide details	Not Applicable, in view of the information provide in query No. 5.
7.	Any other information	The query is not specific.
8.	File nothings on movement of this RTI petition and on every aspect of this RTI Petition.	Copy of the note is enclosed.

Grounds for First Appeal:

The Appellant was not satisfied with the reply of the PIO.

Order of the First Appellate Authority (FAA):

"*The appellant has in query at point No. 1 to 3 sought details of the file notings, etc which led to the imposition of penalty on the 19 banks referred to in the news clipping as also list of banks which were not imposed fine, despite issue of show – cause notice etc.*

The CPIO has, in reply to the appellant's queries at Point No. 1 to 3, claimed exemption under the provisions of clauses (a), (d) and (e) of Section 8(1) of the Act and replied to the appellant stating that the violations for which the banks on the finding of the Annual Financial Inspection on banks and that the said information is received by the Reserve Bank in a fiduciary capacity, the disclosure of which would prejudicially affect economic interests of the State and harm the Banks competitive position. The CPIO therefore held that the SCNs / findings / reports/ associated correspondences / orders are exempt from disclosure in terms of the provisions of clauses (a), (d) and (e) of Section 8(1) of the Act. I agree with the CPIO that the said request for information of the appellant cannot be acceded to. However, I do not feel inclined to accept that CPIO is justified in claiming exemption under Section 8(1) (d) of the RTI Act. In my view, disclosure of the information sought for in query at Point No. 1 is exempt under clauses (a) and (e) of Section 8(1) of the Act. The particulars sought for in the queries at Point No. 2 and 3, relate to the banks to which Show Cause Notices were issued but no fine was imposed and the details like whether their replies were satisfactory etc. These information are available to the CPIO in fiduciary capacity and as such exempt under clause (e) of Section 8(1). I find no infirmity in the reply given by the CPIO, DBS merely because other clauses of Section 8(1) are also cited by him.

4. *There is no merit in the appeal. The appeal is dismissed. This order may be served on the appellant.*"

Ground for Second Appeal:

The Appellant is not satisfied with the PIO's reply and the order of the FAA.

Relevant Facts emerging during Hearing held on 20 October 2011:

The following were present:

Appellant: Mr. Subhash Chandra Agrawal via telephone no. 9810033711;

Respondent: Ms. Mini Kutti Krishnan, Assistant Legal Advisor on behalf of Mr. Jaganmohan Rao, CPIO & Chief General Manager via video conference from NIC Studio – Mumbai.

Various arguments were made by the Respondent claiming exemption under Sections 8(1)(a) and (e) of the RTI Act. The Respondent claimed that the inspection reports are meant to be confidential and as per the judgment of the Supreme Court of India, these are held in a fiduciary capacity by RBI. The Appellant claimed that only after RTI queries and responses from RBI was ICICI made to release Rs.200 crores which it had unfairly held. The Appellant also mentioned that the Damodaran Committee was appointed only because of RTI applications and that its report should be put up on the website of the department. The appellant's contention was that when information was disclosed in RTI, it led to benefits to general public, alongwith the transparency achieved. The Commission asked both parties to send their written submissions to the commission.

The order was reserved at the hearing held on 20/10/2011.

Decision announced on 17 November 2011:

The Commission has received written submissions from the Respondent, which have been perused by it. Based on the submissions of the parties, it appears that the Appellant is now seeking information in relation to queries 1, 2 and 3 of the RTI application. The information sought pertains to imposition of fines by RBI on certain banks for violation of rules including documents, correspondence, file notings, etc, list of banks which were issued show cause notices before imposition of fine along with the type of default, and list of those banks on which fine was ultimately not imposed along with details.

On the basis of the PIO's reply dated 08/06/2011, the FAA's order dated 29/07/2011, and the written submissions and oral arguments of the Respondent, it appears that information on queries 1, 2 and 3 has been denied on the basis of Sections 8(1)(a) and (e) of the RTI Act.

Whether information sought in queries 1, 2 and 3 is exempt from disclosure under Section 8(1)(a) of the RTI Act

The Respondent has claimed that the information sought in queries 1, 2 and 3 was exempt under Section 8(1)(a) of the RTI Act. The Respondent has submitted that the inspection carried out by RBI often brings out the weaknesses in the financial aspect, management and systems of the inspected entity. Inspection reports and related documents though containing conclusive view points are at times tentative. Therefore disclosure of such information may create misunderstanding in the minds of the public and adversely impact public confidence in banks/financial institutions. This may impact the banking sector on the whole. This could trigger a ripple effect on the deposits of not only one bank to which the information pertains but others as well due to contagion effect. This has serious implication on financial stability which rests on public confidence in banks/financial institution, besides harming their competitiveness.

The Respondent has relied on various decisions of the Supreme Court of India and High Courts in the written submissions which have time and again given due deference to the view of RBI and laid down that in matters of economic interests and issues related to financial stability, they would be guided by the view of RBI. These decisions have been perused by this Bench and are *Peerless General Finance and Investment Co. v. Reserve Bank of India* (1992) 2 SCC 343, *Joseph Kuruvilla Vellukunnel v. Reserve Bank of India* AIR 1962 SC, *B. Suryanarayana v. Kolluru Parvathi Co- op Bank Ltd*. AIR 1986 AP 244 and *Reserve Bank of India v. Palai Central Bank Ltd*. AIR 1961 Ker 268.

The Commission has perused these decisions and noted that in the said cases, the Courts have accepted RBI's guidance on matters/issues related to economic interests and financial stability of the country. It must be mentioned that these decisions were given before the advent of the RTI Act. While deciding matters, the Commission would necessarily have to consider whether there were any cogent reasons for denial of information under Sections 8 and 9 of the RTI Act. In this regard, RBI's views would be considered important since it is the apex body competent to determine matters/issues of economic interest and financial stability of the country- as held by decisions cited above. These decisions do not mention that RBI is the sole arbiter to decide what information is exempt under the RTI Act. The decision on whether the information is exempt or not has to be consciously made by the Commission.

The Respondent has also relied on the decision of a Full Bench of the Commission in *R. R. Patel v. RBI* CIC/MA/A/2006/00406 and 00150 dated 07/12/2006. In *R. R. Patel's Case*, the Full Bench was considering the specific issue of disclosure of RBI's inspection report of a cooperative bank. One of the issues before the Bench was whether the inspection report was exempt from disclosure under Section 8(1)(a) of the RTI Act.

The Full Bench relied on a decision of the Punjab & Haryana High Court in *RBI v. Central Government Industrial Tribunal* (dated 07/05/1958) which had observed that "*In an integrated economy like ours, the job of a regulating authority is quite complex and such an authority has to decide as to what would be the best course of action in the economic interest of the State. It is necessary that such an authority is allowed functional autonomy in decision making and as regards the process adopted for the purpose*". Based on the above, the Full Bench, in paragraph 16, ruled *inter alia* that "*In view of this, and in light of the earlier discussion, we have no hesitation in holding that the RBI is entitled to claim exemption from disclosure u/s 8(1)(a) of the Act if it is satisfied that the disclosure of such report would adversely affect the economic interests of the State. The RBI is an expert body appointed to oversee this matter and we may therefore rely on its assessment. The issue is decided accordingly*".

From a plain reading of the above, it appears that the Full Bench was of the view that if RBI concluded that disclosure of inspection reports would adversely affect the economic interests of the State, the said information may be denied under Section 8(1)(a) of the RTI Act. There is no observation that the Full Bench had come to this conclusion by itself. Further, the observations of the Punjab & Haryana High Court in *RBI v. Central Government Industrial Tribunal* (dated 07/05/1958) relied on by the Full Bench were made much before the advent of the RTI Act and cannot therefore, be a guide for deciding on the applicability of exemptions under the RTI Act. Furthermore, the RBI in *R. R. Patel's Case* claimed that if inspection reports of banks were to be disclosed it would affect the economic interests of the State. The Full Bench decision appears to rely on the submissions of the Deputy Governor of RBI provided vide letter dated 21/09/2006 and were as follows:

"(i) Among the various responsibilities vested with RBI as the country's Central Bank, one of the major responsibilities relate to maintenance of financial stability. While disclosure of information generally would reinforce public trust in institutions, the disclosure of certain information can

adversely affect the public interest and compromise financial sector stability.

(ii) The inspection carried out by RBI often brings out weaknesses in the financial institutions, systems and management of the inspected entities. Therefore, disclosure can erode public confidence not only in the inspected entity but in the banking sector as well. This could trigger a ripple effect on the deposits of not only one bank to which the information pertains but others as well due to contagion effect.

(iii) While the RBI had been conceding request for information on actions taken by it on complaints made by members of the public against the functioning of the banks and financial institutions and that they do not have any objection in giving information in respect of such action taken or in giving the

substantive information pertaining to such complaints provided such information is innocuous in nature and not likely to adversely impact the system.

(iv) However, disclosure of inspection reports as ordered by the Commission in their decision dated September 6, 2006 would not be in the economic interest of the country and such disclosures would have adverse impact on the financial stability.

(v) It would not be possible to apply section 10(1) of the Act in respect of the Act in respect of the inspection report as portion of such reports when read out of context result in conveying even more misleading messages."

Thus RBI argued that it did not wish to share the information sought as some of it could "*adversely affect the public interest and compromise financial sector stability*". RBI was unwilling to share information which might bring out the '*weaknesses in the financial institutions, systems and management of the inspected entities'.* It was further contended that '*disclosure can erode public confidence not only in the inspected entity but in the banking sector as well. This could trigger a ripple effect on the deposits of not only one bank to which the information pertains but others as well due to contagion effect'*. It appears that the RBI argued that citizens were not mature enough to understand the implications of weaknesses, and RBI was the best judge to decide what citizens should know. Citizens, who are considered mature enough to decide on who should govern them, who give legitimacy to the government, and framed the Constitution of India must be given selective information about weaknesses exposed in inspection, to ensure that they have faith in the banking sector. They must see the financial and banking sector only to the extent which RBI wishes.

It follows that if RBI made mistakes, or there was corruption, citizens would suffer. This appears to go against the basic tenets of democracy and transparency. Similar arguments have now been raised by the Respondent in the present matter as well. This Bench would like to remember Justice Mathew's clarion call in *State of Uttar Pradesh v. Raj Narain* (1975) 4 SCC 428 – "*In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no*

repercussion on public security".

It is also worthwhile remembering the observations of the Supreme Court of India in *S. P. Gupta v. President of India & Ors*. AIR 1982 SC 149:

"*It is axiomatic that every action of the government must be actuated by public interest but even so we find cases, though not many, where governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes governmental action is influenced by political and other motivations and pressures…*

At times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of government and the processes of government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open government with means, of information available to the public there would be greater exposure of the functioning of government and it would help to assure the people a better and more efficient administration. There can be little doubt that' exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open government is clean government and a powerful safeguard against political and administrative aberration and inefficiency…

This is the new democratic culture of an open society towards which every liberal democracy is evolving 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, disclosure of information in regard to the functioning of Government must be the rule

and secrecy an exception justified only where the strictest requirement of public interest so demands…

Even though the head of the department or even the Minister may file an affidavit claiming immunity from disclosure of certain unofficial documents in the public interest, it is well settled that the court has residual powers to nevertheless call for the documents and examine them. The court is not bound by the statement made by the minister or the head of the department in the affidavit. While the head of the department concerned was competent to make a judgment on whether the disclosure of unpublished official records would harm the nation or the public service, he/she is not competent to decide what was in the public interest as that it the job of the courts. The court retains the power to balance the injury to the State or the public service against the risk of injustice, before reaching its decision on whether to disclose the document publicly or not."

The idea that citizens are not mature enough to understand and will panic is repugnant to democracy. For over 60 years citizens have handled their democratic rights in a mature fashion, punished leaders who showed tendencies of trampling their rights, and again given them power once the leaders had learnt their lessons not to take liberties with the liberties of the sovereign citizens of India. 'We the people' gave ourselves the Constitution of India, nurtured it and will take it forward. The fundamental rights of citizens, enshrined in the Constitution of India cannot be curbed on a mere apprehension of a public authority. The Supreme Court of India has recognized that the Right to Information is part of the fundamental right of citizens under Article 19 of the Constitution of India. Any constraint on the fundamental rights of citizens has to be done with great care even by Parliament. The exemptions under Section 8 and 9 of the RTI Act are the constraints put by Parliament and adjudicating bodies have to carefully consider whether the exemptions apply

before denying any information under the RTI framework.

It is pertinent to mention that in *R. R. Patel's Case*, the Full Bench did not come to any specific conclusion that disclosure of inspection reports would prejudicially affect the economic interests of the State. Instead it left it to RBI to determine whether disclosure of the said information would attract Section 8(1)(a) of the RTI Act. This was primarily on the basis that RBI is an expert body and that any decision taken by it must necessarily be relied upon by the Commission and be the sole decisive factor. No legal reasoning whatsoever was given by the Full Bench for concluding the above. There is no evidence or indication that the Commission after taking cognizance of RBI's views had come to the same conclusion. If the position of the Full Bench is to be accepted, it would lead to a situation where RBI would have the final say in whether information should be provided to a citizen or not. Extending this logic, all public authorities could be the best judge of what information could be disclosed, since they are likely to be experts in matters connected with their working. In such an event the Commission would have no role to play. Parliament evidently expected that the Commission would independently decide whether the exemptions are applicable. It may take the view of RBI into account, but the ultimate decision on whether any exemption would apply or not must be decided by the Commission. The Full Bench did not give any independent finding that the disclosure of information would affect the economic interests of the State in its decision. This would completely negate the fundamental right to information guaranteed to the citizens under the RTI Act. In the case being considered by the Full Bench, it decided to accept the judgment of RBI. It is open to a Commission to defer to a judgment of another body, but this does not establish any principle of law, and would apply only to the specific matter.

It is apparent from the scheme of the RTI Act that the

Commission is a quasi- judicial body which is responsible for deciding appeals and complaints arising under the RTI Act. The Commission cannot abdicate its responsibilities under the RTI Act to RBI on the ground that the latter is an expert body. The Commission cannot rely solely on the decision of the public authority and must look into the merits of the case itself. It must determine, on its own, whether the denial of information by the PIO was justified as per Sections 8 and 9 of the RTI Act. Since the Full Bench has not recorded any comment which shows that it consciously agreed that Section 8 (1)(a) of the RTI Act was applicable in such matters, it does not establish any legal principle or interpretation which can be considered as a precedent or ratio. Thus the decision is applicable only to the particular matter before it, and does not become a binding precedent.

Furthermore, the Full Bench in *R. R. Patel's Case* was constituted to reconsider two decisions dated 06/09/2006 of Professor M. M. Ansari, then Information Commissioner. As described above, the issues to be reconsidered by the Full Bench included whether the claim of RBI for exemption under Section 8(1)(a) of the RTI Act in respect of inspection of reports could be held justified. The Full Bench relied on the Supreme Court's decision in *Grindlays' Bank v. Central Government Industrial Tribunal* AIR 1981 SC 606 and noted that when a review is sought due to a procedural defect, the inadvertent error committed by a tribunal must be corrected *ex debito justitiae* to prevent the abuse of its power and such power is inherent in every court or tribunal. On this basis, the Full Bench proceeded to review the decisions of Professor M. M. Ansari, then Information Commissioner.

The Supreme Court of India in *Patel Narshi Thakershi & Ors. v. Sri Pradyumansinghji* AIR 1970 SC 1273 has noted – "*It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication*". In *Kuntesh Gupta v. Mgmt. of Hindu Kanya*

Mahavidyalaya, Sitapur & Ors. AIR 1987 SC 2186, the Supreme Court observed – "*It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction*". It must be noted that a three- Judge Bench of the Supreme Court in *Kapra Mazdoor Ekta Union v. Mgmt. of M/s Birla Cotton* Appeal (Civil) No. 3475/2003 decided on 16/03/2005 held:

"*…it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases,*

therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others (supra), it was held that once it is established that the respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again."

From a combined reading of the above decisions, it is clear that a quasi – judicial authority can review a decision on merits only if it is vested with power of review by express provision or by necessary implication. The powers of the Commission are limited under the RTI Act and certainly do not confer upon it the power of review. It is clear from the Full Bench ruling in *R. R. Patel's Case* that it was reviewing the two decisions of Professor M. M. Ansari, then Information Commissioner on merits. The Full Bench certainly did not have the power to do so given the provisions of the RTI Act and the law laid down by the Supreme Court in this regard. In fact, the Supreme Court in the *Kapra Mazdoor Ekta Union Case* clearly considered and clarified the ruling in the *Grindlays' Bank Case* (relied upon by the Full Bench). It appears that the Full Bench reviewed the issues based on merits in *R. R. Patel's Case* in ignorance of the law laid down by the Supreme Court in *Kapra Mazdoor Ekta Union Case*. Therefore, for the reasons detailed above, the *R. R. Patel Case* is *per incuriam* and is consequently, not binding on this Bench.

Having laid down the above, this Bench has examined the contention of the Respondent in the present matter that the information sought in queries 1, 2 and 3 is protected under Section 8(1)(a) of the RTI Act. While this Bench has

considered RBI's judgment in the present matter, whether exemption under Section 8(1)(a) of the RTI Act will apply or not, must be decided by the Commission.

Section 8 (1) (a) exempts " *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*". It is unlikely that disclosure of information sought in queries 1, 2 and 3 would prejudicially affect the sovereignty and integrity of India, the security, strategic or scientific interests of the State, or relation with foreign State, or lead to incitement of an offence. Hence it must be examined whether the economic interests of the State are likely to be prejudicially affected by disclosure of the information. The information sought pertains to imposition of fines by RBI on certain banks for violation of rules including documents, correspondence, file notings, etc, list of banks which were issued show cause notices before imposition of fine along with the type of default, and list of those banks on which fine was ultimately not imposed along with details. This Bench is unable to understand how disclosing this information would affect the economic interests of the Indian Nation. Financial stability of a nation cannot lie solely on public confidence in banks/financial institutions, and certainly not where banks/financial institutions holding public funds are involved in irregularities. The submissions of the Respondent appear to suggest that the economic state of this Nation is extremely fragile and therefore, the information sought should not be disclosed.

I am not convinced that the disclosure of information would lead to any harm to the economic interests of India; infact it is my firm conviction that it will help to improve the fundamental strength of the economic foundations of the country and safeguard against sudden disruptions, which could

be caused if all the information was not available to public.

