CASE NO.:
Appeal (civil) 4482 of 2003

PETITIONER:
Union of India & Anr.

RESPONDENT:
Major Bahadur Singh

DATE OF JUDGMENT: 22/11/2005

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

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

Background facts in a nutshell are as under:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*** *** ***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The appeal is accordingly disposed of.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7631 OF 2002

Dev Dutt .. Appellant

-vs-

Union of India & Ors. .. Respondents

JUDGMENT

Markandey Katju, J.

1. This appeal by special leave has been filed against the impugned judgment of the Gauhati High Court dated 26.11.2001 in Writ Appeal No. 447 of 2001. By the aforesaid judgment the Division Bench of the Gauhati High Court dismissed the Writ Appeal of the appellant filed against the judgment of the Learned Single Judge dated 21.8.2001.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide State of U.P. vs. Yamuna Shankar Misra 1997 (4) SCC 7. Hence such non-communication is, in our opinion, arbitrary and hence violative of Article 14 of the Constitution.

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

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

(i) Outstanding

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32. In Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant AIR 2001 SC 24, this Court held (vide para 2):

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

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

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

34. In Union of India etc. vs. Tulsiram Patel etc. AIR 1985 SC 1416 (vide para 97) a Constitution Bench of this Court referred to with approval the following observations of Ormond, L.J. in Norwest Holst Ltd. vs. Secretary of State for Trade (1978) 1, Ch. 201 :

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.....J.
(Markandey Katju)

23

New Delhi;
May 12, 2008

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO.34868 OF 2009

Khanapuram Gandaiah … Petitioner

Vs.

Administrative Officer & Ors. … Respondents

O R D E R

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

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

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

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

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

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

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

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

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

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

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

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

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

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

…….CJI.
(K.G. BALAKRISHNAN)

…….J.
(Dr. B.S. CHAUHAN)

New Delhi,
January 4, 2010

ITEM NO.56 COURT NO.11 SECTION XIV

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

Petition(s) for Special Leave to Appeal (Civil) No(s).19649/2009

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

DIRECTORATE OF ENFORCEMENT
Petitioner(s)

VERSUS

ARUN KUMAR AGRAWAL & ORS.
Respondent(s)

(With prayer for interim relief and office report)

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

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

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

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

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

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

O R D E R

UPON hearing counsel the Court made the following

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

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

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

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

(A.D. Sharma) (Phoolan Wati Arora)
Court Master Court Master

ITEM NO.2 COURT NO.12 SECTION XIV

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

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

UNION PUBLIC SERVICE COMMISSION
Petitioner(s)

VERSUS

SHIV SHAMBU & ORS.
Respondent(s)

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

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

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

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

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

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

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

The Special Leave Petition is, accordingly, dismissed.

(Shiveraj Kaur)
PS to Addl.Regr.

(S.S.R.Krishna)
Court Master

ITEM NO.24 COURT NO.3 SECTION IVB

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

Petition(s) for Special Leave to Appeal (Civil) No(s).9592/2011

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

P.C.WADHWA
Petitioner(s)

VERSUS

CENTRAL INFORMATION COMMN. & ORS.
Respondent(s)

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

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

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

For Respondent(s)

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

Special leave petition is dismissed.

(Ravi P. Verma)
Court Master

(Sneh Lata Sharma)
Court Master

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELALTE JURISDICTION

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

Central Board of Secondary Education & Anr. … Appellants

Vs.

Aditya Bandopadhyay & Ors. … Respondents

With

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

J U D G M E N T

R.V.RAVEENDRAN, J.

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

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

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

(i) The information sought was exempted under Section 8(1)(e) of RTI Act since CBSE shared fiduciary relationship with its evaluators and maintain confidentiality of both manner and method of evaluation.

(ii) The Examination Bye-laws of the Board provided that no candidate shall claim or is entitled to re-evaluation of his answers or disclosure or inspection of answer book(s) or other documents.

(iii) The larger public interest does not warrant the disclosure of such information sought.

(iv) The Central Information Commission, by its order dated 23.4.2007 in appeal no. ICPB/A-3/CIC/2006 dated 10.2.2006 had ruled out such disclosure."

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

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

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

> **"61. Verification of marks obtained by a Candidate in a subject**
>
> (i) A candidate who has appeared at an examination conducted by the Board may apply to the concerned Regional Officer of the Board for verification of marks in any particular subject. The verification will be restricted to checking whether all the answer's have been evaluated and that there has been no mistake in the totalling of marks for each question in that subject and that the marks have been transferred correctly on the title page of the answer book and to the award list and whether the

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

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

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

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

xxxx

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

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

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

xxxx

62. Maintenance of Answer Books

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

(emphasis supplied)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Whether an examinee's right to information under the RTI Act includes a right to inspect his evaluated answer books in a public examination or taking certified copies thereof?

(ii) Whether the decisions of this court in *Maharashtra State Board of Secondary Education* [1984 (4) SCC 27] and other cases referred to above, in any way affect or interfere with the right of an examinee seeking inspection of his answer books or seeking certified copies thereof?

(iii) Whether an examining body holds the evaluated answer books "in a fiduciary relationship" and consequently has no obligation to give inspection of the evaluated answer books under section 8 (1)(e) of RTI Act?

(iv) If the examinee is entitled to inspection of the evaluated answer books or seek certified copies thereof, whether such right is subject to any limitations, conditions or safeguards?

Relevant Legal Provisions

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

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

> "An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.
>
> Whereas the Constitution of India has established democratic Republic;
>
> And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;
>
> And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;
>
> And whereas it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal."

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

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

> "**8. Exemption from disclosure of information --** (1) Notwithstanding anything contained in this Act, **there shall be no obligation to give any citizen,-**
>
> (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
>
> (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
>
> (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
>
> (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

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

(f) information received in confidence from foreign Government;

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

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

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

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

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

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

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

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

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

> the date on which any request is made under secton 6 shall be provided to any person making a request under that section:
>
> Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."
>
> (emphasis supplied)

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

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

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

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

> disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:
>
> Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party."

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

> "(f) "**information**" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;
>
> (h) "**public authority**" means any authority or body or institution of self-government established or constituted-
>
> (a) by or under the Constitution;
>
> (b) by any other law made by Parliament;
>
> (c) by any other law made by State Legislature;
>
> (d) by notification issued or order made by the appropriate Government, and includes any-
>
> (i) body owned, controlled or substantially financed;
>
> (ii) non-Government organisation substantially financed,
> directly or indirectly by funds provided by the appropriate Government;

(i) "**record**" includes-

(a) any document, manuscript and file;

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

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

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

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

(i) inspection of work, documents, records;

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

(iii) taking certified samples of material;

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

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

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

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

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

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

> "In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognised limitations; it is, by no means, absolute. ……Implicit in this assertion is the proposition that in transaction which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated.
>
> To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers is Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest."

In *People's Union for Civil Liberties v. Union of India* - (2004) 2 SCC 476, this Court held that right of information is a facet of the freedom of "speech

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

Re : Question (i)

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

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

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

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

(ii) Exemption of the several categories of information enumerated in section 8(1) of the Act which no public authority is under an obligation to give to any citizen, notwithstanding anything contained in the Act [however, in regard to the information exempted under clauses (d) and (e), the competent authority, and in regard to the information excluded under clause (j), Central Public Information Officer/State Public Information Officer/the Appellate Authority, may direct disclosure of information, if larger public interest warrants or justifies the disclosure].

(iii) If any request for providing access to information involves an infringement of a copyright subsisting in a person other than the State, the Central/State Public Information Officer may reject the request under section 9 of RTI Act.

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

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

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

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

Re : Question (ii)

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

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

> "…. the "process of evaluation of answer papers or of subsequent verification of marks" under Clause (3) of Regulation 104 does not attract the principles of natural justice since no decision making process which brings about adverse civil consequences to the examinees in involved. The principles of natural justice cannot be extended beyond reasonable and rational limits and cannot be carried to such absurd lengths as to make it necessary that candidates who have taken a public examination should be allowed to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer-books and determining whether there has been a proper and fair valuation of the answers by the examiners."
>
> So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations…. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act …

> and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.
>
> It was perfectly within the competence of the Board, rather it was its plain duty, to apply its mind and decide as a matter of policy relating to the conduct of the examination as to whether disclosure and inspection of the answer books should be allowed to the candidates, whether and to what extent verification of the result should be permitted after the results have already been announced and whether any right to claim revaluation of the answer books should be recognised or provided for. All these are undoubtedly matters which have an intimate nexus with the objects and purposes of the enactment and are, therefore, with in the ambit of the general power to make regulations…."

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

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

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

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

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

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

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

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

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

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

Re : Question (iii)

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

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

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

20.1) *Black's Law Dictionary* (7th Edition, Page 640) defines 'fiduciary relationship' thus:

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

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

> "A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil, or Roman, law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.
>
> The word 'fiduciary,' as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust, or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note."

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

> "There is a technical distinction between a 'fiducial relation' which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and 'confidential relation' which includes the legal relationships, and also every other relationship wherein confidence is rightly reposed and is exercised.
>
> Generally, the term 'fiduciary' applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Re : Question (iv)

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

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

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

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

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

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

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

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

(i) Information which promotes *transparency and accountability* in the working of every public authority, disclosure of which may also help in containing or discouraging corruption (enumerated in clauses (b) and (c) of section 4(1) of RTI Act).

(ii) Other information held by public authority (that is all information other than those falling under clauses (b) and (c) of section 4(1) of RTI Act).

(iii) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.

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

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

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

> "**4. Obligations of public authorities**.-(1) Every public authority shall--
>
> (a) xxxxxx
>
> (b) publish within one hundred and twenty days from the enactment of this Act,--
>
> (i) the particulars of its organisation, functions and duties;
>
> (ii) the powers and duties of its officers and employees;
>
> (iii) the **procedure followed in the decision making process, including channels of supervision and accountability**;
>
> (iv) **the norms set by it for the discharge of its functions;**
>
> (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
>
> (vi) a statement of the categories of documents that are held by it or under its control;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(ix) a directory of its officers and employees;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) particulars of recipients of concessions, permits or authorisations granted by it;

(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(xvi) the names, designations and other particulars of the Public Information Officers;

(xvii) such other information as may be prescribed; and thereafter update these publications every year;

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(emphasis supplied)

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

> "(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) **to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information**.
> (3) For the **purposes of sub-section (1)**, every **information shall be disseminated widely and in such form and manner which is easily accessible to the public**.
> (4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.
> Explanation.--For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority."
>
> *(emphasis supplied)*

33. Some High Courts have held that section 8 of RTI Act is in the nature of an exception to section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that therefore section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities.

The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While sections 3 and 4 seek to achieve the first objective, sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore when section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals.

34. When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act that is section 8 of Freedom to Information Act, 2002. The Courts and Information

Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting section 8 and the other provisions of the Act.

35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information *that is available and existing*. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice'

in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

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

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

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

37. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information,(that is information other than those enumerated in section 4(1)(b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments, etc.). Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and

eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising 'information furnishing', at the cost of their normal and regular duties.

Conclusion

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

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

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

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

New Delhi;
August 9, 2011.

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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

The Institute of Chartered Accountants of India … Appellant

Vs.

Shaunak H.Satya & Ors. … Respondents

J U D G M E N T

R.V.RAVEENDRAN,J.

Leave granted.

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

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

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

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

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

(emphasis supplied)

4. The appellant by its reply dated 22.2.2008 gave the following responses/information in response to the 13 queries :

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

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

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

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

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

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

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

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

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

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

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

* This figure may contain some pass candidates also.