Section 8 (2) of the RTI Act states, "*Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests*". The RBI is a regulatory authority which is responsible for *inter alia* monitoring subordinate banks and institutions. Needless to state significant amounts of public funds are kept with such banks and institutions. Therefore, it is only logical that the public has a right to know about the functioning and working of such entities including any lapses in regulatory compliances. Merely because disclosure of such information may adversely affect public confidence in defaulting institutions, cannot be a reason for denial of information under the RTI Act. If there are certain irregularities in the working and functioning of such banks and institutions, the citizens certainly have a right to know about the same. The best check on arbitrariness, mistakes and corruption is transparency, which allows thousands of citizens to act as monitors of public interest. There must be transparency as regards such organisations so that citizens can make an informed choice about them. In view of the same, this Bench is of the considered opinion that even if the information sought was exempted under Section 8(1)(a) of the RTI Act,-as claimed by the Respondent,- Section 8(2) of the RTI Act would mandate disclosure of the information sought.

At this juncture, it is relevant to refer to the conclusion and recommendation of the Full Bench in the *R. R. Patel Case* in paragraph 21 – "*Before parting with this appeal, we would like to record our observations that in a rapidly unfolding economics scenario, there are public institutions, both in the banking and non-banking sector, whose activities have not served public interest. On the contrary, some such institutions may have attempted to defraud the public of their*

moneys kept with such institutions in trust. RBI being the Central Bank is one of the instrumentalities available to the public which as a regulator can inspect such institutions and initiate remedial measures where necessary. It is important that the general public particularly the shareholders and the depositors of such institutions are kept aware of RBI's appraisal of the functioning of such institutions and taken into confidence about the remedial actions initiated in specific cases. This will serve the public interest. The RBI would therefore be well advised to be proactive in disclosing information to the public in general and the information seekers under the Right to Information Act, in particular. The provisions of Section 10(1) of the RTI Act can therefore be judiciously used when necessary to adhere to this objective".

From a plain reading of the above, it follows that the Full Bench had independently come to the above conclusion after applying its mind. It had-, at paragraph 21,- clearly stated that a larger public interest was likely to be served by disclosure of the said information. It suggested that RBI should disclose most of this information in a proactive manner. The Full Bench had effectively given a recommendation to RBI to disclose this information under Section 4 of the RTI Act. This Bench agrees with the conclusion arrived at by the Full Bench that the disclosure of the appraisal of financial institutions by RBI and remedial measures must be shared with public in a proactive manner. Public interest would be served by such disclosure as the bench has concluded on its own, without relying on RBI. It is unfortunate that RBI appears to have taken no steps to proactively disclose this information in the last five years.

However, once the Full Bench had recorded its finding of a public interest in disclosure it should have given reasons why it did not order disclosure as per the provisions of Section 8(2) of the RTI Act. It appears have overlooked the provisions of Section 8 (2) of the RTI Act. The Full Bench had arrived at

the conclusion that there was a larger public interest in disclosure, but did not give any directions based on this finding, nor did it give any reasons for not giving any directions. If the Full Bench had considered the provisions of Section 8(2) of the RTI Act, it would have ruled that the requisite information should be disclosed. It may be pointed out that in view of the above, the ruling in *R. R. Patel's Case* is *per incuriam* as it was rendered without considering the statutory provision of Section 8 (2) of the RTI Act.

The Respondent has argued that as per Section 35 of the Banking Regulation Act, 1949, inspection reports prepared by RBI shall be provided only to the banking company that has been inspected. Further, the inspection report of a banking company is confidential in nature and cannot be published by anybody except the Central Government, after giving reasonable notice to the banking company. These inspection reports are not even made available to the Public Accounts Committee of the Parliament. Furthermore, RBI usually claims privilege under the Evidence Act from production of inspection reports in courts. The Respondent has also relied on the decisions of the Punjab & Haryana High Court in *RBI v. Central Government Industrial Tribunal* (1959) I LLJ 539 P & H and High Court of Madras in *RBI v. P. Nadarajan* (reported in 2000 (II) CTC 173). These decisions have been perused by the Bench.

Section 22 of the RTI Act expressly provides that the provisions of the RTI Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act. Section 22 of the RTI Act, in no uncertain terms, lays down that the RTI Act shall override anything inconsistent contained in any other law. The High Court of Delhi in *Union of India v. Central Information Commission & Anr*. 2009 (165) DLT 559 has held that-

"*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…"

On a bare perusal of Section 35 of the Banking Regulation Act, 1949, it appears to impose restrictions on access to information held by or under the control of RBI inasmuch as the inspection reports shall be provided only to the banking company, or can be published only by the Central Government after notifying the banking company. This is *prima facie* inconsistent with the RTI Act, which mandates disclosure of information unless exempted under Sections 8 and 9 of the RTI Act. Therefore, in accordance with Section 22 of the RTI Act, the provisions of the RTI Act shall override the provisions of the Banking Regulation Act as regards furnishing information. Consequently, whether or not information should be furnished has to be examined in light of Sections 8 and 9 of the RTI Act only. Further, the decisions cited by the Respondent were decided before the advent of the RTI Act and are therefore not relevant in determining whether the information sought was exempted under Section 8(1)(e) of the RTI Act.

The Respondent has contended that the information sought in queries 1, 2 and 3 was exempt under Section 8(1)(e) of the RTI Act. Section 8(1)(e) of the RTI Act exempts from disclosure "*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*". It has been submitted by the Respondent that courts have held that inspection reports are confidential based on the trust reposed by banks on RBI and when there is an element of confidentiality and trust, it is held in

fiduciary capacity. Reliance has been placed on the observations of the Supreme Court of India in *Chartered Accountants of India v. Shaunak H. Staya & Ors*. 2011 (9) SCALE 639 (paragraphs 16-18) and *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors*. 2011 (8) SCALE 645.

The Supreme Court of India in the *Chartered Accountants Case* has relied on its definition of 'fiduciary' (under Section 8(1)(e) of the RTI Act) culled out in the *Aditya Bandopadhyay Case*. In the *Aditya Bandhopadhyay Case*, the Supreme Court of India has held-

"*21. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and expected not to disclose the thing or information to any third party…*

…But the words 'information available to a person in his fiduciary relationship' are used in section 8(1)(e) of RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary…"

(Emphasis added)

It follows from the above ruling that definition of 'fiduciary' is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In other words, the provider of information gives the information in trust to be used for his benefit. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship. Additionally, this Bench in a number of decisions has held that another important characteristic of a fiduciary relationship is that the information must be given by the holder of information who must have a choice- as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor.

The Respondent has argued that while determining whether a fiduciary relationship exists or not, there is no need to look at if the information was given by choice or as a statutory obligation. The Commission does not agree with the Respondent on this count. However, even while solely relying on the definition of fiduciary laid down by the Supreme Court of India as given above- it is clear that while the banking companies may have given information to RBI in confidence or in trust, there does not appear to be any duty case upon RBI to act in benefit of such companies. In fact, when RBI carries out inspection of banking companies under Section 35 of the Banking Regulation Act, 1949, it does so in a regulatory/monitoring capacity. The information provided to RBI by banking companies is clearly in discharge of statutory obligations. Therefore, there does not appear to be a creation

of any fiduciary relationship between RBI and the banking companies in this regard.

The Respondent has also submitted that since the Preamble of the RTI Act itself recognises the fact that since revelation of certain information is likely to conflict with other public interests, there is a need to harmonise these conflicting interests. In this regard, the Respondent has also relied on the observations of the Supreme Court of India in the *Aditya Bandhopadhyay Case* which has been perused by this Bench. The Commission, being an adjudicatory authority set up under the RTI Act, must ensure that the right to information of citizens is effected but at the same time, specific interests mentioned in Sections 8(1) and 9 of the RTI Act are protected. In the present matter, the Commission has adopted this approach and- for the reasons enumerated above, is of the opinion that exemption under Section 8(1)(e) of the RTI Act is not attracted.

It is pertinent to mention once again that citizens have a right to know about the functioning and working of banking companies including any regulatory lapses. If there are irregularities in the functioning of institutions/ banking companies- as sought in queries 1, 2 and 3, citizens certainly have a right to know about the same. A larger public interest would be served by disclosing this information- under Section 8(2) of the RTI Act. In view of the same, this Bench is of the considered opinion that even if the information sought was exempted under Section 8(1)(e) of the RTI Act,-as claimed by the Respondent,- Section 8(2) of the RTI Act would mandate disclosure of the information sought.

The Respondent has further argued that disclosing of inspection reports by RBI would indirectly reveal information provided by customers to the banking companies by way of a fiduciary relationship. The Respondent has also claimed that identities of whistle blowers and other persons who provide information to RBI in this regard must be protected. Reliance

has been placed upon *Barings Plc v. Coopers & Lyband* [2000] 1 WLR 2353 and *Re Galileo Group Ltd*. [1999] Ch 100.

The Commission is of the opinion that there is some merit in the contentions raised by the Respondent and complete disclosure of the inspection reports may attract the exemptions contained in Sections 8(1)(e) and (g) of the RTI Act. Section 10(1) of the RTI Act provides as follows:

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

Under Section 10 of the RTI Act, it is possible to severe certain portions of the information before disclosing it to an applicant to ensure that information that is exempt from disclosure under the RTI Act is not disclosed. Therefore, this Commission has decided to apply Section 10 of the RTI Act to the information sought by the Appellant in queries 1, 2 and 3. **Details of customer related information and particulars of informers/ whistle blowers/ source of information contained in the inspection report shall be blanked out and then provided to the Appellant.**

The Appeal is allowed. The PIO is directed to provide the complete information in relation to queries 1, 2 and 3 of the RTI application to the Appellant **before 15 December 2011** after severing details of customer related information and particulars of informers/ whistle blowers/ source of information.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided

free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

17 November 2011

(In any correspondence on this decision, mention the complete decision number.)(DIS)

□ □ □

Annexure 15.4

Msnisha Priya Bhatia vs Government Of Nct Of Delhi on 23 July, 2014

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2011/002238/16606

Appeal No. CIC/SG/A/2011/002238

Relevant Facts emerging from the Appeal:

Appellant : Mrs. Rashmi Dixit Matiman,

209 B, Jawahar Nagar,

Near Nirogdham Hospital,

Neemach, Madhya Pradesh

Respondent :
Mr. Birbal Singh,

Public Information Officer & Joint Director (Admin.),

Institute Of Human Behaviour and Allied Sciences ("**IHBAS**"),

Dilshad Garden, Delhi-110095

RTI application received on : 26/04/2011

PIO replied : 29/04/2011

First Appeal received on : 13/05/2011

First Appellate Authority order of : 01/06/2011

Second Appeal received on : 12/08/2011

S.No.	Information sought	Reply of Public Information Officer (PIO)
1.	The Appellant was kept in the Short Observation Facility ("**SOF**") of IHBAS from 01/04/2011 to 04/04/2011. The Appellant has sought the reasons for the same along with attested photocopies of the relevant documents?	The information sought was provided by the Appellant and her husband and was sensitive/confidential in nature. It was exempt under Section 8(1)(e) of the RTI Act.

2.	Names, address, academic qualifications and experience of all the doctors who examined the Appellant during the mentioned period along with attested photocopies of the relevant documents.	Requisite information provided by way of enclosures.
3.	Attested photocopies of the observation reports, examination report, opinions of the doctors.	Same as reply to query 1.
4.	Attested photocopies of the questionnaire filled by the Appellant during observation pertaining to psychological examination including the remarks of the doctors on the same.	Same as reply to query 1.
5.	Name, address and attested photocopies of appointment letters of the working staff, doctors, counselors, staff nurses, attendants and drivers of the Mobile Mental Health Unit of IHBAS.	Requisite information provided by way of enclosures.
6.	Action taken by the management of IHBAS on the emails sent by the Appellant’s mother to the Joint Director, Director on 05/04/2011-attested photocopies of the same.	The action taken was in the nature of clinical evaluation and the Appellant was discharged on 06/04/2011.

7.	The Appellant was kept in the Women's Ward from the afternoon of 04/04/2011. Her registration no. was 2011-4 13628. She was discharged from there on 06/04/2011. The Appellant's income, in the discharge letter, was shown as Rs. 50,000. What was the basis of this and attested photocopies of relevant documents.	The information was given by the Appellant's husband.
8.	Reasons given by Dr. Arshad Hussain and Dr. Shewta Sharma of the Mobile Mental Health Unit and that of the driver along with attested photocopies of relevant documents on the basis of which the Appellant was admitted in IHBAS on 01/04/2011.	Same as reply to query 1.
9	Attested photocopies of all the information, documents/records, emails, etc given by the Appellant's husband to IHBAS pertaining to the Appellant.	Same as reply to query 1.

Grounds for First Appeal:

Incomplete and unsatisfactory information provided by the PIO.

Order of the First Appellate Authority (FAA):

The FAA was satisfied that the record of the Appellant contained inputs and information provided by herself, her

husband and relatives-which are individualistic information shared by each person with the hospital team member. Information in psychiatry case records is collection of information given by all persons. The views expressed by the deemed PIOs (as mentioned in the order) were well accepted that in a psychiatry case-the medical records were not only physical clinical examination but included various information shared by the relatives particularly spouse, children, parents, etc. The fiduciary relationship in psychiatry cases extends not only to the patient but also to the information shared by others. Information provided by each of the informants to any of the team members of a mental health team, should be considered as having been provided in a fiduciary relationship. Therefore, Section 8(1)(e) of the RTI Act is applicable. Moreover, in cases wherein reasonable possibility of disputed marital or divorce proceedings existed, divulgence of information under the provisions of RTI Act provided by either of the spouses or partners or any other family member or even a friend to a professional is neither appropriate nor desirable.

Grounds for Second Appeal

Dissatisfied with the FAA's order.

Relevant Facts emerging during Hearing held on 23 November 2011:

The following were present:

Appellant: Mrs. Rashmi Dixit Matiman, via video-conference from NIC Studio-Neemach;

Respondents: Mr. Birbal Singh, PIO & Joint Director (Admin.) and Dr. Nimesh G. Desai, FAA & Director.

Both parties were heard. The Appellant has sought information regarding her psychiatric treatment and records relating to the same. She stated that she was forcibly admitted to IHBAS

by her husband. She claimed that she had not been informed about her ailments and alleged that she was hospitalized only to be terrorized and certified as mentally ill.

Dr. N.G. Desai, FAA claimed that information regarding the Appellant's condition was obtained from different sources which included her husband and therefore the information was held in a fiduciary capacity by the doctors. The Respondents argued that in psychiatry matters, it would not be correct to consider that a fiduciary relationship exists only between the doctor and the patient concerned. He therefore claimed exemption under Section 8(1)(e) of the RTI Act.

The FAA also stated that the Appellant had been informed that she required further treatment and that she could be treated by a proper psychiatric specialist anywhere she chose. The Appellant stated that this was not true and that the doctors were not willing to release her.

The Respondent relied on certain decisions of the Commission in support of their contentions- *Itwari Lal v. IHBAS CIC/WB/A/2006/00787* dated 26/07/2007, *Dipchand Chavanriya v. IHBAS CIC/SG/A/2009/001554* dated 06/08/2009 and *Shravan Kumar v. IHBAS CIC/AD/A/2009/000233* dated 09/12/2009.

The order was reserved at the hearing held on 23/11/2011.

Decision announced on 27 December 2011:

The Respondents gave written submissions which have been perused by the Commission. In the written submissions, the Respondents have relied on certain decisions of the Commission, which have been mentioned above. Certain additional documents were also submitted which are not relevant in deciding the present matter and therefore have not been elaborated upon.

It is legally well-established that information under the RTI Act can be denied only on the basis of Sections 8 and 9 of the

RTI Act and no other exemptions can be claimed while rejecting a demand for disclosure. Given the same, the issue before this Bench is whether the denial of information on queries 1, 3, 4, 8 and 9 on the basis of Section 8(1)(e) of the RTI Act is justified. The PIO has claimed Section 8(1)(e) of the RTI Act in denying the information.

Section 8(1)(e) of the RTI Act exempts from disclosure- "*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*". The traditional definition of a fiduciary is a person who occupies a position of *trust* in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, we generally mean someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, financial analyst or trustee. Another important characteristic of such a relationship is that the information must be given by the holder of information who must have a choice-as when a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to particular doctor. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for the benefit of the one who is providing the information. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a license, cannot be considered to have been given in a fiduciary relationship.

The Respondents have primarily argued that in psychiatry cases, the fiduciary relationship not only exists between the doctor and the patient, but also extends to all other persons such as the husband, relatives, etc from whom information is obtained about the patients; all such information is held by

the doctors in fiduciary capacity. This Bench recognises that a fiduciary relationship exists between the doctor and the patient. However, in psychiatry cases, if the doctor can establish that the patient is incapable of comprehending or handling the information including doctors' reports/conclusions, inputs received from relatives, etc-then a fiduciary relationship may exist between the doctor and the patient's husband, relatives, etc. In the instant case, the Respondents, at no point have claimed that if the information is provided to the Appellant, she would not be able to understand it or it would harm her. Therefore, the Commission finds no reason to accept the claim of a fiduciary relationship between the doctors and the husband of the patient. The information is being sought by the Appellant who was the patient herself. Hence, the fiduciary relationship exists between her and the doctors.

Further, the Commission has perused the decisions cited by the Respondent in support of their arguments. In *Itwari Lal v. IHBAS CIC/WB/A/2006/00787*, the applicant had sought the medical history records of one Mr. Roshan Lal. The Commission had dismissed the Appeal and held that since the information sought was a question of treatment of a patient which must always be held in confidence by his physician and was at the heart of the definition of a fiduciary relationship, the information must be denied not only under Section 8(1)(j), but also under Section 8(1)(e) of the RTI Act. In *Dipchand Chavanriya v. IHBAS CIC/SG/A/2009/001554*, the applicant had sought information about medical records of one Ms. Jyoti. The Appeal was dismissed by this Bench as the information was protected under Section 8(1)(e) of the RTI Act. Moreover, in *Shravan Kumar v. IHBAS CIC/AD/A/2009/000233*, the applicant had sought information about the medical treatment/records of his wife. The Commission had held *inter alia* that information about a patient receiving psychiatric treatment was personal information and held in a fiduciary relationship by the doctors and also in light of the fact that there was an

ongoing marital dispute between the applicant and his wife, the denial of information under Section 8(1)(e) of the RTI Act was justified. In the *Shravan Kumar Case*, the husband had sought information about his wife's psychiatric treatment and hence, it was denied under Section 8(1)(e) of the RTI Act.

In the cases cited by the Respondents, the information was being sought by a person other than the patient. In the instant case, the information is being sought by the patient herself and these precedents are not relevant in deciding the present matter.

The Appeal is allowed. The PIO is directed to provide the complete information as per records on queries 1, 3, 4, 8 and 9 to the Appellant **before 20 January 2012**.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

27 December 2011

(In any correspondence on this decision, mention the complete decision number.) (PG)

□ □ □

16. **Draft of Appeal if information is denied stating it is exempted under Section 8(1)(g) of RTI Act**

Grounds for appeal:

Section 8 (1)(g) exempts "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;”

The reason stated by the PIO denying the information is not a valid ground for denial.