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

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

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

* This figure may contain some pass candidates also.

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

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

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

(emphasis supplied)

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

"Re: Query No.3.

Decision:

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

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

Re : Query No.5.

Decision**:**

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

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

Re : Query No.13.

Decision**:**

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

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

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

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

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

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

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

> possible alternate solutions to a particular question as intimated by different examiners in a subject are also included in the solution. Each examiner in a particular subject is issued detailed instructions on marking scheme by the Head Examiners and general guidelines for evaluation issued by the ICAI. In addition, performance of each examiner, to ascertain whether the said examiner has complied with the instructions issued as also the general guidelines of the Institute, is assessed by the Head Examiner at two stages before the declaration of result. The said process has been evolved based on the experience gained in the last 60 years of conducting examinations and to ensure all possible uniformity in evaluation of answer sheets carried out by numerous examiners in a particular subject and to provide justice to the candidates.
>
> The examination process/procedure/systems of the ICAI are well in place and have been evolved over several decades out of experience gained. The said process/procedure/systems have adequate checks to ensure fair results and also ensure that due justice is done to each candidate and no candidate ever suffers on any count."

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

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

(i) Whether the instructions and solutions to questions (if any) given by ICAI to examiners and moderators, are intellectual property of the ICAI, disclosure of which would harm the competitive position of third parties and therefore exempted under section 8(1)(d) of the RTI Act?

(ii) Whether providing access to the information sought (that is instructions and solutions to questions issued by ICAI to examiners and moderators) would involve an infringement of the copyright and therefore the request for information is liable to be rejected under section 9 of the RTI Act?

(iii) Whether the instructions and solutions to questions are information made available to examiners and moderators in their fiduciary capacity and therefore exempted under section 8(1)(e) of the RTI Act?

(iv) Whether the High Court was justified in directing the appellant to furnish to the first respondent five items of information sought (in query No.13) relating to Regulation 39(2) of Chartered Accountants Regulations, 1988?

Re: Question (i)

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

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

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

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

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

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

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

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

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

Re : Question (ii)

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

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

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

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

Re : Question (iii)

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

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

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

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

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

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

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

preservation of confidentiality of sensitive information, etc. are to be ignored or sacrificed. The object of RTI Act is to harmonize the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information, on the other hand. While sections 3 and 4 seek to achieve the first objective, sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore when section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals. Therefore in dealing with information not falling under section 4(1)(b) and (c), the competent authorities under the RTI Act will not read the exemptions in section 8 in a restrictive manner but in a practical manner so that the other public interests are preserved and the RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding the other public interests.

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

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

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

Re : Question (iv)

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

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

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

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

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

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

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

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

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

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

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

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

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

> "The RTI Act provides access to all information *that is available and existing*. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to

> collect or collate such non-available information and then furnish it to an applicant."

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

General submissions of ICAI

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

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

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

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

to reduce corruption, falling under section 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.

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

……J.
(R V Raveendran)

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

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.10787-10788 OF 2011
(Arising out of S.L.P(C) No.32768-32769/2010)

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

- Versus -

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

J U D G M E N T

GANGULY, J.

1. Leave granted.

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

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

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

4. The second complaint dated 19th May, 2007 was filed by the appellant No. 2 on 19th May, 2007 for obtaining similar information for the period between 1980 - March 2007. As no response was

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

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

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

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

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

way as to preserve the paramountcy of the democratic ideal.

8. The preamble would obviously show that the Act is based on the concept of an open society.

9. On the emerging concept of an 'open Government', about more than three decades ago, the Constitution Bench of this Court in **The State of Uttar Pradesh** v. **Raj Narain & others** – AIR 1975 SC 865 speaking through Justice Mathew held:

> "…The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. … To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired."
>
> (para 74, page 884)

10. Another Constitution Bench in **S.P.Gupta & Ors.** v. **President of India and Ors.** (AIR 1982 SC 149) relying on the ratio in **Raj Narain** (supra) held:

> "…The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest…"
>
> (para 66, page 234)

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

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

12. In **Secretary, Ministry of Information & Broadcasting, Govt. of India and Ors**. v. **Cricket Association of Bengal and Ors**. – (1995) 2 SCC 161, this Court also held that right to acquire information and to disseminate it is an intrinsic component of freedom of speech and expression. (See para 43 page 213 of the report).

13. Again in **Reliance Petrochemicals Ltd.** v. **Proprietors of Indian Express Newspapers Bombay Pvt. Ltd. & others** – (1988) 4 SCC 592 this Court recognised that the Right to Information is a fundamental right under Article 21 of the Constitution.

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

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

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

(para 34, page 613 of the report)

15. In **People's Union for Civil Liberties and Anr**. v. **Union of India and Ors**. – (2004) 2 SCC 476 this Court reiterated, relying on the aforesaid judgments, that right to information is a facet of the right to freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India and also held that right to information is definitely a fundamental right. In coming to this conclusion, this Court traced the origin of the said right from the Universal Declaration of Human Rights, 1948 and also Article 19 of the International Covenant on Civil and Political Rights, which was ratified by India in 1978. This Court also found a similar enunciation of principle in the Declaration of European Convention for the Protection of Human Rights

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

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

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

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

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

18. Justice Frankfurter also opined:

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

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

(Active Liberty by Stephen Breyer – page 15)

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

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

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

(para 19, page 314)

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

> "(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-
>
> (i) inspection of work, documents, records;
>
> (ii) taking notes, extracts, or certified copies of documents or records;
>
> (iii) taking certified samples of material;
>
> (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

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

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

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

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

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

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

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

> "(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall communicate to the person making the request,-
>
> (i) The reasons for such rejection;
> (ii) the period within which an appeal against such rejection may be preferred; and
> (iii) the particulars of the appellate authority.

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

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

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

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

withheld from it on any ground.

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

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

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

> "19. Appeal. - (1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer as the case may be, in each public authority:
>
> Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

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

> "(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:
>
> Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

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

> "19(8). In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,--
>
> (a) require the public authority to take any such steps as may be necessary to secure

compliance with the provisions of this Act, including--

(i) by providing access to information, if so requested, in a particular form;

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) by publishing certain information or categories of information;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the application."

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

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

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

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

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

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

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

38. It may be that sometime in statute words are used by way of abundant caution. The same is not the position here. Here a completely different procedure has been enacted under Section 19. If the interpretation advanced by the learned counsel for the respondent is accepted in that case Section 19 will become unworkable and especially Section 19(8) will be rendered a surplusage. Such an interpretation is totally opposed to the fundamental canons of construction. Reference in this connection may be made to the decision of this Court in **Aswini Kumar Ghose and another** v. **Arabinda Bose and another** – AIR 1952 SC 369. At

page 377 of the report Chief Justice Patanjali Sastri had laid down:

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

39. Same was the opinion of Justice Jagannadhadas in **Rao Shiv Bahadur Singh and another** v. **State of U.P.** – AIR 1953 SC 394 at page 397:

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

40. Justice Das Gupta in **J.K. Cotton Spinning & Weaving Mills Co. Ltd.** v. **State of Uttar Pradesh and others** – AIR 1961 SC 1170 at page 1174 virtually reiterated the same principles in the following words:

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

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

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

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

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

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

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

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

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

preferably within three months of their filing. With these directions both the appeals are disposed of.

47. There will be no order as to costs.

.....J.
(ASOK KUMAR GANGULY)

.....J.
(GYAN SUDHA MISRA)

New Delhi
December 12, 2011

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 210 of 2012

Namit Sharma ... **Petitioner**

Versus

Union of India ... **Respondent**

J U D G M E N T

Swatanter Kumar, J.

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

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

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

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

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

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

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

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

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

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

5. It is contended that keeping in view the powers, functions and jurisdiction that the Chief/State Information Commissioner and/or the Information Commissioners exercise undisputedly, including the penal jurisdiction, there is a certain requirement of legal acumen and expertise for attaining the ends of justice, particularly, under the provisions of the Act of 2005. On this premise, the petitioner has questioned the constitutional validity of sub-Sections (5) and (6) of Section 12 and sub-Sections (5) and (6) of Section 15 of the Act of 2005. These provisions primarily deal with the eligibility criteria for appointment to the posts of Chief Information Commissioners and Information Commissioners, both at the Central and the State levels. It will be useful to refer to these provisions at this very stage.

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

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

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

XXX XXX XXX

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

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

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

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

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

(ii) Absence of any specific qualification and merely providing for experience in the various specified fields, without there being any nexus of either of these fields to the object of the Act of 2005, is violative of the fundamental constitutional values.

(iii) Usage of extremely vague and general terminology like social service, mass media and alike terms, being indefinite and undefined, would lead to arbitrariness and are open to abuse.

(iv) This vagueness and uncertainty is bound to prejudicially affect the administration of justice by such Commissions or Tribunals which are vested with wide adjudicatory and penal powers. It may not be feasible for a person of ordinary experience to deal with such subjects with legal accuracy.

(v) The Chief Information Commissioner and Information Commissioners at the State and Centre level perform judicial and/or quasi-judicial functions under the Act of

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

(vi) The fundamental right to equality before law and equal protection of law guaranteed by Article 14 of the Constitution enshrines in itself the person's right to be adjudged by a forum which exercises judicial power in an impartial and independent manner consistent with the recognised principles of adjudication.

(vii) Apart from specifying a high powered committee for appointment to these posts, the Act of 2005 does not prescribe any mechanism for proper scrutiny and consultation with the judiciary in order to render effective performance of functions by the office holders, which is against the basic scheme of our Constitution.

(viii) Even if the Court repels the attack to the constitutionality of the provisions, still, keeping in view the basic structure of the Constitution and the independence of judiciary, it is a mandatory requirement that judicial or quasi-judicial powers ought to be exercised by persons having judicial knowledge and expertise. To that extent, in any case, these

provisions would have to be read down. Resultantly, limitation has to be read into the competence of the legislature to prescribe requisite qualifications for appointment of judicial or quasi-judicial bodies or tribunals.

Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "(a) The possibility of abuse of a statute does not impart to it any element of invalidity.
>
> (b) Conversely, a statute which violates the Constitution cannot be pronounced valid merely because it is being administered in a manner which might not conflict with the constitutional requirements.
>
> In the case of *Charan Lal Sahu v. UOI [(1990) 1 SCC 614 (667)* (para 13), MUKHERJEE, C.J. made an unguarded statement, *viz., that*
>
> > *"In judging the Constitutional validity of the Act, the subsequent events, namely, how the Act has worked out, have to be looked into."*

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

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

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

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

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

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

(i) It must be based on reasonable and intelligible differentia; and

(ii) Such differentia must be on a rational basis.

(iii) It must have nexus to the object of the Act.