There must be a reasonable possibility of danger to someone’s physical safety or life by disclosing the information and some reasoning should be provided indicating whose life or physical safety is likely to be endangered. A bland statement without any reasonable possibility cannot be adequate grounds for denial of my fundamental right.

The PIO must show how disclosing the information would either endanger the life or physical safety of any person. This must be a likely possibility and not a mere remote probability. If this is not established as a reasonable possibility this exemption will not apply. The onus of proof thus, lies upon the PIO.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons.

□ □ □

17. **Draft of Appeal if information is denied stating an exemption under Section 8(1)(h)**

Grounds for appeal in case of:

1. Information has been denied on the grounds that investigation is on going

OR

2. Prosecution is going on

Section 8(1)(h) exempts “information which would impede the process of investigation or apprehension or prosecution of offenders;”. The information had been wrongly denied stating that the investigation is ongoing OR Prosecution is going on.

The reason stated by the PIO denying the information is not a valid ground for denial. The law does not envisage denial of information merely because an investigation or prosecution are going on or likely to be undertaken. The PIO must show how disclosing the information will impede the process. This must be a likely possibility and not a mere remote probability. If this is not established as a reasonable possibility this exemption will not apply. The onus of proof thus, lies upon the PIO.

[If the applicant has a filed a complaint and is seeking progress of the investigation then also mention the following paragraph]:

I have filed the complaint and am seeking the progress of the investigation. It is impossible to imagine that I could cause an impediment to investigation or prosecution after filing the complaint.]

The denial of information is not in consonance with the law and hence is an error.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days. If, however you disagree with my contentions please mention in your order the point wise reasons.

Attaching two orders of CIC no. 2695 and 3164

CIC **Decision No. CIC /SG/A/2009/000015/2695 and Decision No. CIC /SG/A/2009/000512, 519/3164 on the subject enclosed**

□ □ □

Annexure 17.1

Mr. Prakash Chandra Vs. Mr. D. Verma

CENTRAL INFORMATION COMMISSION

Room No. 415, 4th Floor,

Block IV, Old JNU Campus,

New Delhi -110 067.

Tel: + 91 11 26161796

Decision No. CIC /SG/A/2009/000015/2695

Appeal No. CIC /SG/A/2009/000015

Relevant Facts emerging from the Appeal

Appellant
: Mr. Prakash Chandra,

1646, Type IV, Delhi Admn. Flat,

Gulabi Bagh, Delhi-110007.

Respondent
: Mr. D. Verma,

Dy. Secretary (Vigilance) & PIO,

Govt. of NCT of Delhi,

Directorate of Vigilance,

Level-4, C-Wing, Delhi Secretariat,

New Delhi-110002.

RTI application filed on : 12/08/2008

PIO replied
: 28/08/2008

First appeal filed on
: 24/09/2008

First Appellate Authority order : 27/10/2008

Second Appeal filed on : 31/12/2009

The appellant had asked in RTI application for supplying the SP report dated 11/11/1999 with all its enclosures. Copy of letter No. DLI/AC/CR-3/33-A97/2511 dated 07/12/2000 of

Director (Vigilance) Govt. of NCT of Delhi. Copy of the note portion of the file dated 07/12/2000.

S. No.	Information Sought.	The PIO replied.
1.	In RC 33-A/97 of Anti Corruption Branch of CBI, Delhi Branch, dated 06/05/1997 against Shri K.S. Medena, DANICS and others, Shri Anil Kumar, SP, CBI, Anti corruption Branch, New Delhi sent a report dated 11/11/1999 to MHA, a copy of which was also endorsed to Director (Vigilance) Government of NCT of Delhi to obtain sanction to prosecute the public servants involved in the said RC. Kindly supply the said SP Report dated 11/11/1999 with all its enclosures.	1 & 2 as per record available with this Directorate the trial in this case is pending in the Court of Special Judge, Delhi and as such the requisite information is exempted under Section 8(1) (h) RTI Act, 2005 and cannot be provided.

2.	Further it is understood that DIGP, Central Bureau Investigation (ACB) sent a letter to Shri N.J. Thomas, Under Secretary, MHA and the said letter is numbered as DLI/AC/CR-3/33-A97/2511 dated 07/12/2000 of Director (Vigilance) Govt. of NCT of Delhi. the said letter is in connection with RC No. 33-A/97 dated 06/05/1997 of CBI, New Delhi and in this letter the CBI recommended suspension of public servants involved in the above said RC.	
3.	Please supply the copy of the said letter dated 07/12/2000 and the note portion of the file where the said letter was dealt with in Directorate of Vigilance.	As above Para 1.

The First Appellate Authority ordered.

"Both the above said letters are addressed to the Ministry of Home Affairs letter dated 15/11/1999 is also addressed to the Chief Secretary, Delhi but in respect of letter dated 07/12/2000 endorsement has been made to the Directorate of Vigilance.

While, it is correct that Section 8(1) (h) refers to those circumstances where the process of investigation is going on and such information which could impede the process of investigation may not be disclosed. There seems some substance in the appeal that process of investigation having been over,

information sought should not have been withheld by the PIO. But at the same time, it can also not be ignored that investigating agency in the matter referred to by the Appellant is the CBI. Since the agency has specifically conveyed that the document be treated as confidential. It would be proper if the views of the agency are obtained. In fact. PIO was expected to consider this aspect and then take a decision whether the information sought could be supplied or not.

I, therefore, feel it appropriate to advise the PIO to obtained the views of the CBI immediately and then based on the views given by the CBI, take further decision on the Appellant's application. I order accordingly. PIO may seek the views, preferably, with in 10 days from the issue of this order and then convey the decision within 3 days of the receipt of the reply form the CBI."

Relevant Facts emerging during Hearing on 30 March 2009:

The following were present

Appellant: Mr. Prakash Chandra

Respondent: Mr. D. Verma PIO

The respondent claims exemptions under section 8 (1) (g) & (h). They claim it could hinder prosecution. The SP report is meant for the CBI and the department..

Appellant states investigation is over and the trial is on, hence there can be claim of investigation being impeded. The appellant has given written submissions and relies on many Court judgements to argue that the said information must be provided. Respondent submits CIC order CIC/AT/A/2006/2004, of 30/06/2006 in which a bench had ruled, ' this commission consistently takes the view that matters in the investigation or those taken up in prosecution should not be disclosed till all proceedings in such cases are over. We uphold therefore

the position taken by the AA and the CPIO that in the present case disclosure is barred by section 81H and section 8 when she of the RTI act.'

Order reserved.

The respondent is given time upto 9 April 2009 to give his written submissions.

Mr. Sumit Sharan Supdt. Of Police has given written submissions arguing that the information must not be disclosed. The main arguments of the respondent are as follows:

"4. That SP's report is a confidential document of CBI. It is prepared by taking out information from the case diaries written by the investigating officer of the particular case. The information mentioned in the case diaries are given by various persons to the investigating officer for assistance in the investigation of the case. This information is given by such persons in confidence for furtherance of law enforcement. The details of the persons who have given such information is mentioned in the SP's report along with information which they have provided. The disclosure of the names and information would endanger life or physical safety of such persons. The information was also given in confidence and if it is divulged it will cost breach of confidence which they have reposed in the law enforcement agency. Thus, exemption for providing SP's report to see Prakash Chandra who is an accused in the said case, is sought under 8 (1) (g) of RTI act 2005 is also sought.

5. In the SP's report all the evidence gathered during investigations are discussed in detail. The defence taken by the accused Persons is also discussed in this report. The departure of the defence and line of action to be taken by prosecution is also discussed in detail in this report. If the said report is provided to the

appellant who is the accused in the instant case, then it would enable him to have privy to the extremely confidential information which is meant for exclusive consumption of CBI and the concerned department. The appellant/accused will use the confidential information contained in the SP's report to delay the trial of the case which is a very crucial juncture and use the arguments discussed and report for his advantage in the trial of the case in the court. This will cause grave miscarriage of justice and hinder prosecution at adversely. In view of this exemption under section 8(1)(h) of RTI act 2005 is also sought.

In support of the argument we would like to bring to your notice following judgement of Delhi High Court and CIC:-

1. That para 13 of Judgement passed by Justice Ravindra Bhat of Delhi High Court on 13/2/2007 in WP(c) No. 3114/2007 held that " 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 the information is granted if it would impede the process of investigation or the prosecution of offenders."
2. That CIC in appeal no. 38/IC(A)/06 (file no. CIC/OK/A/2006/00037 dtd. 12/12/2006 held that " the appellant is an accused in the criminal prosecution launched by the customs and CBI to stop the information sought by the appellant is required to prove his innocence, which will be provided to him under the law by the prosecuting agencies and the court of law to ensure justice to him. At this juncture when the prosecution proceedings have been initiated and is at the advanced stage, exemption from disclosure of

information under section 8(1)(h) has been correctly applied by the CPIO. The decision of the appellate authority is therefore upheld."

- That CIC in appeal number 39/IC(A)/06 (file number CIC/MA/A/2006/00083 dtd. 15/05/2006 held that " the matter pertains to corruption involving several officers and staff, including the appellant. This is indeed an issue of vital public interest. In view of the pending prosecution in the court of law, which follows a well-established procedure under the law to ensure natural justice, the disclosure of information as would, at this stage, impede the process of prosecution of offenders. In all such matters, disclosure of information under section 8(1) (h) is barred. The decision of the appellate authority is therefore upheld."

Decision announced on 13 April, 2009:

The Delhi High Court judgement quoted by the respondent was passed after the orders of the Commission quoted by respondent. Justice Ravindra Bhat's order in WP(c) No. 3114/2007 has clearly stated,

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

consideration, Section 8(1)(h) and other such provisions would become the haven for dodging demands for information.

14. A rights based enactment is akin to a welfare measure, like the Act, should receive a liberal interpretation. The contextual background and history of the Act is such that the exemptions, outlined in Section 8, relieving the authorities from the obligation to provide information, constitute restrictions on the exercise of the rights provided by it. Therefore, such exemption provisions have to be construed in their terms; there is some authority supporting this view (See Nathi Devi v. Radha Devi Gupta 2005 (2) SCC 201; B. R. Kapoor v. State of Tamil Nadu 2001 (7) SCC 231 and V. Tulasamma v. Sesha Reddy 1977 (3) SCC 99). Adopting a different approach would result in narrowing the rights and approving a judicially mandated class of restriction on the rights under the Act, which is unwarranted."

This judgement has effectively overruled the earlier orders of the CIC on this matter. In the instant case the investigations are clearly over and therefore we would only have to see whether releasing the information would impede the process of prosecution of offenders. If the basis of prosecuting the accused is the truth as it exists on the records, it is not possible to understand how it could impede the process of prosecution of the offender. If there are any details in the SP's report which would create any doubts in the mind of the judge who is conducting the trial, this must certainly be disclosed in the interests of justice. The Commission does not agree with the grounds given by the respondent to refuse giving the information, and cannot see how the truth could impede the prosecution. If anything Justice demands that the truth must be placed before the Court. Therefore the Commission does not find merit in the denial of the information under Section 8(1)(h).

However we do see merit in the respondent's grounds of Section

8 (1) (g). If some people have given information based on which the prosecution has been launched, revealing their identity could result in some harm to them, and revealing their identities would also reveal the source of information. The Commission directs that the PIO apply the severability clause of Section 10 and blank out the names of those who have provided the information in confidence.

The appeal is allowed.

The PIO will give the SP’s report and copy of the said letter dated 07/12/2000 and the note portion of the file where the said letter was dealt with in Directorate of Vigilance the to the appellant before

5 May 2009.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Shailesh Gandhi

Information Commissioner

13 April 2009

(In any correspondence on this decision, mentioned the complete decision number.)

(BK)

□ □ □

Annexure 17.2

Mr. S. K. Tiwari Vs. Mr. S. P. Singh

CENTRAL INFORMATION COMMISSION

Club Building, Old JNU Campus,

Opposite Ber Sarai, New Delhi 110 067.

Tel: + 91 11 26161796

Decision No. CIC /SG/A/2009/000512, 519/3164

Appeal No. CIC /SG/A/2009/000512, 519

Relevant Facts emerging from the Appeal

Appellant :
Mr. S.K. Tiwari,

CPDE/W.C. Railway

Office of GM/West Central Railway,

Opp. Indira Market,

Jabalpur (MP)-482001.

Respondent :
Mr.S.P. Singh

PIO

West Central Railway, Jabalpur

Central Manager Office RTI Cell,

Jabalpur.

RTI application filed on :
12/09/2008

PIO replied
: 30/09/2008

First appeal filed on :
07/11/2008

First Appellate Authority order : Not replied

Second Appeal filed on : 05/03/2009

The appellant had asked information regarding two tenders for the work of fabrication and supply of steel channel sleepers which were invited by Jablapur Division vide tender notice No. 73/04 dt. 12.04.2004 and tender notice no.95/04 dt.10.5.2004. In connection with these tenders, following informations are requested under RTI Act, 2005:-

- Chief Technical Examiner of CVC had inspected West Central Railway and prepared his Inspection Report on the above 2 tender cases. A copy of the Inspection Report of CTE/CVC may kindly be furnished.
- Action taken by Vigilance Organization of WCR, on receipt of Inspection Report of CTE/CVC along with all file notings and a copy of the report prepared and sent to Railway Board on the issue of finalization of tenders.
- While conduction enquiry, Vigilance Organization of W.C. Railway have issued few questionnaires to concerned officers involved in finalization of tenders. Officers had given reply to questionnaires of Vigilance Organization. Kindly furnish copies of the comments offered by Vigilance Organization of West Central Railway on the replies furnished by officers.
- Comments of vigilance organization, investigating officer, GM/WCR and disciplinary authority on following 8 letters of the undersigned written on the subject.
- My letter No.W-HQ/CPDE/Con/Per dt. 2.01.2007 addressed to SDGM/WCR.
- My letter No.W-HQ/CPDE/Con/Per dt. 12.01.2007 addressed to SDGM/WCR.
- My letter No.W-HQ/CPDE/Con/Per dt. 25.05.2007 addressed to SDGM/WCR.
- My letter No.W-HQ/CPDE/Con/Per dt. 26.06.2007 addressed to SDGM/WCR.

- My letter No.W-HQ/CPDE/Con/Per dt. 03.10.2007 addressed to GM/WCR.
- My letter No.W-HQ/CPDE/Con/Per dt. 20.03.2008 addressed to GM/WCR.
- My letter No.W-HQ/CPDE/Con/Per dt. 05.05.2008 addressed to Member Engineering, Railway Board.
- My letter No.W-HQ/CPDE/Con/Per dt. 06.06.2008 addressed to Member Engineering, Railway Board.

The PIO's reply.

PIO had replied that "with reference to your application, the desired information is collected from Vigilance branch and CPO/WCR as a nodal officer of Vigilance branch and sent to your.

The remarks on the items from Sl.No. 1 to 4 as mentioned in the application received along with your letter no. refereed above is as follows:

Since the disciplinary proceeding has been initiated in the matter against the concerned charged official in the case and is still going on against the applicant and yet not completed, therefore, as per Para 8(1) (h) of Right of Information Act 2005, no information can be given at this stage, which would impede the process of Investigation or apprehension or "prosecution of offenders."

The information sought in point No. 4 refers to a request by the appl8icant to furnish SDGM, GM and Member (Engg.)'s remarks regarding representations made by the applicant. It is stated that GM/WCR had forwarded his view on the above representations to Member(Engg.). However, the view of GM are in the context of the contract, "Fabricating, galvanizing, supplying and fixing of steel channel sleepers with fittings by removing existing bridge timbers on various girder bridges in Jabalpur division of W.C. Railway" and have a direct bearing on the investigation. Since the inquiry is not yet

over, it is not appropriate to divulge the contents at this stage.

As regards to item Sl.no. 4 the representations dt. 02.01.2007 & 20.03.2008 are not available in the concerned file."

The First Appellate Authority ordered.

Not replied.

Relevant Facts emerging during Hearing:

The following were present

Appellant : Mr. S.K. Tiwari

Respondent : Mr. S.P. Singh PIO

The PIO states that the process of the DR has not been initiated. The Railway and the CT investigation contains opinions of the people who have dealt with this case and once that is disclosed at this stage both the opinions of the people who have dealt with the case and also the names of the people who have dealt with the case will get disclosed. It is likely that the accused can influence the people who have conducted the inquiry.

The Appellant states that in his appeal to the Appellate Authority, no reasons have been quote by the PIO for the denial of information. The Appellate Authority while replying to his appeal, vide his letter dated 08/12/2008 has stated that "if information is given to applicant before conclusion of prosecution it can hamper the ongoing enquiry by way of influencing the co-accused, hence documents are denied under 8(1) (h).". The Appellant states that the names of the co-accused and the inquiry officers can be severed under S 10 of the RTI Act by the department. The Appellant states that the detailed charge-sheet given to him, the names of the co-accused have already been mentioned and the PIO is using this as an excuse to deny the information.

Section 8 (1) (h) puts the responsibility on the PIO to squarely explain coherently how giving the information would 'impede the process of investigation.' In this case the PIO admits that the investigation has been concluded and the chargesheet has been given.

Hon'ble Justice Ravindra Bhat in WP(C) No. 3114/2007 decided On: 03.12.2007

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

The PIO has not shown a reasonable ground to convince the Commission that disclosing the information would 'impede the process of investigation.' The Commission however directs the PIO to blank out the names of the co-accused and the inquiry officers by severing this under Section 10 of the RTI Act.

Decision:

The Appeal is allowed.

The complete information will be given to the appellant after severing the names of the co-accused and the inquiry officers

before 25 May 2009.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Shailesh Gandhi

Information Commissioner

11th May, 2009

□ □ □

18. **Draft of Appeal if Information is denied stating grant of information is exempted as per Section 8(1)(h) – Casual denial**

Grounds for appeal:

The claim for exemption is completely wrong and misguided by facts and law since the law only exempts "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 law does not say that information on all subjudice matters is exempt. Section 2(b) can be claimed if there is an express order directing that certain information must not be disclosed. In the absence of such a specific order from a court or tribunal, the information cannot be denied and must be provided. Furthermore, if such a specific order exists against disclosure of this information, such order should have been cited and quoted.

The denial of information is not in consonance with the law and hence is an error.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons as per the law.

CIC Decision No. CIC/SG/A/2011/003224/16954 on the subject enclosed

□ □ □

Annexure 18.1

Mr.Tarun Nag vs Ministry Of Health And Family … on 19 January, 2012

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2011/003224/16954

Appeal No. CIC/SG/A/2011/003224

Relevant Facts emerging from the Appeal

Appellant

: Mr. Tarun Nag

5/52,Azad Garh,

Kolkata-700040

Respondent

Mr. Dr. M. F. A. Baig

PIO & Sr. Scientific Officer

Central Drugs Laboratory

03-KYD Street,

Kolkata 700016

RTI application filed on
: 30/06/2011

RTI application transferred on
: 20/07/2011

PIO replied :
Not mentioned.