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

17. The principles for adjudicating the constitutionality of a provision have been stated by this Court in its various judgments. Referring to these judgments and more particularly to the cases of *Ram Krishna Dalmia v. Justice S.R. Tendolkar* AIR 1958 SC 538

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

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

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

18. These principles have, often been reiterated by this Court while dealing with the constitutionality of a provision or a statute. Even in the case of *Atam Prakash v. State of Haryana & Ors.* [(1986) 2 SCC 249], the Court stated that whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered, a cardinal rule is to look to the Preamble of the Constitution as the guiding light and to the Directive Principles of State Policy as the Book of Interpretation. The Constitution being *sui generis*, these are the factors of distant vision that help in the determination of the constitutional issues. Referring to the object of such adjudicatory process, the Court said :

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

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

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

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

A)<u>SCHEME, OBJECTS AND REASONS</u>

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

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

OBJECTS AND REASONS

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

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

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

> "The right to information is a right incidental to the constitutionally guaranteed right to freedom of speech and expression. The international movement to include it in the legal system gained prominence in 1946 with the General Assembly of the United Nations declaring freedom of information to be a fundamental human right and a touchstone for all other liberties. It culminated in the United Nations Conference on Freedom of Information held in Geneva in 1948.
>
> Article 19 of the Universal Declaration of Human Rights says:
>
> > "Everyone has the right to freedom of information and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. The courts have observed that when the law making power of a State is restricted by a written fundamental law, then any law enacted, which is opposed to such fundamental law, being in excess of fundamental authority, is a nullity. Inequality is one such example. Still, reasonable classification is permissible under the Indian Constitution. Surrounding circumstances can be taken into consideration in support of the constitutionality of the law which is otherwise hostile or discriminatory in nature, but the circumstances must be such as to justify the discriminatory treatment or the classification, subserving the object sought to be achieved. Mere apprehension of the order being used against some persons is no ground to hold it illegal or unconstitutional particularly when its legality or constitutionality has not been challenged. {Ref. *K. Karunakaran* v. *State of Kerala & Anr.* [(2000) 3 SCC 761]}. To raise the plea of Article 14 of the Constitution, the element of discrimination and arbitrariness has to be brought out in clear terms. The Courts have to keep in mind that by the process of classification, the State has the power of determining who should be regarded as a class for the purposes of legislation and in relation to law enacted on a particular subject. The power, no doubt, to some degree is likely to produce some inequality but if a law deals with liberties of a number of individuals or well

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

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

38. The rule of equality or equal protection does not require that a State must choose between attacking every aspect of a problem or not attacking the problem at all, and particularly with respect to social welfare programme. So long as the line drawn, by the State is rationally supportable, the Courts will not interpose their judgment as to the appropriate stopping point. A statute is not invalid because it might have gone further than it did, since the legislature need not strike at all evils at the same time and may address itself to the phase of the problem which seemed most acute to the legislative mind. A classification based on experience was a reasonable classification, and that it had a rational nexus to the object thereof and to hold otherwise would be detrimental to the interest of the service itself. This opinion was taken by this Court in the case of *State of UP & Ors.* v. *J.P. Chaurasia & Ors.* [(1989) 1 SCC 121]. Classification on the basis of educational qualifications made with a view to achieve administrative efficiency cannot be said to rest on any fortuitous circumstances and one has always to bear in mind the facts and circumstances of the case in order to judge the validity of a classification. In the case of *State of Jammu & Kashmir v. Sh. Triloki Nath Khosa & Ors.*

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

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

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

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

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

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

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

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

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

(b) Whether it violates any Article of Part III of the Constitution, particularly, Article 14?

(c) Whether the prescribed criteria and classification resulting therefrom is discriminatory, arbitrary and has no nexus to the object of the Act?

(d) Lastly, whether it a legislative exercise of power which is not in consonance with the constitutional guarantees and does not provide adequate guidance to make the law just, fair and reasonable?

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

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

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

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

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

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

Constitutional Validity of Section 12(6)

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

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

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

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

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

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

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

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

Constitutional Validity of Section 12(5)

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

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

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

1. The Central/State Public Information Officer;

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

3. The Information Commission (Central/State) consisting of Chief Information Commissioner and Information Commissioners.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) **NATURE OF FUNCTION**

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

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

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

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

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

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

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

> "Of, relating to, or involving an executive or administrative official's adjudicative acts. Quasi-judicial acts, which are valid if there is no abuse of discretion, often determine the fundamental rights of citizens. They are subject to review by Courts. (Blacm, 7th Edn., 1999)
>
> 'Quasi-judicial is a term that is …. Not easily definable. In the United States, the phrase often covers judicial decisions taken by an administrative agency – the test is the nature of the tribunal rather than what it is doing. In England quasi-judicial belongs to the administrative category and is used to cover situations where the administrator is bound by the law to observe certain forms and possibly hold a public hearing but where he is a free agent in reaching the final decision. If the rules are broken, the determination may be set aside, but it is not sufficient to show that the administration is biased in favour of a certain policy, or that the evidence points to a different conclusion..' (George Whitecross Paton, *A*

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

> Describing a function that resembles the judicial function in that it involves deciding a dispute and ascertaining the facts and any relevant law, but differs in that it depends ultimately on the exercise of an executive discretion rather than the application of law (*Oxford Law Dictionary 5th Edn. 2003*)
>
> When the law commits to an officer the duty of looking into certain facts not in a way which it specially directs, but after a discretion in its nature judicial, the function is quasi judicial.
>
> Of or relating to the adjudicative acts of an executive or administrative officials.
>
> Sharing the qualities of and approximating to what is judicial; essentially judicial in character but not within the judicial power or function nor belonging to the judiciary as constitutionally defined. [S.128(2)(i), C.P.C. (5 of 1908)]."

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

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

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

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

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

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

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

2. It performs adjudicatory functions and is required to grant opportunity of hearing to the affected party and to record reasons for its orders. The orders of the Public Information Officer are appealable to first appellate authority and those of the First Appellate Authority are appealable to the Information Commission, which are then open to challenge before the Supreme Court or the High Court in exercise of its extraordinary power of judicial review.

3. It is an adjudicatory process not akin to administrative determination of disputes but similar in nature to the judicial process of determination. The concerned authority is expected to decide not only whether the case was covered under any of the exceptions or related to any of the organizations to which the Act of 2005 does not apply, but even to determine, by applying the legal and constitutional provisions, whether the exercise of the right to information amounted to invasion into the right to privacy. This being

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

4. The concerned authority exercises penal powers and can impose penalty upon the defaulters as contemplated under Section 20 of the Act of 2005. It has to perform investigative and supervisory functions. It is expected to act in consonance with the principles of natural justice as well as those applicable to service law jurisprudence, before it can make a report and recommend disciplinary action against the defaulters, including the persons in service in terms of Section 20(2).

5. The functioning of the Commission is quite in line with the functioning of the civil courts and it has even expressly been vested with limited powers of the civil Court. Exercise of these powers and discharge of the functions discussed above not only gives a colour of judicial and/or quasi-judicial functioning to these authorities but also vests the Commission with the essential trappings of a civil Court.

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

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

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

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

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

80. Once it is held that the Information Commission is essentially quasi-judicial in nature, the Chief information Commissioner and members of the Commission should be the persons possessing requisite qualification and experience in the field of law and/or other specified fields. We have discussed in some detail the requirement of a judicial mind for effectively performing the functions and exercising the powers of the Information Commission. In the case of *Bharat Bank Ltd., Delhi* v. *Employees of Bharat Bank & Ors.* [1950 SCR 459 : AIR 1950 SC 188], this Court took the view that the functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions, although it is not a court in the technical sense of the word. In *S.P. Sampath Kumar* v. *Union of India* [(1987) 1 SCC 124], again this Court held that in the case of Administrative Tribunals, the presence of a Judicial member was the requirement of fair procedure of law and the Administrative Tribunal must be so manned as to inspire confidence in the public mind that it is a highly competent and expert mechanism with judicial approach and objectivity. It was also observed that

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

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

> "88. Functioning of Tribunals
>
> XXX XXX XXX
>
> 8.65 A Tribunal which substitutes the High Court as an alternative institutional mechanism for judicial review must be no less efficacious than the High Court. *Such a tribunal must inspire confidence and public esteem that it is a highly competent and expert*

mechanism with judicial approach and objectivity. What is needed in a tribunal, which is intended to supplant the High Court, is legal training and experience, and judicial acumen, equipment and approach. When such a tribunal is composed of personnel drawn from the judiciary as well as from services or from amongst experts in the field, any weightage in favour of the service members or expert members and value-discounting the judicial members would render the tribunal less effective and efficacious than the High Court. The Act setting up such a tribunal would itself have to be declared as void under such circumstances. The same would not at all be conducive to judicial independence and may even tend, directly or indirectly, to influence their decision-making process, especially when the Government is a litigant in most of the cases coming before such tribunal. (*See S.P. Sampath Kumar v. Union of India.*) The protagonists of specialist tribunals, who simultaneously with their establishment want exclusion of the writ jurisdiction of the High Courts in regard to matters entrusted for adjudication to such tribunals, ought not to overlook these vital and important aspects. *It must not be forgotten that what is permissible to be supplanted by another equally effective and efficacious institutional mechanism is the High Courts and not the judicial review itself.* Tribunals are not an end in themselves but a means to an end; even if the laudable objectives of speedy justice, uniformity of approach, predictability of decisions and specialist justice are to be achieved, the framework of the tribunal intended to be set up to attain them must still retain its basic judicial character and inspire public confidence. Any scheme of decentralisation of administration of justice providing for an alternative institutional mechanism in substitution of the High Courts must pass

the aforesaid test in order to be constitutionally valid."

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

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

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

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

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

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

(b)REQUIREMENT OF LEGAL MIND

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

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

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

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

88. As already noticed, in terms of Section 12(5), the Chief Information Commissioner and Information Commissioners are required to be persons of eminence in public life with wide knowledge and experience in law, science and technology or any of the other specified fields. Further, Sub-Section (6) of Sections 12 and 15 lays down the disqualifications for being nominated as such. It is provided that the Chief Information Commissioner or Information Commissioners shall not be a Member of Parliament or Member of the Legislative Assembly of any State or Union Territory or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

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

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

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

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

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

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

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

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

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

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

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

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

> eligibility for promotion to higher posts. If the Government, in exercise of its executive power, has created certain posts, it is for it to prescribe the mode of appointment or the qualifications which have to be possessed by the candidates before they are appointed on those posts. The qualifications would naturally vary with the nature of posts or the service created by the Government.
>
> 33. The post in question is the post of Principal of the Industrial Training Institute. The Government has prescribed a Degree or Diploma in Engineering as the essential qualification for this post. No one who does not possess this qualification can be appointed on this post. The educational qualification has a direct nexus with the nature of the post. The Principal may also have an occasion to take classes and teach the students. A person who does not hold either a Degree or Diploma in Engineering cannot possibly teach the students of the Industrial Training Institute the technicalities of the subject of Engineering and its various branches."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The writ petition is partly allowed.

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

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

3. As opposed to declaring the provisions of Section 12(6) and 15(6) unconstitutional, we would prefer to read these provisions as having effect 'post-appointment'. In other words, cessation/termination of holding of office of profit, pursuing any profession or carrying any business is a condition precedent to the appointment of a person as Chief Information Commissioner or Information Commissioner at the Centre or State levels.

4. There is an absolute necessity for the legislature to reword or amend the provisions of Section 12(5), 12(6) and 15(5), 15(6) of the Act. We observe and hope that these provisions would be amended at the earliest by the legislature to avoid any ambiguity or impracticability and to make it in consonance with the constitutional mandates.

5. We also direct that the Central Government and/or the competent authority shall frame all practice and procedure related rules to make working of the Information Commissions effective and in consonance with the basic rule of law. Such rules should be framed with particular reference to Section 27 and 28 of the Act within a period of six months from today.

6. We are of the considered view that it is an unquestionable proposition of law that the Commission is a 'judicial tribunal' performing functions of 'judicial' as well as 'quasi-judicial' nature and having the trappings of a Court. It is an important cog and is part of the court attached system of administration of justice, unlike a ministerial tribunal which is more influenced and controlled and performs functions akin to the machinery of administration.