First appeal filed on :
21/09/2011

First Appellate Authority order
: 14/10/2011

Second Appeal received on :

15/11/2011

Information Sought:

1. Details of Proceedings of Departmental Promotional committee of ‘Junior Administrative Officer’ central Drugs Laboratory, Kolkata.In that DPC Mr. Tarit Kumar Adhikari had been considered for the post.
2. The total corresponding letter send between office of the Director of Central Drugs Laboratory,3,Kyd Street,Kolkata-700016,And DCGI Ministry of Health & Family Welfare, Govt. Of India & Office of The Dte.General of Health Services, Ministry of Health & Family Welfare,Central Drugs Standard Control Organization, FDA Bhawan,ITO,Kotla Road ,New Delhi-11002 related to the post of senior scientific Assistance (Bacteriology)& Senior Scientific Assistant (Pharmacology) from the 1994 to till date.

Transfer of the RTI application by the Public Information Officer (PIO):

PIO directed the application to the Director, Central Drugs Agency, Kolkata so as to give reply with the information to the applicant and to take necessary action in the matter in accordance with the provisions of RTI Act 2005.

Grounds for the First Appeal:

Incomplete and unsatisfactory information provided by the PIO.

Order of the First Appellate Authority (FAA):

FAA ordered that the matter being sub-judice the information sought cannot be provided as Director, CDL, Kolkata has informed that the subject matter is pending consideration before Hon’ble Central Administrative Tribunal,Kolkata Bench in OA No.504 of 2011 and WPCT No.265 of 2011 before Hon’ble Calcutta High Court and it attracts provisions of section (8

(1) (b) of RTI Act 2005.

Grounds for the Second Appeal:

Incomplete and unsatisfactory information provided by the PIO and unfair disposal of the appeal by the FAA.

Relevant Facts emerging during Hearing:

The following were present

Appellant: Ms. Leena Jha Representing Mr. Tarun Nag on video conference from NIC-Kolkata Studio;

Respondent: Mr. Dr. M. F. A. Baig, PIO & Sr. Scientific Officer on video conference from NIC-Kolkata Studio;

The Respondent has refused to give the information on the ground that a case is pending before CAT, Kolkata Bench and before the Kolkata High Court. Effectively the PIO has stated that since the matter is sub-judice he is claiming exemption under Section 8(1) (b) of the RTI Act. Section 8(1)(b) of the RTI Act exempts, "*information which has been expressly forbidden by any court of law or tribunal or the disclosure of which may constitute contempt of court.*" This clearly does not extend to all matters that are subjudice. If Parliament wanted to exempt sub-judice matters it would have said so expressly. In this event the PIO has not applied his mind properly and has denied information which is not exempt. The PIO is warned to ensure that denial of information is not done unless there is an express provision in the law.

Decision:

The Appeal is allowed.

The PIO is directed to provide the information sought by the Appellant before 10 February 2012.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

19 January 2012

(In any correspondence on this decision, mention the complete decision number.)(SH)

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19. **Draft of Appeal if information has been denied on the grounds that it pertains to a bill presented in parliament or State legislature and information of the cabinet note and the papers relating to the bill are denied citing Section 8(1)(i)**

Grounds for appeal:

Section 8(1)(i) of the RTI Act exempts "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;"

Thus it is clear on bare perusal of the Section that cabinet papers and records of deliberations of ministers, secretaries

and other officers are exempt until the decisions are taken, and the matter is complete or over. However, the proviso categorically envisages these being made public suo moto and shared with citizens. Once the cabinet takes a decision the matter is complete and once the bill is laid on the floor of the house the matter is complete and over as far as the cabinet is concerned.

That this is also in line with the requirement of the pre legislative public consultation policy

It is thus incumbent on government to suo moto share this information with the public which it does not appear to have done. Under these circumstances it cannot be denied to a RTI applicant.

The denial of information is not in consonance with the law and hence is an error.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons as per the law.

Attaching one order of CIC no. 19365

□ □ □

Annexure 19.1

Mr.Venkatesh Nayak vs Department Of Atomic Energy on 26 June, 2012

CENTRAL INFORMATION COMMISSION

Club Building (Near Post Office)

Old JNU Campus, New Delhi – 110067

Tel: +91-11-26161796

Decision No. CIC/SG/A/2012/001023/19365

Appeal No. CIC/SG/A/2012/001023

Relevant Facts emerging from the Appeal

Appellant : Mr. Venkatesh Nayak

B-117, 2nd Floor, Sarvodaya Enclave

New Delhi- 110017

Respondent Mr. A. Anandraju,

PIO & OSD(ER)

Department of Atomic Energy

Officer on special duty (ER) & CPIO

Anushakti Bhawan

Chtrapati Shivaji maharaj Marg

Mumbai- 400001

RTI application filled on : 20/01/2012

PIO replied : 31/01/2012 and 07/02/2012

First appeal filed on : 24/02/2012

First Appellate Authority order : 16/03/2012

Second Appeal received on : 27/03/2012

Sl.	Information Sought
1.	A clear photocopy of the Cabinet Note prepared by your department seeking approval of the Union Cabinet for introducing The Nuclear Safety Regulatory Authority Bill, 2011 in the Lok Sabha along with all annexures. This Bill was introduced in the Lok Sabha on 07 September, 2011;
2.	The total number of records and live files held by the DAE Secretariat and its units that have been assigned the security classification: top secret', 'secret' and confidential' as on the date of this application. I wish to clarify that (would like to know only the total number of records and files marked with each type of security classification mentioned above but not the total number of pages in each file. I also wish to clarity that I do not want information about any public sector undertaking or aided institution under CM;

3.	The subject matter or topic of each record and live file that has been assigned the security classification ‘top secret’, ‘secret’ and confidential’ as on the date of this application; and
4.	A clear photocopy of the information submitted by DAE to the Central Information Commission under Section 25(3) of the RTI Act for the period: 1’ April 2010 –31” March 2011
Reply of the Public Information Officer (PIO) (Mr. Dayalan)	
1 Point No.1: A copy of the RTI application is being forwarded to PIO/OSD(ER) for furnishing a reply to you as the subject matter is dealt by ER Section, DAE. 2. Point No.2 The information requested for is not available as no records are kept regarding the total number of such files centrally. 3. Point No.3 The information requested are exempted from disclosure under Section 8(a) of the RTI Act, 2005. 4. An extract of Annual return for the year 2010-Il submitted by DAE to CIC under Section 25(3) of the RTI Act is enclosed	
Reply of the Public Information Officer (PIO) (Mr. O.T.G.Nair)- query 1	
You are informed that the information sought by you as above is exempted from disclosure under Section 8(l) (i) of the RTI Act.	

Grounds for the First Appeal:

PIO refused to reply as sought information is exempted under sec 8 (1) (i) of RTI Act, without explaining any reasons how it is exempted and on which ground.

Order of the First Appellate Authority (FAA):

FAA said that the use of the word ‘and” appearing in Section 8(1)(i) between “after the decision has been taken’ and ‘the matter is complete or over’ implies that both the conditions,

i.e. (i) the decision has been taken; and (ii) the matter is complete or over, must be satisfied for disclosure of full information. The Department-related Parliamentary Standing Committee on Science & Technology, Environment & Forests had put the contents of the Bill in the public domain and invited comments on it. As is public knowledge, the Committee has deliberated on the report and forwarded its observations to the Hon'ble Chairman, Rajya Sabha and Hon'ble Speaker, Lok Sabha. Thus, the matter stands and has to be taken forward, and the second condition i.e. 'the matter is complete or over' is not satisfied in this case. In view of the above, the information sought does not qualify for disclosure at this stage…

Grounds for the Second Appeal

"It is undisputed that the information relating to the Nuclear Safety Regulatory Authority Bill sought by me is in the nature of a Cabinet Note. However CPIO#1 has failed to appreciate the holistic position of the exemption provision that he has sought to invoke. While a Cabinet note may be exempted from disclosure initially, the proviso to Section 8(l) (i) clearly states that 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. The ostensible purpose of the Cabinet Note attached to the Nuclear Safety Regulatory Authority Bill was to seek the approval of the Union Cabinet for the draft provisions contained in the said bill and for its tabling in Parliament. Upon securing the approval of the Union Cabinet, the Minister of State for Public Grievances and Pensions tabled the said bill in the Lok Sabha in September 2011. So the purpose of the Cabinet note was completed upon securing Cabinet approval and the subsequent tabling of the said Bill in Parliament. The contents of the Cabinet note now qualify for disclosure under the proviso to Section 8(1)(i) as the matter is over. The

passage of the Bill is dependent upon the will of both Houses of Parliament and the Union Cabinet cannot undertake to get the Bill passed. Therefore the limited purpose of the Cabinet Note attached to the said Bill may be treated as over. However CPIO #1 has not appreciated this fact. Instead he has mechanically invoked Section 8(1)(i) without paying any attention to the proviso underlying it which entitles me to receive the said information."

"The Department of Atomic Energy is under an obligation as per Section 4(1)(c) of the RTI Act to make public the reasons for seeking amendments to the RTI Act. As they have not done so suo moto and as the matter relates to a Cabinet Note which is covered by Section 8(1) I was compelled to seek the information through a formal request. The Department of Atomic Energy is required to disclose the said Cabinet Note in order to facilitate informed debate on the amendment of the RTI Act. However it has not done so despite my formal request for information. Hence the filing of this second appeal before the Hon'ble Central Information Commission." Information on query 1 should be provided.

Relevant Facts that emerged during the hearing on 18 May 2012:

The following were present

Appellant: Mr. Venkatesh Nayak

Respondent: Absent;

"The PIO was not present at the Mumbai NIC-Studio. The Commission called up the Joint Secretary on telephone no. 022-22027815 who stated that he has not received the notice of hearing in this matter and hence the matter is adjourned.. A fresh notice of hearing will be sent.

Matter was adjourned."

A notice was issued to both parties to be present for a

hearing on 25 June 2012 at 11.00am impugned

Relevant Facts that emerged during the Hearing on 25 June 2012:

The following were present:

Appellant: Mr. Venkatesh Nayak;

Respondent: Mr. A. Anandraju, PIO & OSD(ER) on video conference from NIC-Mumbai Studio;

"The Appellant has stated that he would be satisfied if information sought in query-01 is disclosed.

Both the parties are agreed that the cabinet note has been put up to the Cabinet, and after due approval a bill has been presented to the Parliament. The matter has now been referred to the Standing Committee on Science and Technology which has submitted the recommendations to the Government with suggested changes. The PIO claims that the matter is not complete and over, until the bill is enacted, duly gazetted, and a notification is issued that the bill comes into force. The Appellant states that, "I contend that the matter regarding this NSRA Bill is complete or over on the date of the bill being tabled in Parliament." He further stated, "Section 8(2) suggests that if public interest in disclosure outweighs the harm to the protected interest, then access may be allowed. So my contention is rather than nearly invoking 8(1)(i) mechanically the PIO has a duty and a burden to demonstrate what interests are sought to be protected by the secrecy of Cabinet papers at this stage of the bill, which will outweigh the disclosure in public interest. If the harm to any protected is not demonstrated by the PIO, I submit that the exemption should be overruled by Section 8 (2) of the Act."

The Commission asked the PIO if he can explain the harm which can accrue to the protected interest if the information sought by the Appellant in query-01 is disclosed. The PIO states that

since the bill has not been enacted so far revealing the cabinet note may be inappropriate and hence it should not be revealed. He did not give any explanation on the harm which could accrue if the information was disclosed.

The appellant states that the NSRA bill has proposed amendments to the RTI Act and the DOPT has stated to the Parliament that no amendments are proposed to the RTI Act. The Appellant therefore states that he needs to know the contents of the Cabinet note so that he may make representations to the elected representatives to ensure that no amendments are made to the RTI Act without widespread consultation.

The PIO states that the bill is already in the Public domain and therefore he is not able to appreciate the Appellant's contention. The Commission reserved the order during the hearing.

The order is reserved."

Decision announced on 26 June 2012:

The PIO has claimed exemption under Section 8 (1) (i) of the RTI Act whereas the appellant has stated that the Cabinet note sought by him is not covered by the said exemption. The appellant has further argued that in terms of Section 8 (2) of the RTI Act, even if the Commission rules that the information is exempt under Section 8 (1) (i), there is a larger public interest in disclosure, and hence the information must be disclosed as per the provision of Section 8 (2).

The RTI Act has codified the fundamental Right to Information of Citizens guaranteed under Article 19 of the Constitution. As per Section 3 of the Act, 'Subject to the provisions of this Act, all citizens shall have the right to information. 'The provisions of the Act by which any information may be denied to a Citizen is defined in ten exemptions of Section 8 (1) of the Act. Section 8 (2) of the Act, which states, 'Notwithstanding anything in the Official Secrets Act, 1923

nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests' would override the exemptions of Section 8 (1) if a larger public interest in disclosure is shown. The appellant has claimed that disclosure of the Cabinet note should be made as per the provision of Section 8 (2), even if the exemption claimed under Section 8 (1) (i) by the PIO is upheld.

Section 8(1)(i) under which the PIO has claimed exemption, which has been upheld by the First appellate authority exempts, "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;"

The Commission therefore agrees with the First appellate authority's contention that the use of the word 'and" appearing in Section 8(1)(i) between "after the decision has been taken' and 'the matter is complete or over' implies that both the conditions, i.e. (i) the decision has been taken; and (ii) the matter is complete or over, must be satisfied for disclosure of full information.

From the arguments put across by the Appellant and the PIO the issue to be decided by the Commission is whether the "decision has been taken, and matter is complete or over". If the decision has been taken and the matter is complete or over, the exemption under Section 8(1)(i) would not be available. If the decision has not been taken or the matter is not complete or over the information would be exempt. The PIO has

argued that this means that the purpose for which the cabinet note was made,-passing of the proposed Act,- should be over. If such an interpretation were to be given it would mean that if an Act for which the Cabinet note was made is either not passed by Parliament, or not Gazetted, or not Notified, such a Cabinet note would never be disclosed under the RTI Act. The Commission had also asked the PIO to explain what harm could come to any protected interest if the information was divulged. The PIO's statement that disclosing the Cabinet note may be inappropriate does not give any reasons to show what harm could come by disclosure of the cabinet note.

The Appellant has argued that once the cabinet decision is taken the condition in the proviso that "the decision has been taken" is fulfilled. He has also argued that once the bill is presented in the Parliament "the matter is complete, or over" since the cabinet decision has been complied with. Subsequently the Bill is a property of the Parliament and hence the objective of the cabinet note is over with the presentation of the bill in Parliament.

It may be worthwhile to glimpse the mind of the Parliament when passing the RTI Act to understand the frame of mind of the elected representatives.

In Parliament when the RTI Bill was debated, Shri Varkala Radhakrishnan, MP said, "There must be transparency in public life. There must be transparency in administration and people must have a right to know what has actually transpired in the secretariat of the State as well as the Union Ministry. A citizen will have a right because it will be safe to prevent corruption. Many things are done behind the curtain. Many shoddy deals take place in the secretariats of the Central and State Governments and the information will always be kept hidden. Such practice should not be allowed in a democratic country like ours. Ours is a republic. The citizenry should have a right to know what transpired in the secretariat. Even Cabinet papers, after a decision has been taken, must be

divulged as per the provisions of this amendment. It cannot be hidden from the knowledge of others. It must be divulged. But before taking a final decision, the Cabinet papers can be kept secret."(Emphasis supplied). Thus it is clear that the intention to prevent disclosure was only until the time that the decision was taken by Cabinet on the Cabinet Papers/Notes. Once the Cabinet decision has been taken, the first part of the proviso that the decision had been taken would be fulfilled. With the tabling of the bill in Parliament the second part of the Proviso that the matter is complete or over would also have been met. The Commission would like to remember the further contentions of Shri Varkala Radhakrishnan, "After Independence, the Constitution came into being on 26th January 1950; till date, we have not given the fundamental right to information to the citizenry. Many things are done without their knowledge. They have a right to know. We are accountable to the people. The Government as well as the Parliament, as also everybody is accountable to people. It includes Judiciary also; and everybody is accountable to the people. They must know and they are entitled to know what actually is taking place in the governance of the country."

At this stage since there are doubts which have been voiced by some functionaries that Right to Information is draining the financial resources it is worthwhile to remember what Shri Milind Deora, MP said, "Once the use of this Bill matures, it will actually bring down the cost of Government. This is not a cost increase for the Government. This is going to reduce the cost of the Government, this is going to reduce implementation cost and this is going to ensure that quality service is given to the people of India."

Suresh Pachauri, Minister DOPT assured the nation that, "The UPA Government wants to hand over the key of democracy to the people of this country. The Government does not want to hide any information, which is in the national interest, from the people. "

The heart and essence of democracy is the concept that each individual citizen is a sovereign in her own right, and she gives up part of the sovereignty to the State, in return for which she gets rule of law. The Citizen has a right to know the basis on which decisions were taken by the Cabinet, before the law is finally made, which was the clear intent of Parliament. This would facilitate a reasoned discussion and debate in the country amongst citizens and their public servants. This appears to have been the intent of Parliament, as mentioned by the MPs whose speeches have been quoted above. The key of democracy must be with the Citizens of our Nation.

In view of preceding discussion the Commission rules that the Cabinet note is material on the basis of which a Cabinet decision is taken to table a bill in Parliament. Once the decision is taken by the Cabinet to table the bill in Parliament the 'decision has been taken'; when the bill is tabled in Parliament 'the matter is complete or over' as far as the Cabinet is concerned. In the instant case, since the 'the decision has been taken, and the matter is complete, or over:' the exemption claimed under Section 8 (1) (i) of the RTI Act by the PIO is not upheld.

The PIO has not given any valid reasons showing that any harm could come to any protected interest, whereas it is obvious that if Citizens knew the contents of the Cabinet note based on which Parliament proposed to enact a law, it would lead to a better and meaningful democracy and enactments of laws which would indeed serve people's needs. It appears to the Commission that there is a larger public interest in disclosing Cabinet notes regarding introducing any new bill in Parliament, after the Cabinet has taken a decision to table such a bill and the bill is tabled. This meets the criterion for suo moto disclosure mandated by the RTI Act in Section 4 (1) (d) of the Act which mandates that all public authorities must 'provide reasons for its administrative or quasi judicial decisions to affected persons;'. Citizens are certainly deeply

affected by every law made by Parliament, and hence have a right to know the basis on which these laws are being made. The citizen who gives legitimacy to the Members of Parliament and thereby to the institution of Parliament itself must be provided reasons which are behind the laws being made by Parliament. The Commission therefore directs the Secretary, Department of Atomic Energy to display this Cabinet note and all Cabinet notes in future on the department's website where such Cabinet notes relate to proposing a new bill to be tabled in Parliament, within 07 days of the bill being tabled in Parliament. This order is being given by the Commission in exercise of its powers under Section 19 (8) (a) (iii) of the RTI Act.

The Appeal is allowed.

The PIO is directed to provide an attested photocopy of the Cabinet Note sought by the Appellant alongwith all the annexures in query-01 to him before 20 July 2012.

The Secretary, Department of Atomic Energy is directed to ensure that the Cabinet Note mentioned above is displayed on the website of the Department before 20 July 2012 and all Cabinet Notes relating to proposals for new bills to be tabled in the Parliament should also be displayed on the website of the Department within 07 days of tabling the bill in the Parliament.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi

Information Commissioner

26 June 2012

(In any correspondence on this decision, mention the complete decision number.

Copy to:

Secretary

Department of Atomic Energy

Officer on special duty (ER) & CPIO

Anushakti Bhawan

Chatrapati Shivaji maharaj Marg

Mumbai- 400001

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20. **Draft of Appeal if information has been denied on the grounds that it is personal information, and no larger public interest has been established as mandated by Section 8 (1)(j)**

Grounds for appeal:

Section 8(1)(j) merely exempts only such "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.”

To qualify for this exemption, it must be personal information. In common parlance, a rational person would ascribe the adjective ‘personal’ to an attribute which applies to an individual and not to an institution or a corporate. Therefore, it suggests that ‘personal’ cannot be related to institutions, organizations, or corporates. Also, it is clear since the provision talks about invasion of privacy of the individual. Hence Section 8(1)(j) of the RTI Act cannot be applied when the information concerns institutions, organizations, or corporates.

A clear reading of the law shows that the information requested, may be denied under section 8(1)(j), under the following two circumstances:

1. a) Where the information requested is personal information and the nature of the information requested is such that it has apparently no relationship to any public activity or interest; or
2. b) Where the information requested is personal information, and the disclosure of the said information, would cause unwarranted invasion of the privacy of the individual.

If the information is personal information, it must be seen whether the information came to the public authority as a consequence of a public activity. Generally, most of the information in public records arises from a public activity. The details sought by me are of a public activity; hence it is on a public record.

Even if the information has arisen by a public activity, it could still be exempt if disclosing it would be an unwarranted invasion on the privacy of an individual. Privacy is to do with matters within a home, a person’s body, sexual preferences etc. as per the Kharak Singh case and the R.

Rajagopal landmark judgements of the Supreme Court. This is in line with Article 21 of the Constitution of India which relates to Right to Privacy through the Right to Live with Dignity and Article 19 (2) which permits placing restrictions on Article 19 (1) (a) in the interest of 'decency or morality'. Article 19 (2) permits "reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

The only words which could apply to the issue of violation of privacy are 'decency or morality'.

Even if it is felt that the information is not the result of any public activity or disclosing it would be an unwarranted invasion on the privacy of an individual, before denying information it must be subjected to the acid test of the proviso: 'Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.'

The proviso is meant as a test which must be applied before denying information claiming exemption under Section 8(1)(j). Hence, when a PIO, FAA, Information Commissioner or Judge invoke the exemption under Section 8(1)(j), they must first come to the subjective conclusion that they would not provide the information even to MPs and MLAs and record this when denying information to citizens.

In giving your decision I request you to first determine whether the information sought is a result of a private activity; secondly whether it relates to the privacy of the individual and would violate 'decency or morality'. Even if you feel that one of these applies, please record your subjective assessment that you would deny it to Parliament or State Legislature. Otherwise, the denial will not be in

consonance with the RTI Act or the Constitution.

For your convenience and reference, I am also quoting the ratio decidendi of the Supreme Court judgement in R Rajagopal and Anr. v State of Tamil Nadu (1994), SC which states:

“26. We may now summarize the broad principles flowing from the above discussion:

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, childbearing, and education among other matters. None can publish anything concerning the above matters without his consent – whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages. Position may, however, be different, if a person voluntarily thrusts himself into controversy or voluntarily invites or raises a controversy.

(2) The rule aforesaid is subject to the exception, that any publication concerning the aforesaid aspects becomes unobjectionable if such publication is based upon public records including court records. This is for the reason that once a matter becomes a matter of public record, the right to privacy no longer subsists and it becomes a legitimate subject for comment by press and media, among others. We are, however, of the opinion that in the 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 publicized in press/media.

(3) There is yet another exception to the rule in (1) above –

indeed, this is not an exception but an independent rule. In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defense 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."

This judgement effectively lays down that matters of public records cannot claim privacy unless it relates to violation of 'decency or morality'. It also reiterates the principle in Article 19(2) of the constitution. It is my submission that all personal information is not exempt from disclosure by law, hence there is no reason to establish a larger public interest. This would be necessary only when the information is exempt. The denial of information is not in consonance with the law and hence is an error.

Further I very humbly submits that if the denial is based on the Girish Ramchandra Deshpande judgment of the Supreme Court, I would like to point out that it was given in a SLP and hence

does not give any reasoning and cannot lay down the law. Besides, the R, Rajagopal judgment precedes the Girish Deshpande judgment. **It also has a clear ratio decidendi** and hence forms s precedent laying down the law. The Girish Deshpande judgment being a subsequent judgment cannot contradict or override the R. Rajagopal judgment.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons by law.

Attaching 3 orders of CIC nos. 2336, 2926, 3062 on the subject.

□ □ □

Annexure 20.1

Dr. Prem Prakash Sharma Vs. Shyam Lal College (University of Delhi)

CENTRAL INFORMATION COMMISSION

Room No. 415, 4th Floor,

Block IV,Old JNU Campus,

New Delhi -110 067.

Tel: + 91 11 26161796

Decision No. CIC /SG/A/2008/00275/2336

Appeal No. CIC/SG/A/2008/00275

Relevant Facts emerging from the Appeal

Appellant : Dr. Prem Prakash Sharma

S/o Dr. Madan Lal Sharma

B-51, Phase-II, Vivek Vihar,

New Delhi-110095

Respondent 1 :
Dr. O.P. Sharma

Shyam Lal College

(University of Delhi)

Ministry of H.R.D.

Shahdara, New Delh-110032.

RTI filed on : 04/08/2008

PIO replied : 22/08/2008

First appeal filed on : 02/09/2008

First Appellate Authority order : 06/10/2008

Second Appeal filed on : 18/11/2008

Information Sought:

The appellant through his 15 queries had sought certain information from PIO-Shyam Lal College, Shahdara, New Delhi.

- Furnish names with their guides for P.H.D and M.Phil of 8 persons appointed as permanent lecturers in Hindi department.
- Furnish certified copies of their application forms submitted by 8 appointed lecturers on the basis of advertisement.
- Certified copy of my application form.
- Certified copy of the appointment letter of each lecturer.
- Certified copy of the complete synopsis prepared by the college for selection having around 900 names.
- Names of two expert panels and copies of the correspondence with University.
- Reasons for changing first panel, furnish basis of such rules.
- On what basis Dr. Krishandutt Paliwal was sitting in the selection committee even after his retirement. Dose a retired persons is eligible to sit in the selection committee as subject expert? If yes give copies of such rules and regulations.
- Give name of the third subject expert you have called?
- When third subject expert refused to come then why you

did not called fourth person? Give reasons.

- I have heard that you have changed V. C. Nominees decided by University? Furnish copy of such rules on the basis of which the changes were made?
- On what basis S.T. Post was filled? Furnish copies of such rules.
- I am working as Ad-hoc Lecturer since 10 years from16/10/1998 in you college. I was assured to get joining letter on 16/07/2008 but no appointment letter was given nor I was asked to join. When I asked you in this regard no answer was given. Because of all this there is break up in my 10 years service, which will affect my carrier/future.
- College did not gave any termination letter to me hence I am not sure whether my services are terminated or not? I have not received my salary for summer vacation also. Why this injustice is being done to me?
- According to my qualification, work experience, results and other qualities were excellent hence I was the better person for appointment but you did not appointed me, kindly explain why this injustice you have done? I am still better person to be appointed as I can teach Hindi and Sanskrit both. Can you please consider my quality and qualification on humanitarian ground? Kindly explain in detail.

PIO’s Reply:

The PIO in his reply states that “I may like to draw your kind attention towards the writ petition being field by you before the Hon’ble High Court of Delhi bearing no.5045/2008 titled as Dr.Prem Prakash Sharma Vs Shyam Lal College & Ors. that in the writ petition also have challenged the similar selection of lecturers seeking process (the same as you have sought in your RTI application), for which the Hon’ble High Court of Delhi vide order dated 16.07.2008 has said that selection of the candidates will totally depend upon the out come of the writ

petition, therefore it is requested to you that you cannot seek two alternate remedies for the same relief therefore you are requested to either withdraw the present application or the writ petition field by you."

The First Appellate Authority ordered.

The First appellate authority ordered that "The Hon'ble High Court vide order dt.16.07.2008 has directed that the appointment in the department of Hindi in Shyam Lal College will be subject to the out come of the judgment in the case. I have sought the advice of our Legal Counsel Mr. Mohit Gupta, Advocate, who is representing the college in this case and requested him to give point wise reply to your application/appeal that I can communicate to you as First Appellate Authority."

As per the advice of Legal Counsel F.A.A gave point-wise reply to the questions sought by the appellant.

Relevant Facts emerging during Hearing on 26/02/2009:

The following were present

Appellant : Dr. Prem Prakash Sharma S/o Dr. Madan Lal Sharma

Respondent : Dr. O.P.Sharma PIO

The PIO contends that he did not give most of the information based on an 'Information Handbook' issued by University of Delhi in The Manual 6 –section 4 (1) (b)(vi). The note he is relying on states, "Confidential matters pertaining to examinations, paper settings… composition and proceedings of the selection committees and minutes of the University Court/EC/Ac until these are printed will remain confidential and not available in the public domain." He also asked certain third parties for their comments who have stated that the information should not be given.

The PIO is not able to justify the denial based on any

provisions of Section 8 (1). The note from the 'Information Handbook' is misleading and seeks to read non-existent exemptions into the RTI act.

The PIO is claiming a variety of objections including third party rights.

The PIO suddenly pulls out written submissions from his file and states he wants to submit them. The Commission has taken them on record.

The Commission adjourns the hearing to 6 March 2009 at 10.00am.

The PIO will give his written objections to releasing the information and also inform the third parties who may wish to present their objections to be present at the Commission with their

On 6/03/09 when Hearing was held:

The following were present:

1,. Appellant: Dr. Prem Prakash Sharma, Dr.M.L.Sharma, Dr. S.P.Sharma

2. Respondent: Mr. Mohit Gupta, Counsel for PIO Shyam Lal College, Mr. O.P.Sharma
3. Third parties:
4. Dr. Prabhat Sharma
5. Dr. Raj Kumar Prasad

- Dr. Satya Priya Pandey

1. Dr. (Ms.) Sujata Tweatia
2. Dr. Samrendra Kumar
3. Sh. Amitabh Kumar

- Sh. Rakesh Kumar Meena

Mr. Mohit Gupta Counsel for PIO Shyam Lal College stated that

there is no verification has been done as per CIC rules and clarifies that the information is invasion of privacy on the basis of Section 8(1)(j).

He further stated that some questions are not seeking information, and the Commission agreed that Q.13,14,15 are not seeking information as defined under the Act and hence no information can be provided for these.

Dr. O.P. Sharma , PIO at the time of filing the RTI application gave written submissions to justify the denial of information to the appellant in which he has raised the following main points:

1……..Apparently, Dr. Prem Prakash Sharma/Appellant has the necessary information based on which he had filed the writ petition in the Hon'ble High Court, yet he has sought this information under RTI Act in his application dt. 25.7.2008/4.8.2008.

2. …….second appeal as filed by Dr. Prem Prakash Sharma/Appellant is not maintainable as various information sought for by the applicant in his application dated 4.8.2008 under RTI Act, are related to the eight lecturers (hereinafter referred to as third parties) who are neither got issued the notice of the present second appeal by the appellant nor any reasonable opportunity to put their objections before this Hon'ble Commission has been accorded to the said third parties.
3. That the present second appeal as field by Sh. Prem Prakash Sharma/Appellant is also not maintainable as it is humbly submitted that the PIO/Appellant Authority has appropriately provided the information to the appellant which could be provided to him as per law and has assigned appropriate reasons for not providing the information, if any, which either is exempted under Section 8 of the RTI, Act……..

- ……..Appellant vide his application dated 4.8.2008, the same relates to personal information of the third parties and also cause unwarranted invasion of the privacy of the said persons. It is important to submit that the said third persons, i.e. 8 lectures were asked whether such information concerning them shall be imparted or not. On which they have specifically instructed not to provide the information related to them to any body.
- ……information no.3,5,6,9, & 10 sought by the appellant vide his application dated 4.8.2008 relates to procedure, composition and proceedings of the Selection Committee and as per the University Information Handbook under RTI Act Vide Manual (6) clause 4(1)(b)(iv), the information regarding Selection Process will remain confidential an not available in public domain.

The Commission asked the Third Parties to clarify which information they believe comes under Privacy. The third parties said their phone numbers, address, and educational qualifications are personal information and disclosing them would be an intrusion on their privacy. They also said that they had an objection to giving information about them to the appellant.

The Commission reserved the Decision.

Decision announced on 20 March 2009:

The PIO had initially refused to give the information to the appellant stating, "you cannot seek two alternate remedies for the same relief therefore you are requested to either withdraw the present application or the writ petition field by you."

The PIO's contention is flawed. By using RTI the applicant is seeking information and cannot get any remedy.

During the hearing and in his written submissions the PIO has claimed that University Information Handbook under RTI Act

Vide Manual (6) clause 4(1)(b)(iv), states 'Confidential matters pertaining to examinations, paper settings,… composition and proceedings of the selection committees and minutes of the University Court/EC/AcC until these are printed will remain confidential and not available in the public domain.' The basis for refusing to give any information under RTI has to be based on the law not on a handbook issued by any authority. The Commission also takes this opportunity to direct the University to correct its Manual and not misguide its PIOs by creating exemptions. Those who make manuals or guides are advised not to create exemptions which do not exist in the law. It would be prudent only to record the exemptions of Section 8 (1) verbatim, and not amplify these.

The Honorable Justice Mr. Ravindra Bhat of Delhi High Court clearly stated in Bhagat Singh Vs. Chief Information Commissioner and Ors that, "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." The interpretation of these restrictions cannot be done by any Public authority by issuing directives, notes or manuals. This is a bad practice and the University is directed to correct its manual.

The PIOs contention in his written submissions also mentions that the appeal is not maintainable. His contention that the third parties must be given an opportunity to present their objections before the Information Commission as per Section 19 (4) is correct and hence the Information Commission has given an opportunity to the third parties to present their objections.

There is no merit in the PIOs objection to giving details of the selection committee and process to the appellant.

The PIO and the third parties have claimed exemption under Section 8 (1) (j) for information relating to the selected candidates.

We will now examine this contention.

Under Section 8 (1) (j) information which has been exempted is defined as:

“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:”

To qualify for this exemption the information must satisfy the following criteria:

1. It must be personal information.

Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective ‘personal’ to an attribute which applies to an individual and not to an Institution or a Corporate. From this it flows that ‘personal’ cannot be related to Institutions, organisations or corporates. (Hence we could state that Section 8 (1) (j) cannot be applied when the information concerns institutions, organisations or corporates.).

The phrase ‘disclosure of which has no relationship to any public activity or interest’ must be interpreted means the information must have some relationship to a Public activity.

Various Public authorities in performing their functions routinely ask for ‘personal’ information from Citizens, and this is clearly a public activity. When a person applies for

a job, or gives information about himself to a Public authority as an employee, or asks for a permission, licence or authorisation, all these are public activities.

We can also look at this from another aspect. The State has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade on the privacy of a Citizen. In those circumstances special provisos of the law apply, always with certain safeguards. Therefore it can be argued that where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly in all Countries uniformly. However, the concept of 'privacy' is related to the society and different societies would look at these differently. India has not codified this right so far, hence in balancing the Right to Information of Citizens and the individual's Right to Privacy the Citizen's Right to Information would be given greater weightage.

Therefore we can accept that disclosure of information which is routinely collected by the Public authority and routinely provided by individuals, would not be an invasion on the privacy of an individual and there will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone-tapping.

The information provided by the third parties was provided by them to the Public authority for getting selected for certain positions, which clearly is a Public activity.

The Commission does not find any merit in their arguments that disclosure of their experience or educational qualifications

would constitute an invasion on their privacy.

The only personal information disclosure of which could qualify as an invasion on privacy could be their addresses and telephone numbers.

The Appeal is allowed.

The PIO will blank out the telephone numbers and addresses of the selected candidates severing them as per the provision of Section 10 (1), and provide all the other information sought by the appellant, on queries 1 to 12.

This information will be provided to the appellant before 10 April 2009 free of cost.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Shailesh Gandhi

Information Commissioner

20 March 2009

(In any correspondence on this decision, mentioned the complete decision number.)

(RM)

□ □ □

Annexure 20.2

Mr. Syed Izhar-ul Hasan Vs. Mr. Raj Pal Singh

CENTRAL INFORMATION COMMISSION

Room No. 415, 4th Floor,

Block IV, Old JNU Campus,

New Delhi -110 067.

Tel: + 91 11 26161796

Decision No. CIC /WB/C/2008/00443/SG/2926

Appeal No. CIC /WB/C/2008/00443/SG

Relevant Facts emerging from the Appeal

Appellant : Mr. Syed Izhar-ul Hasan,

F-37, Abul Fazal Enclave Part-I,

Jamia Nagar, Okla,

New Delhi-110025.

Respondent : Mr. Raj Pal Singh

Addl. Dy. Commissioner & PIO,

Municipal Corporation of Delhi,

Engg. Department (HQ),

Town Hall, Delhi-110006.

RTI application filed on : 29/10/2007

PIO replied : 11/04/2008

First appeal filed on : not mentioned.

First Appellate Authority order : not mentioned.

Second Appeal filed on :

10/05/2008

The appellant had asked in RTI application regarding moveable and non-moveable properties details declared of Mr. Syed Nasirul Hassan R/o 337-C,/59, Batla House, Okhla, New Delhi-25 to MCD and copy of the Service Book.

The PIO replied.

Being a third party case the information cannot be provided under section 11(1) of the RTI Act, 2005.

The First Appellate Authority ordered.

Not replied.

Relevant Facts emerging during Hearing on 25 March:

The following were present

Appellant: Mr. Syed Izhar-ul Hasan

Respondent: Mr. Rajpal Singh PIO

The PIO argues that he has refused information since it relates to third party and disclosing the information would be an invasion on the privacy of the individual.