7. It will be just, fair and proper that the first appellate authority (i.e. the senior officers to be nominated in terms of Section 5 of the Act of 2005) preferably should be the persons possessing a degree in law or having adequate knowledge and experience in the field of law.

8. The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of

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

9. The appointment of the judicial members to any of these posts shall be made 'in consultation' with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.

10. The appointment of the Information Commissioners at both levels should be made from amongst the persons empanelled by the DoPT in the case of Centre and the concerned Ministry

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

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

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

13. This judgment shall have effect only prospectively.

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

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

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

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

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

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

New Delhi;
September 13, 2012

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

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

Girish Ramchandra Deshpande .. Petitioner

Versus

Cen. Information Commr. & Ors. .. Respondents

O R D E R

1. Delay condoned.

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

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

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

> "As to Point No.1: Copy of appointment order of Shri A.B. Lute, is in 3 pages. You have sought the details of salary in respect of Shri A.B. Lute, which

relates to personal information the disclosures of which has no relationship to any public activity or interest, it would cause unwarranted invasion of the privacy of individual hence denied as per the RTI provision under Section 8(1)(j) of the Act.

As to Point No.2: Copy of order of granting Enforcement Officer Promotion to Shri A.B. Lute, is in 3 Number. Details of salary to the post along with statutory and other deductions of Mr. Lute is denied to provide as per RTI provisions under Section 8(1)(j) for the reasons mentioned above.

As to Point NO.3: All the transfer orders of Shri A.B. Lute, are in 13 Numbers. Salary details is rejected as per the provision under Section 8(1)(j) for the reason mentioned above.

As to Point No.4: The copies of memo, show cause notice, censure issued to Mr. Lute, are not being provided on the ground that it would cause unwarranted invasion of the privacy of the individual and has no relationship to any public activity or interest. Please see RTI provision under Section 8(1)(j).

As to Point No.5: Copy of EPF (Staff & Conditions) Rules 1962 is in 60 pages.

As to Point No.6: Copy of return of assets and liabilities in respect of Mr. Lute cannot be provided as per the provision of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.

As to Point No.7: Details of investment and other related details are rejected as per the provision of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.

As to Point No.8: Copy of report of item wise and value wise details of gifts accepted by Mr. Lute, is rejected as per the provisions of RTI Act under Section 8(1)(j) as per the reason explained above at point No.1.

As to Point No.9: Copy of details of movable, immovable properties of Mr. Lute, the request to provide the same is rejected as per the RTI Provisions under Section 8(1)(j).

As to Point No.10: Mr. Lute is not claiming for TA/DA for attending the criminal case pending at JMFC, Akola.

As to Point No.11: Copy of Notification is in 2 numbers.

As to Point No.12: Copy of certified true copy of charge sheet issued to Mr. Lute – The matter pertains with head Office, Mumbai. Your application is being forwarded to Head Office, Mumbai as per Section 6(3) of the RTI Act, 2005.

As to Point No.13: Certified True copy of complete enquiry proceedings initiated against Mr. Lute – It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest. Please see RTI provisions under Section 8(1)(j).

As to Point No.14: It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest, hence denied to provide.

As to Point No.15: Certified true copy of second show cause notice – It would cause unwarranted invasion of privacy of individuals and has no relationship to any public activity or interest, hence denied to provide."

4. Aggrieved by the said order, the petitioner approached the CIC. The CIC passed the order on 18.6.2009, the operative portion of the order reads as under:

> "The question for consideration is whether the aforesaid information sought by the Appellant can be treated as 'personal information' as defined in clause (j) of Section 8(1) of the RTI Act. It may be pertinent to mention that this issue came up before the Full Bench of the Commission in Appeal No.CIC/AT/A/2008/000628 (**Milap Choraria** v. **Central Board of Direct Taxes**) and the Commission vide its decision dated 15.6.2009 held that "the Income Tax return have been rightly held to be personal information exempted from disclosure under clause (j) of Section 8(1) of the RTI Act by the CPIO and the Appellate Authority, and the appellant herein has not been able to establish that a larger public interest would be served by disclosure of this information. This logic would hold good as far as the ITRs of Shri Lute are concerned. I would like to further observe that the information which has been denied to the appellant essentially falls in two parts – (i) relating to the personal matters pertaining to his services career; and (ii) Shri Lute's assets & liabilities, movable and immovable properties and other financial aspects. I have no hesitation in holding that this information also qualifies to be the 'personal information' as defined in clause (j) of Section 8(1) of the RTI Act and the appellant has not been able to convince the Commission that disclosure thereof is in larger public interest."

5. The CIC, after holding so directed the second respondent to disclose the information at paragraphs 1, 2, 3 (only posting details), 5, 10, 11, 12,13 (only copies of the posting orders) to the appellant within a period of four weeks from the date of the order. Further, it was held that the information sought for with regard to the other queries did not qualify for disclosure.

6. Aggrieved by the said order, the petitioner filed a writ petition No.4221 of 2009 which came up for hearing before a learned Single Judge and the court dismissed the same vide order dated 16.2.2010. The matter was taken up by way of Letters Patent Appeal No.358 of 2011 before the Division Bench and the same was dismissed vide order dated 21.12.2011. Against the said order this special leave petition has been filed.

7. Shri A.P. Wachasunder, learned counsel appearing for the petitioner submitted that the documents sought for vide Sl. Nos.1, 2 and 3 were pertaining to appointment and promotion

and Sl. No.4 and 12 to 15 were related to disciplinary action and documents at Sl. Nos.6 to 9 pertained to assets and liabilities and gifts received by the third respondent and the disclosure of those details, according to the learned counsel, would not cause unwarranted invasion of privacy.

8. Learned counsel also submitted that the privacy appended to Section 8(1)(j) of the RTI Act widens the scope of documents warranting disclosure and if those provisions are properly interpreted, it could not be said that documents pertaining to employment of a person holding the post of enforcement officer could be treated as documents having no relationship to any public activity or interest.