The appellant argues that Mr. Syed Nasirul Hassan has been charged with corruption cases on the charge of possessing Disproportionate assets. He is continuing in service and the CBI had raided his house on 22 November 2001. Hence there is a large public interest in disclosing this information.

The PIO states the Central Information Commission in its decision IC(A)/CIC/2006 had upheld the contention that annual immovable property returns of government servants are exempt under Section 8(1)(j) of the RTI act.

The Commission needs to give the third party Mr. Syed Nasirul Hassan an opportunity to give his objections to releasing the

information before taking a decision in the matter. The Commission would also like a written report from Director of Vigilance MCD on the status of the cases against Mr. Syed Nasirul Hassan. The Director of Vigilance and third party Mr. Syed Nasirul Hasan will present themselves before the Commission for a hearing on this matter on 22 April at 5.00pm The PIO and the appellant are also directed to be present to give their arguments. Mr. Rajpal Singh will inform the Director of Vigilance and third party Mr. Syed Nasirul Hasan to present themselves for the hearing.

Matter adjourned to 22 April 2009 at 5.00pm

Relevant facts emerging during Hearing on 22 April 2009

The following were present

Appellant: Mr. Syed Izhar-ul Hasan

Respondent: Mr. U. B.Tripathi Director,Vigilance Dept.

Mr. Jugal Kishore head clerk, Eng, Dept. HQ

Third party: Mr. S. N. Hassan

The Director, Vigilance Mr. U.B. Tripathi has given a list of 6 departmental cases relating to unauthorized construction and one Police case relating to causing injury during demolition of a

Building against Mr. S.N.Hassan. The cases are upto seven years old and the enquiries continue.

The third party Mr. S. N. Hassan has given written submissions claiming that the information should not be given since it would be an intrusion on his privacy. He objects to the information being given and alleges that the motives of the appellant are not good. He also shows proof that the appellant is running two societies which have not been registered with the registrar of Societies. The appellant’s visiting card

claims that the societies are registered.

Order reserved during hearing.

The third party Mr. S.N.Hassan again gave written submissions on 24/4/2009 stating that the appellant's motives are not good and also making allegations about him. He has again made plea that information about him is protected by Section 8 (1) (j).

Decision announced on 24/4/2009:

The Commission is not taking any cognizance of the charges leveled by the appellant and the third party against each other, since they have no relevance to the matter before it.

The Commission is guided by Section 3 of the Act which elegantly and with a great economy of words states, 'Subject to the provisions of this Act, all citizens shall have the right to information.' Thus the only restriction to the Sovereign Citizen's Right to Information is the exemptions in the Act.

The Commission recognizes that its job is to decide matters as per the RTI act. Section 6 (2) of the Act categorically states: "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." Thus no Public authority or Commission has any authority to look at the antecedents or motives of an applicant.

This Commission is conscious of the fact that it has been established under the RTI Act 2005 and being an adjudicating body under the Act, it cannot take upon itself the role of the legislature and import any exemptions hitherto not provided. The Commission cannot of its own impose exemptions and substitute their own views for those of Parliament. The Act leaves no such liberty with the adjudicating authorities to read law beyond what it is stated explicitly. There is

absolutely no ambiguity in the Act and tinkering with it in the name of larger public interest is beyond the scope of the adjudicating authorities. Creating new exemptions by the adjudicating authorities will go against the spirit of the Act. The exemptions have to construed strictly in accordance with the objectives of the Act.

The Commission can therefore allow denial of information only based on the exemptions listed under Section 8 (1) of the act. The third party and the PIO have claimed that the information should not be disclosed since it is exempted from disclosure under Section 8 (1) (j).

Under Section 8 (1) (j) information which has been exempted is defined as:

"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:"

To qualify for this exemption the information must satisfy the following criteria:

1. It must be personal information.

Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an Institution or a Corporate. From this it flows that 'personal' cannot be related to Institutions, organisations or corporates. (Hence we could state that Section 8 (1) (j) cannot be applied when the information concerns institutions, organisations or corporates.).

The phrase ‘disclosure of which has no relationship to any public activity or interest’ means that the information must have some relationship to a Public activity.

Various Public authorities in performing their functions routinely ask for ‘personal’ information from Citizens, and this is clearly a public activity. When a person applies for a job, or gives information about himself to a Public authority as an employee, or asks for a permission, licence or authorisation, all these are public activities. The information sought in this case by the appellant has certainly been obtained in the pursuit of a public activity.

We can also look at this from another aspect. The State has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade on the privacy of a Citizen. In those circumstances special provisos of the law apply, always with certain safeguards. Therefore it can be argued that where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly in all Countries uniformly. However, the concept of ‘privacy’ is a cultural notion, related to the society and different societies’ would look at these differently. India has not codified this right so far, hence in balancing the Right to Information of Citizens and the individual’s Right to Privacy the Citizen’s Right to Information would be given greater weightage.

Therefore we can state that disclosure of information such as assets of a Public servant, -which is routinely collected by the Public authority and routinely provided by the Public servants,- cannot be construed as an invasion on the privacy of an individual. There will only be a few exceptions to this

rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone-tapping. Any other exceptions would have to be specifically justified.

Thus the information sought by the appellant in this case is not covered by the exemption of Section 8 (1) (j), and therefore the information would have to be provided.

The appeal is allowed.

The PIO will provide the information to the appellant before 5 May 2009.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Shailesh Gandhi

Information Commissioner

24 April 2009

□ □ □

Annexure 20.3

Mr. R.C. Jain vs Delhi Jal Board on 4 May, 2009

CENTRAL INFORMATION COMMISSION

Club Building, Old JNU Campus,

Opposite Ber Sarai,

New Delhi – 110066

Tel: +91 11 26161796

Decision No. CIC/SG/A/2009/000401/3062

Appeal No. CIC/SG/A/2009/000401

Relevant facts emerging from the Appeal:

Appellant : Mr. R.C. Jain,

R/o WZ-596, V.P.O.

Palam, New Delhi-110045.

Respondent :
PIO,

Delhi Jal Board,

Office of the Secretary, RTI Cell,

Varunalaya Phase-II, Karol Bagh,

New Delhi.

RTI application filed on : 28/08/2008

PIO replied : 01/10/2008

First Appeal filed on :
05/10/2008

First Appellate Authority order : not replied

Second Appeal filed on : 02/02/2009

The appellant had asked in RTI application for inspection of the files of Sh. Prem Chand Jain R/o WZ-603 A, Palam Village who is having two water connection with DJB. Also please allow me to have same documents (Photocopies thereof).

Please also advise the basis on which the above connection have been permitted by DJB to him. i.e. the property documents related to it, when the connection was allowed originally.

The PIO replied.

Desired information relates to 3rd party. A notice was served by Z.R.O. (SW)-I to Sh. Prem Chand Jain to give NOC for giving / sharing the information under RTI.

Shri Prem Chand Jain has objected to give information to any other person.

Hence desired information cannot be provided.

First Appellate Authority Ordered:

Not replied.

Relevant facts emerging during hearing on 28 April 2009:

The following were present.

Appellant: Mr. R.C. Jain

Respondent: Dr. Bipin Bihari on behalf of Mr. Santosh D. Vaidya PIO

Third party : Mr. Narinder Kumar Jain son of Mr. P.C. Jain

The third party states that the appellant is asking personal information about them from various Government organizations and this is misuse of RTI. The appellant also has Court cases

and wants to use the information in the Court cases. The Third party objects to giving the information since it would be an intrusion on his privacy, and hence the information is exempt under Section 8(1)(j). The third party also states that the appellant is seeking a lot of information about him under RTI.

The respondent states that the deemed PIO sought the NOC from the third party who objected to giving the information on the grounds that it was an invasion of his privacy.

The order is reserved during Hearing

Order pronounced on 4 May 2009:

Section 11 of the RTI act, which is the basis on which the information is sought to denied to the appellant in the present case lays down:

'11. (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 out weighs 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.'

It is clearly stated at Section 11 (1) that 'submission of third party shall be kept in view while taking a decision about disclosure of information. Section 11 does not give a third party an unrestrained veto to refuse disclosing information. It only gives the third party an opportunity to voice its objections to disclosing information. The PIO will keep these in mind and denial of information can only be on the basis of exemption under Section 8 (1) of the RTI act.

The Commission will first deal with the contentions of the third party:

Disclosing it would be an intrusion on his privacy.

The third party is invoking the protection of Section 8 (1) (j) of the RTI act.

Under Section 8 (1) (j) information which has been exempted is defined as:

“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:”

To qualify for this exemption the information must satisfy the following criteria:

1. It must be personal information.

Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective ‘personal’ to an attribute which applies to an individual and not to an Institution or a Corporate. From this it flows that ‘personal’ cannot be related to Institutions, organizations or corporates. (Hence we could state that Section 8(1)(j) cannot be applied when the information concerns institutions, organizations or corporates.).

The phrase ‘disclosure of which has no relationship to any public activity or interest’ must be interpreted means that the information must have some relationship to a Public activity.

Various Public authorities in performing their functions routinely ask for ‘personal’ information from Citizens, and this is clearly a public activity. When a person applies for a job, or gives information about himself to a Public authority as an employee, or asks for a permission, license or

authorization, all these are public activities.

We can also look at this from another aspect. The State has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade on the privacy of a Citizen. In those circumstances special provisos of the law apply, always with certain safeguards. Therefore it can be argued that where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly in all Countries uniformly. However, the concept of 'privacy' is related to the society and different societies' would look at these differently. India has not codified this right so far, hence in balancing the Right to Information of Citizens and the individual's Right to Privacy the Citizen's Right to Information would be given greater weightage.

Therefore we can accept that disclosure of information which is routinely collected by the Public authority and routinely provided by individuals, would not be an invasion on the privacy of an individual and there will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone-tapping.

1. Third party has the right to refuse to divulge with information relating to him, and unless a large Public interest can be established, the information will not be disclosed.
2. No legal provision has been cited.
3. The third parties' contention that there are Court cases with appellant is not relevant to the appellant's demand for information.

Under this Act, providing information is the rule and denial an exception. Any attempt to constrict or deny information to the Sovereign Citizen of India without the explicit sanction of the law will be going against the rule of law. The Citizen needs to give no reasons nor are his credentials to be checked for giving the information. If the third party objects to giving the information, the Public Information Officer must take his objections and see if any of the exemption clauses of Section 8 (1) apply. If the any of the exemption clauses apply, the PIO is then obliged to see if there is a larger Public interest in disclosure. If none of the exemption clauses apply, information has to be given.

The third party's objections made before the Commission about the exemptions of Section 8 (1) (j) are disallowed. Hence the information would have to be given.

Decision:

The Appeal is allowed.

The PIO will give the information to the appellant before 15 May 2009.

Notice of this decision be given free of cost to the parties.

Shailesh Gandhi

Information Commissioner

4 May 2009

(In any case correspondence on this decision, mention the complete decision number.)

□ □ □

21. **Draft of Appeal if PIO denies information claiming it is**

third party information or denying on account of Section 11 of the RTI Act

Or saying he is denying information on account of Section 11

Grounds for appeal:

The exemptions for providing the information are only in Section 8 and 9 as mentioned explicitly in Section 7(1). The wording of this provision does not contemplate any Right to Information application being rejected on the grounds of Section 11.

Section 11 is a procedure to allow an affected third party to voice his objections to releasing information which might cause harm to his interests.

The PIO is expected to follow the procedure of section 11 when he “intends to disclose any information or record”. This means that the information exists, and PIO has concluded that the information is not exempt as per the provisions of the RTI Act. If the PIO has concluded that the third-party information is exempt as per Section 8 or 9, he must reject the application and inform the applicant accordingly.

If the PIO does not think it is exempt but the information relates to or has been supplied by a third party and has been treated as confidential by that third party the PIO must inform the third party within five days that he ‘intends to disclose the information or record, or part thereof,’.

Section 11(1) categorically states that ‘submission of third party shall be kept in view while taking a decision about disclosure of information’. Thus, the procedure of Section 11 comes into effect when the information exists and the PIO’s view is that is not exempt, and the third party has treated it as confidential.

If information ‘relates to or has been supplied by a third party and has been treated as confidential by that third party’ the PIO must inform the third party within five days that he ‘intends to disclose the information or record, or part thereof,’. It is clearly stated in section 11 (1) that ‘submission of third party shall be kept in view while taking a decision about disclosure of information’. Thus, the procedure of Section 11 comes into effect when the information exists and the PIO’s view is that is not exempt, and the third party has treated it as confidential.

The PIO must send a letter to the third party within 5 days of receipt of the RTI application stating that he ‘intends to disclose’ the information. The PIO can only intend to disclose information if he believes it is not exempt. He must give the third party an opportunity to voice its objections about disclosing information. If the third-party objects to disclosure of the information, the PIO will keep this in mind and decide whether the third party’s objections are justified by the exemptions under Sections 8 or 9. If he is not convinced that the information is covered by any of the exemptions of Sections 8 or 9, he will inform the third party accordingly. If he is convinced he will deny the information to the applicant quoting the relevant section and giving reasons how this applies. The Act in consonance with Section 8 (2) again reiterates that if a larger public interest in disclosure is established, the information may be given if it outweighs the likely harm. However, the larger public interest override has one exception.

If a third-party object and the PIO conclude that the information is covered by Section 8(1) (d) (trade or commercial secrets) which could harm the competitive interest of the third party, the information shall not be given, even if a larger public interest is established. This is the only exception which has been carved out for a prior law. In the case disclosure of trade or commercial secrets might harm the

competitive position the RTI Act does not override the earlier law. By implication and specifically under Section 22, it has been clearly spelt out that this Act shall have effect notwithstanding anything inconsistent with it in any other law.

When the PIO puts in motion the third-party reference, he is of a view that the information is not exempt and is giving the chance to the third party to voice any objections which could be based on the exemptions under the Act. Only if the third party's objection is in line with one of the exemptions under Section 8 or Section 9, the PIO will again examine the issue. If he is convinced that an exemption applies, he must change his earlier position to disclose and deny the information claiming exemption under the relevant Subsection of Section 8 or 9. It must be stressed that the issue of a larger public interest needs to be invoked only if the exemption is established. Otherwise, no public interest in disclosure needs to be established. It is also evident that if there is no response from the third party, the information has to be disclosed, since the PIO has concluded that the information is not exempt.

It is my submission that all personal information is not exempt from disclosure by law, hence there is no reason to establish a larger public interest. This would be necessary only when the information is exempt.

The denial of information is not in consonance with the law and hence is an error.

[Applicant to mention one of the following after the above paragraph:

1. I would like to attend the hearing; OR
2. I would like to attend the hearing by video conferencing; OR
3. I do not wish to come for a hearing and request you to

pass an appropriate order based on my written submission.]

Relief Sought:

Please direct the PIO to send the information within 7 days, as the denial is not as per law. Kindly direct him to send the information free of charge as mandated under Section 7(6) since the information has not been provided within the mandated period of 30 days.

If, however you disagree with my contentions please mention in your order the point wise reasons as per the law as to how you how you disagree with the grounds mentioned above.

□ □ □

Annexure 21.1

CENTRAL INFORMATION COMMISSION

Club Building, Old JNU Campus,

Opposite Ber Sarai,

New Delhi – 110066

Tel: +91 11 26161796

Decision No. CIC/SG/A/2009/000401/3062

Appeal No. CIC/SG/A/2009/000401

Relevant facts emerging from the Appeal:

Appellant
: Mr. R.C. Jain,

R/o WZ-596, V.P.O.

Palam, New Delhi-110045.

Respondent :
PIO,

Delhi Jal Board,

Office of the Secretary, RTI Cell,

Varunalaya Phase-II, Karol Bagh,

New Delhi.

RTI application filed on :
28/08/2008

PIO replied
: 01/10/2008

First Appeal filed on :
05/10/2008

First Appellate Authority order : not replied

Second Appeal filed on :
02/02/2009

The appellant had asked in RTI application for inspection of the files of Sh. Prem Chand Jain R/o WZ-603 A, Palam Village who is having two water connection with DJB. Also please allow me to have same documents (Photocopies thereof).

Please also advise the basis on which the above connection have been permitted by DJB to him. i.e. the property documents related to it, when the connection was allowed originally.

The PIO replied.

Desired information relates to 3rd party. A notice was served by Z.R.O. (SW)-I to Sh. Prem Chand Jain to give NOC for giving / sharing the information under RTI.

Shri Prem Chand Jain has objected to give information to any other person.

Hence desired information cannot be provided.

First Appellate Authority Ordered:

Not replied.

Relevant facts emerging during hearing on 28 April 2009:

The following were present.

Appellant: Mr. R.C. Jain

Respondent: Dr. Bipin Bihari on behalf of Mr. Santosh D. Vaidya PIO

Third party : Mr. Narinder Kumar Jain son of Mr. P.C. Jain

The third party states that the appellant is asking personal information about them from various Government organizations and this is misuse of RTI. The appellant also has Court cases and wants to use the information in the Court cases. The Third party objects to giving the information since it would be an intrusion on his privacy, and hence the information is exempt under Section 8(1)(j). The third party also states that the appellant is seeking a lot of information about him under RTI.

The respondent states that the deemed PIO sought the NOC from the third party who objected to giving the information on the grounds that it was an invasion of his privacy.

The order is reserved during Hearing

Order pronounced on 4 May 2009:

Section 11 of the RTI act, which is the basis on which the information is sought to denied to the appellant in the present case lays down:

'11. (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 out weighs 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.'

It is clearly stated at Section 11 (1) that 'submission of third party shall be kept in view while taking a decision about disclosure of information. Section 11 does not give a third party an unrestrained veto to refuse disclosing information. It only gives the third party an opportunity to voice its objections to disclosing information. The PIO will keep these in mind and denial of information can only be on the basis of exemption under Section 8 (1) of the RTI act.

The Commission will first deal with the contentions of the third party:

Disclosing it would be an intrusion on his privacy.

The third party is invoking the protection of Section 8 (1) (j) of the RTI act.

Under Section 8 (1) (j) information which has been exempted is defined as:

"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:”

To qualify for this exemption the information must satisfy the following criteria:

1. It must be personal information.

Words in a law should normally be given the meanings given in common language. In common language we would ascribe the adjective ‘personal’ to an attribute which applies to an individual and not to an Institution or a Corporate. From this it flows that ‘personal’ cannot be related to Institutions, organizations or corporates. (Hence we could state that Section 8(1)(j) cannot be applied when the information concerns institutions, organizations or corporates.).

The phrase ‘disclosure of which has no relationship to any public activity or interest’ must be interpreted means that the information must have some relationship to a Public activity.

Various Public authorities in performing their functions routinely ask for ‘personal’ information from Citizens, and this is clearly a public activity. When a person applies for a job, or gives information about himself to a Public authority as an employee, or asks for a permission, license or authorization, all these are public activities.

We can also look at this from another aspect. The State has no right to invade the privacy of an individual. There are some extraordinary situations where the State may be allowed to invade on the privacy of a Citizen. In those circumstances special provisos of the law apply, always with certain safeguards. Therefore it can be argued that where the State routinely obtains information from Citizens, this information is in relationship to a public activity and will not be an intrusion on privacy.

Certain human rights such as liberty, freedom of expression or right to life are universal and therefore would apply uniformly in all Countries uniformly. However, the concept of 'privacy' is related to the society and different societies' would look at these differently. India has not codified this right so far, hence in balancing the Right to Information of Citizens and the individual's Right to Privacy the Citizen's Right to Information would be given greater weightage.

Therefore we can accept that disclosure of information which is routinely collected by the Public authority and routinely provided by individuals, would not be an invasion on the privacy of an individual and there will only be a few exceptions to this rule which might relate to information which is obtained by a Public authority while using extraordinary powers such as in the case of a raid or phone-tapping.

1. Third party has the right to refuse to divulge with information relating to him, and unless a large Public interest can be established, the information will not be disclosed.
2. No legal provision has been cited.
3. The third parties' contention that there are Court cases with appellant is not relevant to the appellant's demand for information.

Under this Act, providing information is the rule and denial an exception. Any attempt to constrict or deny information to the Sovereign Citizen of India without the explicit sanction of the law will be going against the rule of law. The Citizen needs to give no reasons nor are his credentials to be checked for giving the information. If the third party objects to giving the information, the Public Information Officer must take his objections and see if any of the exemption clauses of Section 8 (1) apply. If the any of the exemption clauses apply, the PIO is then obliged to see if there is a larger Public interest in disclosure. If none of the exemption

clauses apply, information has to be given.

The third party’s objections made before the Commission about the exemptions of Section 8 (1) (j) are disallowed. Hence the information would have to be given.

Decision:

The Appeal is allowed.

The PIO will give the information to the appellant before 15 May 2009.

Notice of this decision be given free of cost to the parties.

Shailesh Gandhi

Information Commissioner

4 May 2009

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Analysis of data – Law Commision Report

SLUMFREE MUMBAI

Right to housing has been declared to be a basic right for all people, and yet,-particularly in the large urban centers,- it has been found almost impossible to implement this right meaningfully. I am reasonably familiar with the situation in Mumbai as also the frauds masquerading as solutions towards this problem. I shall attempt here to offer a tentative framework which could perhaps act as a starting point for this exercise. I know about Mumbai, and am therefore focusing on a solution for this City, but this could have some pointers to solutions in other urban centers as well. There will be flaws in the arguments advanced here; but I would urge the reader to think of changes which are necessary to remove the weaknesses in the proposal offered here. Perhaps we can use this to begin a journey towards finding a viable solution.

Let us start with an attempt to define the issue. It is evident that a significant inflow of people will keep coming to Mumbai and other urban centers, until we address the issue of providing livelihoods to people in the rural areas. In that case, we have to assume that cut-off dates, or any solution to restrict people coming to cities is not an option; these would be illegal and also impossible to implement. There have been various attempts to remove the problem of slums in Mumbai since 1971, but the only consistent result they have obtained

is an exponential increase in the slums. The conditions in which the slum dwellers live are dehumanizing, and these become big sources of support for crimes and corruption. The Slum Rehabilitation Scheme was brought in Maharashtra by the Shiv Sena –BJP in 1997 and basically, it sought to depend on the milk of human kindness of private builders to ensure low cost houses for the poor. To implement the scheme, a body called the Slum Redevelopment Authority (SRA) was set up with very vast powers. SRA was given the powers to declare any area as a Slum, and a Slum Redevelopment Scheme could be started there with the concurrence of 70% of the slum dwellers. SRA can take over any land and has virtually been given unchecked powers to deliver this laudable social objective. Traditionally, it has been looked after by the Chief Minister. The scheme is usually initiated by a builder. He has to show the concurrence of 70% of the slum dwellers residing in a location. The concept was that all slum dwellers who were staying in Mumbai before 1995, would be given free housing of 225 square feet (equal to 21 Sq.Mtr.) and an equivalent area could be built and sold by the builder to offset the construction of the free houses to be given to slum dwellers. If the land belonged to the Government it was given free, and if it belonged to a private person, some compensation would be given to him. The private builders do not have any significant milk of human kindness and are more often driven by vile greed. Hence the scheme has failed to make any significant contribution to the problem of housing for the poor. The scheme suffered from a few fatal flaws. First it promised a free house to people based on an arbitrary date on which they were in the City, which evidently lead to a mad scramble to become eligible for the free house. These tenements are worth 20 lacs to 2 crores at present prices, depending on the area![1] In any urban city, property prices are basically a function of land prices and vary largely depending on the area. On the other hand, construction cost variation is not really area-linked. For low cost housing the construction cost is likely to be around 20000 rupees per sq.mtr. . Thus the

equation works in a manner that the developer invests in the construction cost of two tenements-one to be given free for the slum dweller,-and the other which he is free to sell. He invests about 8.4 lacs[2] and could sell the property which is his share for 21 lacs to 210 lacs! It is obvious that the main contributor for prices for houses is the land price. The Slum redevelopment policy does not factor the question of land prices at all. Many other policies,-the market redevelopment policy, the Caretaker Policy and so on,- are designed without any reference to the hugely different land prices. Thus they are designed for arbitrariness and corruption. These invite the greed of human beings. When property prices were much lower in the first 15 years from the policy, the scheme did not attract too many takers. As the property prices have skyrocketed in the last few years, SRA has attracted all the greedy criminals to adopt a variety of ways to exploit this. If a slum dweller who came to Mumbai say in 1996 (this year keeps getting pushed forward) can change his data to prove he was in Mumbai a year earlier, he will be entitled to a free house worth 21 to 210 lacs! And what about the Citizen who came in 2001? He is expected to live in Mumbai in a slum, and so their tribe will grow. Some people have suggested that Indians who are not 'Mumbaikars' must be banned from staying in Mumbai. This is against the Constitution and is neither feasible nor desirable. It is also an irony that the same people who suggest such hair-brained policies, will welcome foreigners to come to Mumbai! Such approaches cannot work. The Courts in the meanwhile pronounce loftily that shelter is a basic right for everybody. At other times, they authorize demolition of slums! Overall the Courts are not solving any problems, only complicating them. With the present SRA schemes, the builders, politicians, officials and mafia have been able to earn fantastic amounts if they can increase the number of fake slum dwellers, take over Public lands by having even one hut there, coercing slum dwellers into acquiescing in their scheme and so on. Well known celebrities too have had their names registered as slum dwellers! By

introducing fake names, appropriating Public lands where there were no slums, canceling the names of the actual slum dwellers and so on, a great bonus of thousands of crores have been earned. Criminal complaints have been filed for forgery, intimidation, criminal assault, bribery, appropriation of Public lands. These cover almost all the sections of the Indian Penal Code with the Anti-Corruption Bureau, and various police stations across Mumbai. The State Government has officially taken a position that no Police investigations are taking place as required under the Criminal procedure Code since it would affect the morale of its officers! The State is openly implementing the Protection of Corruption Act.

Having looked at the present scenario, is there a solution which can address the right of people to get a house in Mumbai or such other Urban centers? I believe it is possible to achieve this and am suggesting a possible solution. Perhaps it could be the starting point for a rational search for a resolution. First let us look at the flaws in the present scheme. Any process, which seeks to confer ownership of property worth 21 lacs to 210 lacs gratis will give rise to dishonesty amongst Citizens and will be seen by those who do not get this largesse as unfair. It will create the desire to get this by any means. Since it has no rational basis for the profit of the developers, it tempts them to finding ways of illegally increasing their profits to absurd levels. This combination of greed of developers and Citizens is an ideal and fertile ground for spread of lawlessness and corruption. This in turn leads to a vested interest in this arrangement and its continuance amongst the Public servants, politicians and the mafia. We have arrived at a good recipe for designing corruption, and the attendant illegal activities. Let us first look at what I feel are the fundamental fatal flaws in the assumptions of the present Slum Rehabilitation Schemes. Firstly while we recognize the right of a Citizen to have shelter, it does not imply that this means the right to own a house for free. Secondly, as designed at present it is left to

private builders to executet, with no rational basis for the formula of this supposedly ‘one for one free’ scheme. Land as we all know has varying values depending on location, whereas construction cost variables are much lower. Also, any scheme which looks at arbitrarily conferring special rights on those who came before a particular date, is refusing to look at the issue of migration from rural to urban areas being a fact of life. Another aspect is that it discriminates against many young middle class persons, who chose not to stay in a slum, and work for most part of their lives to pay for a home.

Starting from identifying these issues, I am making the following assumptions to attempt developing a solutions:

1. We need to ensure shelter, not ownership of property.
2. Citizens in urban areas have some capability of paying and must be made to pay

for shelter. The fact is most families in slums are presently paying over 1000 rupees each month to the slumlords for their meager water and electricity.

3. In Mumbai,- and other urban centers,- poor will migrate to the cities. Hence any solution will have to think of those who come in future.
4. We need to build enough shelters so that a scarcity does not prevail.

My basic assumption is that if we provide shelters for about 1 crore people in Mumbai in the next five years, there would be no scarcity. If we build 20 lac tenements of an area of 23 sq. mtrs and 1500 dormitories of 1500 sq. mtrs. with a capacity to house 500 people each, we could meet the housing requirements for the next five years. This would take care of the needs for shelter for about 1.01 crore people. Scarcity of shelter could become history. If the average tenement houses 5 people this would mean a capability of housing 100 lac people in

tenements and 7.5 lac people in dormitories. Those who wish to stay in tenements could be asked to give Rs. 5000 as a refundable deposit and a lease rental of Rs. 1000 could be charged monthly, with an escalation of Rs. 100 each year for a period of 10 years. At the end of 10 years, people must be told that the lease conditions would be renegotiated. Some would hopefully move out into owned flats. It should be possible to maintain these tenements at Rs.200 per month which would leave a tidy sum which could be used to build more facilities ever year.

For dormitories people could come every evening and for 10 rupees a night, be given a covered shelter to sleep with a bed, toilets and a facility for a bath. At a cost of Rs.10 per person, it would be possible to pay for the maintenance cost of the dormitories A concept of this nature of providing shelters for the homeless exists in Countries like the US as well. Who should undertake this? The State must undertake this, and that is its job. It could get the construction done on contract basis, give the shelters to Citizens, maintain and collect the lease rents. So far, this is sounding like expressions of fond desires. Please read on with some patience. The total land area required for this would be 22.5 sq. kms.,- on an assumption of a FSI of 2.-spread over Mumbai. Presently according to most data slums are spread over a much larger area. The cost of construction,- assuming a reasonable Rs. 20000 per sq.mtr.,- will come to about 72375 crores. I am presenting this data in a tabular form below:

	Numbers	Total Builtup Area	People accommodated	Construction cost @ 20000 per sq. mtr. In crores
Tenements (21 sq.mts. each)	20 lacs	420 lac sq. mtrs.	100 lacs	84000

Dormitories (1500 sq. mtrs. Each)	1500 for 500 persons each.	22.5 lac sq. mtrs.	7.5 lacs	4500
Total		442.5 lac sq. mtrs.	107.5 lacs	88500 crores

At 2 FSI 482.5 lac sq.mtrs. would require 241.25 lac sq.mts. ie. 24.125 sq.kms. By most accounts the slums are spread over 10% of the 437 sq. kms. of Mumbai. This means that presently about 43 sq. kms. are already covered by slums. Thus the land is already available and occupied by slums. The projects could implemented in about half the present area where the slumdwellers are staying. Thus they could be close to the current dwellings. The dwellings could be given to people at a rent of Rs. 1000 per month and a deposit of Rs. 5000/-, for a ten year lease, with an increase in rent of Rs. 50 each year. The dormitories could be offered for Rs. 10 per day. One argument against this proposal is that Government cannot collect lease rentals. It can then be argued that Government is incapable of collecting taxes.

The State must undertake this project and get the construction done through contractors. So called Public-Private partnerships will only lead to a one-way transaction; the Public gives and the private developers take. The questions that naturally come to mind are:

1. Why will it not get hijacked by the affording class moving in?
2. Where will the money come from?

There are a large number of supposed low-cost houses which are used only by the rich, by combining the tenements. To the first question i think we need to look at designing the tenements in such a manner that they are for those who are

presently prepared to live in slums and are willing to forgo some aspirational needs. A private toilet is a strong aspiration for most home owners. The tenements built under such a scheme should have only common toilet blocks, be typically four storeyed-ground plus three and have no lifts. The tenements would be leased by Government, and no alterations of any kind should be permitted in the tenements. No painting or any change should be permitted and a coat of whitewash would be applied by the State every alternate year. Incidentally, the chawls in Mumbai have precisely these features, and have housed many people. I believe by refusing to allow all the aspirations of upward moving social classes, it would be possible to ensure it does not get hijacked by those who can afford to buy flats. There may also be other means of ensuring that the tenements cannot be combined. Refusal to confer ownership rights, and a strict adherence to laws,- which could even be specially framed to address the needs of such a scheme,- could make is possible to provide shelter in such abundance that nobody needs to be without shelter. Also, we need to enforce the conditions of lease very seriously, just as private owners of property do presently. We have the land, and it appears possible to provide for shelters for anyone who needs it in Mumbai. However, where will the money come from? I am suggesting one source which has been allowed to bleed Public revenue without any legal or moral justification.

Where is the money for this?

Using RTI i have obtained information from the City and Suburban Collectors that 650 acres of land in the island city and 620 acres in the suburbs have lessees whose leases have expired long back and they are being allowed to continue illegal occupation paying the original lease rents. The total

lease rent being paid by nearly 700 people occupying 1270 acres of land, without any legal right to occupy these Public lands is about 6 crores. If we get the right lease rent for our lands in Mumbai, we could get an additional 2750 crores. Since Maharashtra is over 700 times the size of Mumbai this figure is likely to be over 30000 crores for the whole State.. If we get our due revenue of even 20000 crores annually, we could execute the plan for housing one crore people. In the first 5 years we would need about 88500 crores, and our revenue could be about over 20,000 crores annually by getting our rightful share of revenue. The property belongs to us, and is presently in the hands of some lessees illegally, because of connivance and negligence of the Government. A few examples of these:

				Lease	Period	Expired
			Area	**Rent paid**	years	In
	Area	Name of lessee	Sq.mtrs.	**Rupees**		
	Colaba	**Sterling Investment Corporation**	2217	1	21	1959
	Mazgaon	**Wallace flour Mills**	29345	76.81	99	1992
	Mazagaon	Shapurji Palonji	25507	1644.54	99	2002
	Mazgaon	Shivdas Chapsi	10047	6.57	99	1972
	Byculla	Simplex Mills	7836	48.81	99	1983
	Malabar Hill	Prithvi Cotton Mills	1132	3.53	99	1986
	Dadar	**Bharati Cine Enterprises**	3470	546.54	50	1976
	Lower Parel	**National Rayon Corporation**	4427	327.21	21	1985
	Bandra	Gauri Khan & Shahrukh Khan	2446	2325	30	1981

	Bandra	Mrs. Gracy Martha Lopez	27330	1400	30	1981
	Juhu	Sun ‘N Sand Hotel	1036	1004.4	2	1970
		_				

I had filed a complaint with the Chief Secretary of Maharashtra in 2005. He argued that it was difficult for them to get favourable Court orders in these matters. I pointed out to him that the Government regularly acquires lands owned by Citizens even when Citizens do not wish to part with their lands, and hence the Government’s claim that they cannot acquire their own land back was untenable. The solution lies in Citizens across the spectrum putting pressure on the political establishments of all parties to get us our rightful dues and resolve the issue of housing and slums. It can be done, and could be a fantastic opportunity for all Citizens. This matter can unite all Citizens, and give us a solution to our housing problems and after a few years,- give us a stream of additional revenue to improve our infrastructure. Similar schemes could be put in place in the other cities of Mumbai.

In December 2012 the Government has offered to sell the lands to those whose leases have expired at an effective discount of around 90%! I have filed a PIL in 2013 in the Bombay High Court against this attitude of the Government to give away people’s lands. Instead of backing my plea to recover market rents and increase its revenue legitimately due to the citizens is opposing me!

This proposal appears to be a feasible if there is political will. If Citizens and civil society organizations pursue it with consistence, it can happen. We do not aspire to be a Shanghai,- but we can certainly become a humane Mumbai.

shailesh gandhi

Mera Bharat Mahaan..

Nahi Hai,

Per Yeh Dosh Mera Hai.

Note: 1 sq. mtr.= 10.7 sq.ft.

1 acre= 4087 sq. mtr.

[1] The value of a residential property of 21 sq.mtrs. in Mumbai will be in the range of 100000 to 1000000 per sq.mtr. ie. form 2.1 million to 21 million rupees for the flat.

[2] At a construction cost of Rs. 20,000 per sq.mtr.the construction cost of one tenement will be Rs. 4.2 lacs, thus for two tenements the cost would be Rs.8.4 lacs.

Satyendra Dubey

December 10, 2003

Satyendra Dubey was a 31-year-old IIT Kanpur civil engineering graduate working with the National Highways Authority of India and assigned to the prime minister’s pet project, the Golden Quadrilateral, to connect the four corners of India. He was posted at Koderma, Jharkhand.

On discovering rampant corruption and poor implementation of work in the section where he had been posted, Dubey wrote to the prime minister exposing the irregularities. In the letter, received by the prime minister's office on November 11, 2002, he had named some companies. Fearing retribution, he had requested that his name be kept secret.

But PMO officials circulated his letter along with details of his identity among the bureaucracy. The number of notings on the file bear witness to this (*The Indian Express*, November 30, 2003). While the file was making the rounds, not one official thought about the threat Dubey was being exposed to.

Why officials in the PMO did not heed Dubey's request for anonymity is not known. But just over a year later, on November 27, 2003, he was murdered in Gaya, Bihar.

This is a clear signal to everyone that honesty in India has only one result – failure. An honest citizen must be prepared to forfeit one's life.

Satyendra Dubey's IIT status is being talked about for two reasons:

- IITians will band together to generate support for one of their kin.
- National and international attention is attracted by this name.

When the weakest person is hurt, our voices should rise the highest; and IITians are not the weakest.

But the main issue is not about Dubey having been an IITian, and therefore having had the choice of a better job or country.

When a citizen files a complaint or brings some wrongdoing before the local police, he believes that the police will protect him. The minimum expectation of a citizen from the

State is of a reasonable level of safety and protection for his body and life. The State is expected to ensure this at all levels.

The single aspect that differentiates Dubey's case is the fact that the PMO gave out details of his identity in spite of a specific request to the contrary.

The office of the highest executive authority in the country not only failed to provide him security, it almost seems to have commissioned his murder.

It is nobody's case that it is the prime minister's act; however, all of us have a reasonable expectation that the prime minister would act against the erring officials in his office immediately.

Else, we can only expect a powerful criminal response at all other levels. We would then have to give up even a pretension to being a nation with enforceable laws and a Constitution.

We cannot be party to a State which expects a citizen to be a martyr if he wishes to counter dishonesty.

We can persuade the next generation to stay in India only if they feel they can live safely and honestly.

The angst against Satyendra's murder must ensure a quick change for a better India. He is a symbol of an urge for an honest and ethical India. He has done more than his share; we must carry his ideals forward; otherwise we fail India and ourselves.

The best tribute can be a Whistleblower's Act. Most people are badly hurt by the corruption in our country. This is the time for them, along with various bodies and associations, to get together and initiate a movement for a more honest society and good governance.

Shailesh Gandhi is chairman of the IIT Bombay Alumni

Association.

RBI

Cobrapost Exclusive

Public Money for Private Profits: How the Public Sector Banks Bankroll such Moribund Companies as IVRCL to Play Havoc with both on Public Life and Money

By Shailesh Gandhi

New Delhi: Recently, an under-construction flyover collapsed in Kolkata on March 31, 2016 killing 27 people and injuring 80. The din the collapse raised, with politicos shamelessly throwing muck at each other, overshadowed some dark truths about India's public sector banks. Undoubtedly, IVRCL, which was constructing the flyover, has to be blamed for the shoddy construction quality and resultant loss of lives, but the public sector banks are no less culpable of financing the death warrant of those who died in what one of its top functionaries declared to be an "Act of God". Only six months before the collapse, a consortium of 18 banks led by IDBI had bankrolled the debt-ridden company by buying a majority stake in the almost insolvent company to square off its huge debt of Rs. 10,000 crore with accumulated losses of Rs. 2,000 crore by the end of the second quarter of the fiscal year gone by. Instead of recovering the debt by attaching its assets, these banks had extended a much-needed lifeline to the moribund company in what is known as strategic debt restructuring (SDR) which the RBI permits but curiously does not monitor. The consortium of lending banks had, in fact, approved a corporate

debt restructuring (CDR) package of Rs 7,350 crore for the Hyderabad-based company in June 2014. The package included a restructuring of term loans, working capital loans and fresh financial assistance. However, the package could not revive the company and the consortium took the SDR route.

Banks raise money by soliciting deposits from the general public or using other instruments available to them and use this public money to fund various projects of the corporate or business entities after due diligence. If a borrower fails to repay the money, a bank's primary concern is to ensure its profitability and safeguard the interests of its depositors. Until 1994, this was the prevailing view of the banks and the Reserve Bank of India (RBI). RBI had by its circular DBOD No.BC/CIS/47/20.16.002/94 dated April 23, 1994 directed all banks to send a report on their defaulters, which it would share with all banks and financial institutions (FIs), with two objectives:

1. To alert banks and financial institutions (FIs) and to put them on guard against borrowers who have defaulted in their dues to lending institutions.
2. To make public the names of the borrowers who have defaulted and against whom recovery suits have been filed by banks/FIs.

However, with the liberalization and unshackling of India's economy, a paradigm shift occurred in this shaming-the-defaulter policy. It is well known that there exists a corrupt and powerful nexus of bureaucrats, bankers and politicians which always works in the interest of big corporate borrowers. Gradually but steadily, a case was made out that if large borrowers fail to repay their debt, the lending banks must make a business decision for the revival and sustainability of the business! This flawed idea was propagated as the nation was made to believe that governments or their institutions are not capable of taking such business decisions and it is incumbent upon lending banks to help revive their ailing

borrowers, and to enable the lending institutions to take this call, instruments such as CDR and SDR were put in place by the RBI to allow defaulting corporate borrowers to laugh all their way to the bank. This is exactly what was done in the case of IVRCL, and there many big corporate borrowers who have been extended this facility.

From past experience, every banker worth his salt knows that once a business becomes a non-performing asset (NPA), the chances of recovery are slim. Thus, in order to do proper accounting of bad debts, banks would write off the borrowed money, and interest thereof, in a period of three years. It is interesting to note that from 1993 to 2009, the NPA figures fluctuated between Rs. 39000 crore and Rs. 56000 crore. In August 2001, the RBI set up a CDR Cell. CDR is nothing but reorganization of a company's outstanding debt. Under this arrangement, a borrower company is allowed more time to repay the debt, and the interest rates are cut to a minimum so as to reduce the burden of debt on the company. It is presumed that this would help a company to increase its ability to meet its obligations and come out of the red. Some part or whole of the debt may be written off by creditors for equity in the company. While CDR proved to be a useful device for the corporate defaulters to bolster their losing businesses with infusion of fresh funds at much cheaper rates without fear of being declared defaulters and recovery suits filed against them, this also allowed banks to show their books healthy as such debts were no longer taken as NPAs but as CDR.

However, the premise that such an instrument would not only help bring ailing corporate houses out of the red but would also lead to recovery of debt has fallen flat on its face. For instance, while NPAs stand at a staggering Rs. 3.6 lakh crore, the total debt locked in the form of CDR stands at no less a staggering figure of Rs. 4 lakh crore, out of which only Rs. 0.6 lakh crore has been recovered by the lending banks. Given the experience so far, the instrument is unlikely to pay off.

The RBI, instead of taking tough remedial measures to recover public money, has chosen to bury its face in the sand like an ostrich, as it stopped asking banks to report their NPAs to it in 2014!

When in 2015 it was realized that despite CDR, NPAs had ballooned to over Rs. 3.5 lakh crore, RBI devised another strategy to help defaulting corporate borrowers evade punitive action. Now, banks could take recourse to the strategic debt restructuring scheme, wherein a consortium of lenders converts a part of their loan in an ailing company into equity, with the consortium owning at least 51 per cent stake. The SDR scheme provides banks significant relaxation from the RBI rules for 18 months. Loans restructured under the scheme are not treated as non-performing assets and banks have to make low provisions of 5 per cent in most cases. This again enables banks to report lower NPAs and higher profits for 18 months. By making banks majority owners and replacing the existing management, the scheme gives lenders the powers to turnaround the ailing company, make it financially viable and recover their dues by selling the firm to a new promoter.

Contrary to RBI’s expectations, SDR scheme has met the same fate as CDR. According to unconfirmed sources, the bad debt now locked in the form of SDR stands at more than Rs. 1 lakh crore and most of the losers are again the public sector banks. If we take into account Rs. 3.6 lakh crore of acknowledged NPAs together with Rs. 3.4 lakh crore in CDR and Rs. 1 lakh crore in SDR, the total outstanding bad debt adds up to Rs. 8 lakh crore, and public sector banks account for over 90 per cent. With a cumulative market cap of about Rs. 2.7 lakh crore, the bad debts of all the nationalized banks are over three times their worth.

In a landmark decision delivered on 16 December last year, the Supreme Court had ordered RBI to release information about its activities and the banks it is expected to regulate. The apex court had also upheld 11 orders of Central Information

Commissioner (10 of these were passed by the writer of this article) asking RBI to make information public with regard to investigations and audit reports of banks by RBI, warnings or advisory issued by RBI to banks, minutes of meetings of governing board and directors, top defaulters and grading of banks.

Rooting for transparency in its functioning and calling for more stringent measures to punish non-compliance, RBI Governor Raghuram Rajan said in his New Year message to his officers: "It has often been said that India is a weak state. Not only are we accused of not having the administrative capacity of ferreting out wrong doing, we do not punish the wrong-doer – unless he is small and weak. This belief feeds on itself. No one wants to go after the rich and well-connected wrong-doer, which means they get away with even more."

However, RBI has shown it does not care a fig about those words of transparency and accountability that its head had barely four months back pouted out, as it is refusing to share information with RTI requesters including this writer in clear violation of the Supreme Court order. It leaves no one in doubt on whose side the officialdom of the central bank stands.

(*Shailesh Gandhi is former Central Information Commissioner*)

Political party funding

There is a lot of talk about the funding of political parties and the cancer of black money in our elections. It has now become accepted that black money will always be present in our electoral system and the issue cannot be resolved. Should parties which do not win a single seat be eligible to an incometax exemption? Should parties which do not contest any election be given an incometax exemption? It is well known that many of these parties are only laundries of black money. There are over 1850 registered political parties in India and their tribe is growing. Only 56 out of these are recognized as registered national or state parties. Should all of these be given a subsidy in terms of an incometax exemption.

It is worthwhile looking at the basic concept of giving incometax exemption and the argument that worthwhile activities will only take place if they are given tax exemptions. Firstly, is it desirable and necessary that more and more political parties should come up and hence the tax break? For a diverse nation like India perhaps 100 or two hundred parties could be justified, but over 1800 shows that most of them are not serious political parties. Would the nation benefit by having more than a hundred or two hundred parties? It may be argued that it would mean suppressing freedom of expression. Will freedom of expression flourish only if tax subsidies are given? I would also argue that by and large incometax exemptions become havens for corruption and arbitrariness. This applies also to the exemptions and subsidies given to trusts and corporates. Most desirable activities will take place for cause or profit and really will not depend on the existence of tax exemptions. If there is a demand and a business opportunity, business will go into it and if the tax subsidy is not given it will still pursue it. Similarly if some people wish to propagate a thought or do charity they will go forward with or without tax subsidies.

Mazdoor Kisan Shakti Sangh has built a robust institution without any tax sops. If somebody really wishes to propagate a ideology it can be done without any tax exemptions. The state must take its revenue and undertake various measures for the welfare of all. The tax subsidy is actually a revenue loss from the poorest man in India, since the money belongs to him.

I would therefore submit that there should be no incometax exemption for all political parties. If however it is felt necessary that the poorest man must finance them, the tax exemption should be limited only to the recognized registered parties.

While on this topic, I would like to touch on a linked subject, viz. financing of the political parties and elections. It is known to everyone that the black money requirements of the political parties for running their organizations and fighting elections is a major factor in the thriving black economy of our nation. We have tried to restrict the amount of money in the election and are aware that by this hypocritical position we are all living in a collusive national lie. There will be a rare elected candidate who will have spent only the amount mandated by law. Even if an honest candidate does not wish to engage in a illegal black transaction, he gets sucked into this whirlpool.

Political parties need a certain amount of white money to show the bare minimum expenditure to run the party. This is currently obtained by some white money donations and the rest by showing cash donations of less than Rs.20000. There is a proposal to reduce this amount to Rs. 2000. This will serve little purpose since this would only result in ten times more fake entries being required to be made with fake names.

Is there a solution to all this? I believe the following measures could go some way:

1. Remove all expenditure limits on elections, or have a

much larger amount being permitted.

2. Remove all incometax exemptions for political parties. If their revenue is more than their expenditure they should pay incometax.
3. Insist that all donations to political parties or electoral candidates will only be digital or by cheque. The PAN number or Aadhar number of all donors must be taken. It would be easy to devise a standard software in which all donation entries should be made. If there are multiple entries either with a PAN number or with a Aadhar number, it would give the total amount paid by a PAN number or Aadhar number.
   The government is talking about going cashless and digital. Could they go digital and cashless in this ?

I believe a better India can be obtained by designing honesty into the system.

Shailesh Gandhi

Mumbai Mirror Open space

http://www.mumbaimirror.com/mumbai/cover-story/Fight-back/articleshow/50583453.cms

Our elected representatives in BMC have on 13 January passed what they call is an ‘adoption policy’ with respect to our Open Spaces. Many citizens heard about this proposal when the corporation’s committee had passed it. We realized that it would deplete our limited open spaces. We also realized that

this was a way to gift away our property to private parties. Some citizens got together and called up many corporators to persuade them to drop this policy. We explained that there was just no logical reason for this. Many agreed that such a policy was not in the interests of citizens and assured us that they would oppose it. Not a single corporator could offer any logical reason for this policy, or explain the public interest in it. The key aspects of this 'adoption policy' are as follows:

1. BMC will ask corporates, NGOs and other institutions to take up the open grounds,-our gardens, play grounds and recreation grounds,- and 'adopt' them. These offers would be evaluated and corporates would be given preference.
2. The selected institution would then sign an agreement with BMC for five years.
3. The corporate would maintain the ground and only be allowed to put a small board in the ground.

What is the problem with this? Every citizen is aware that possession of property is *de facto* ownership. Given our legal system it is nearly impossible to get anyone to vacate a property. In this case, private legal rights would be created. Earlier under such a professed policy where parties were asked to take 'care' of open spaces private clubs have been built. In certain cases they are inaccessible to citizens. There are many gardens and grounds which have been fenced off. Once a private party is given the responsibility of spending money on the maintenance and also given legal possession of the ground, no clauses in agreements are adequate to get the property back. Even after the period of agreement is over parties have continued to hold on to these grounds.

What are the reasons being offered for passing such a policy:

1. BMC does not have the funds.

Citizens: This is false. The funds required to maintain the 1000 acres of open spaces will be around 200 crores and BMC has a budget larger than this which it is unable to spend. We are also aware that our BMC has a total budget of around 33000 crores.

2. BMC cannot maintain and supervise them well.

Citizens: There is some truth in this. A very simple solution is to ask the same institutions to who would be interested to 'adopt' to audit and monitor these spaces. In that case no legal rights are created, nor is it put in the possession of the private party. If an institution wants to really do service and maintain these grounds it would happily do this if its intentions were not malafide.

When we explained this to many corporators many of them agreed with our contention. The parties in the opposition in BMC and some BJP and Shiv Sena members also agreed to safeguard our interests. In the house, they forgot our conversations and brazenly passed this policy. Citizens who had called the corporators have recorded the gist of their conversation with corporators at www.satyamevajayate.info . One conversation with a prominent BJP corporator has been reported thus: "First said that the policy is basically right and may need some tweaking. After i explained that a policy which created private rights and required private expenditure on open spaces would lead to free gifting away of open spaces, he asked for a solution. I suggested that BMC should retain all rights and maintain these through contracts and give the auditing, monitoring and supervisory authority to NGOs, corporate and other private bodies. He appreciated the suggestion and said he would represent this."

The President of the same party had said that he would get the State assembly to pass a law which would make it impossible for BMC to give such lands away. Our elected representatives have let us down, and passed this policy to deprive us. Today

many reporters have tried to get the elected leaders to explain the reasons but are not getting any answers.

If a poor man cannot pay for the upkeep of a single room which he owns, he will not give rights and possession to anyone else to maintain it. What is the reason for BMC to do what even a single poor man will not? The answer is evident. What remains with BMC remains with citizens.

Citizens must protest against this if they wish to defend their open spaces and lands. They can do the following:

1. Call up corporators and tell them to recall the policy.
2. Send letters to the BMC Commissioner and ask him to reject this policy. He has the right to do this.
3. Send letters to the Chief Minister.

If we keep quiet and do nothing our future generation may not have open spaces and would have lost their property as well. We need to act to stop this ‘Kidnapping Policy’ masquerading as a ‘adoption policy’.

Shailesh Gandhi

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Mumbai needs open spaces for our children to play and spend some leisure time; for senior citizens to take their walks and meet other friends. A large number of Mumbaikars are staying in extremely small sized dwellings and need these open spaces.

Digital Governance

Prime Minister Narendra Modi has announced his commitment for a Digital India, and demonstrated it by visiting Silicon Valley. I hope this happens soon, but there is smaller step which he can take within two years if he wishes.

All the government work is done on paper files. When a citizen goes to any office for some work, he is often told that the relevant file is unavailable. If he pays a bribe it becomes available. It is common knowledge that depending on the amount of the bribe in many offices a record in the file can be altered, replaced or lost. A significant percentage of corruption and inefficiency is a consequence of this method of keeping paper files. Many government offices create records which they cannot access after a few months! Most have computers which are usually used as electric typewriters. There is a fairly simple solution available. If all the work was done on computers and each day the default mode was that it would be displayed on the website, there could be a sea change in our governance. Only some information, which is thought to be exempt as per the RTI Act should not go on the website. If parliament proceedings can be telecast live, there is no reason why our executive cannot function in a transparent manner. Only with transparency can there be hope of accountability. If purchase orders of CWG ordering toilet paper rolls for Rs. 400 each had to be displayed on the website, such orders may not have been given. The fact that the information on decisions will be available transparently will itself curb some of the arbitrariness and corruption. Unfortunately, most powerful people subscribe to the idea of transparency for others and are reluctant to practice it themselves. The corrupt obviously dislike transparency, whereas the honest have the arrogance of believing they know best and informing citizens and exposing their actions hinders their work. This is the big challenge. Accountability will

automatically follow transparency. Corruption reduction and greater efficiency will be natural byproducts.

Information in various files and registers is usually collated manually. Errors in this consolidation are common and difficult to identify. If all government offices work only on computers and transmit files on intranet or internet the decision making process would be much faster. Transparency could be achieved by design if all the files,-except that which is thought to be exempt as per the RTI Act,- were to be displayed at the end of each day on websites. If any change is made or any record deleted it is possible to identify the person who did it and also what it was initially. Backup could be taken at regular intervals in a different city, so that even an earthquake would not be able to destroy the records. As for the argument that government servants cannot use computers or security issues cannot be handled, we merely need to look at our public sector banks to see that they are able to do this quite efficiently, with no major problem to the security of data, or their operations. India prides itself on superiority in Information Technology, but fails to use it effectively for governance. Reports could be extracted from the computerized data which could be as accurate as the data collected and decision making would be more efficient and reasoned. We would also save thousands of crores spent on paper, files, printing machines and cartridges, and the space for keeping the files. What is well known is that a greater amount and time is wasted on locating them, and many cannot be found.

Presently, thousands of crores are being spent by government on ‘digitization’. This involves scanning all earlier files and sometimes even the files after they are closed. This has no real benefit, but is only an expense with no benefit. Besides, most government departments say they will go digital after all the files are scanned and this is never completed. If a decision was taken to go digital say by 2017 April, all

new files should be only on computers after that day, and only earlier files on which further work has to be done need to be scanned. Accountability to citizens is the rationale and foundation of democracy and this cannot be achieved unless transparency is built into our governance as a default mode. Digital working can achieve this and the Prime Minister only needs to decide on a timeframe of say two years to achieve this. We have the need, the benefits would be enormous and we would have a meaningful democracy, where government will have credibility and citizen's trust. Instead of piecemeal e-governance solutions, a commitment for digital governance would make a discernible change in our governance. There is really no obstacle to improving our governance and transparency and one hopes the Prime Minister will bite the bullet.

Shailesh Gandhi

Former Central Information Commissioner