9. Learned counsel also pointed out that in view of Section 6(2) of the RTI Act, the applicant making request for information is not obliged to give any reason for the requisition and the CIC was not justified in dismissing his appeal.

10. This Court in **Central Board of Secondary Education and another** v. **Aditya Bandopadhyay and others** (2011) 8 SCC 497 while dealing with the right of examinees to inspect evaluated answer books in connection with the examination conducted by the CBSE Board had an occasion to consider in detail the aims and object of the RTI Act as well as the reasons for the introduction of the exemption clause in the RTI Act, hence, it is unnecessary, for the purpose of this case to further examine the meaning and contents of Section 8 as a whole.

11. We are, however, in this case primarily concerned with the scope and interpretation to clauses (e), (g) and (j) of Section 8(1) of the RTI Act which are extracted herein below:

> "**8. Exemption from disclosure of information**.- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
>
> **(e)** information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

> **(g)** information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
>
> **(j)** information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information."

12. The petitioner herein sought for copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from Banks and other financial institutions. Further, he has also sought for the details of gifts stated to have accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question that has come up for consideration is

whether the above-mentioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

13. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show cause notices and orders of censure/punishment etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the

larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

14. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

15. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.

16. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for

the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.

.....J.
(K. S. RADHAKRISHNAN)

.....J.
(DIPAK MISRA)

New Delhi
October 3, 2012

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9095 OF 2012
(Arising out of SLP(C) No.7529 of 2009)

Manohar s/o Manikrao Anchule ... Appellant

Versus

State of Maharashtra & Anr. ... Respondents

J U D G M E N T

Swatanter Kumar, J.

1. Leave granted.

2. The present appeal is directed against the judgment dated 18th December, 2008 of the High Court of Bombay at Aurangabad vide which the High Court declined to interfere with the order dated 26th February, 2008 passed by the State Information Commissioner under the provisions of the Right to Information Act, 2005 (for short 'the Act').

3. We may notice the facts in brief giving rise to the present appeal. One Shri Ram Narayan, respondent No.2, a political person belonging to the Nationalist Congress Party, Nanded filed an application on 3rd January, 2007, before the appellant who was a nominated authority under Section 5 of the Act and was responsible for providing the information sought by the applicants. This application was moved under Section 6(1) of the Act.

4. In the application, the said respondent No.2 sought the following information:

> "a. The persons those who are appointed/selected through a reservation category, their names, when they have appointed on the said post.
>
> b. When they have joined the said post.
>
> c. The report of the Caste Verification Committee of the persons those who are/were selected from the reserved category.
>
> d. The persons whose caste certificate is/was forwarded for the verification to the caste verification committee after due date. Whether any action is taken against those persons? If any action is taken, then the detail information should be given within 30 days."

5. The appellant, at the relevant time, was working as Superintendent in the State Excise Department and was designated as the Public Information Officer. Thus, he was discharging the functions required under the provisions of the Act. After receiving the application from Respondent No.2, the appellant forwarded the application to the concerned Department for collecting the information. Vide letter dated 19th January, 2007, the appellant had informed respondent No.2 that action on his application has been taken and the information asked for has been called from the concerned department and as and when the information is received, the application could be answered accordingly. As respondent No.2 did not receive the information in furtherance to his application dated 3rd January, 2007, he filed an appeal within the prescribed period before the Collector, Nanded on 1st March, 2007, under Section 19(1) of the Act. In the appeal, respondent No.2 sought the information for which he had submitted the application. This appeal was forwarded to the office of the appellant along with the application given by respondent No.2. No hearing was conducted by the office of the Collector at Nanded. Vide letter dated 11th April, 2007, the then

Superintendent, State Excise, Nanded, also designated as Public Information Officer, further wrote to respondent No.2 that since he had not mentioned the period for which the information is sought, it was not possible to supply the information and requested him to furnish the period for which such information was required. The letter dated 11th April, 2007 reads as under :

> "... you have not mentioned the period of the information which is sought by you. Therefore, it is not possible to supply the information. Therefore, you should mention the period of information in your application so that it will be convenient to supply the information."

6. As already noticed there was no hearing before the Collector and the appeal before the Collector had not been decided. It is the case of the appellant that the communication from the Collector's office dated 4th March, 2007 had not been received in the office of the appellant. Despite issuance of the letter dated 11th April, 2007, no information was received from respondent No.2 and, thus, the information could not be furnished by the appellant. On 4th April, 2007, the appellant was transferred from Nanded to Akola District and thus was not responsible for performance of the functions of the post that he was earlier

holding at Nanded and so also the functions of Designated Public Information Officer.

7. Respondent No.2, without awaiting the decision of the First Appellate Authority (the Collector), filed an appeal before the State Information Commission at Aurangabad regarding non-providing of the information asked for. The said appeal came up for hearing before the Commission at Aurangabad who directed issuance of the notice to the office of the State Excise at Nanded. The Nanded office informed the appellant of the notice and that the hearing was kept for 26th February, 2008 before the State Information Commission at Aurangabad. This was informed to the appellant vide letter dated 12th February, 2008. On 25th February, 2008, the applicant forwarded an application through fax to the office of the State Information Commissioner bringing to their notice that for official reasons he was unable to appear before the Commissioner on that date and requested for grant of extension of time for that purpose. Relevant part of the letter dated 25th February 2008 reads as under:

> "...hearing is fixed before the Hon'ble Minister, State Excise M.S.Mumbai in respect of licence of

> CL-3 of Shivani Tq. and Dist. Akola. For that purpose it is necessary for the Superintendent, State Excise, Akola for the said hearing. Therefore, it is not possible for him to remain present for hearing on 26.2.2008 before the Hon'ble Commissioner, State Information Commission, Aurangabad. Therefore, it is requested that next date be given for the said hearing."

8. The State Information Commission, without considering the application and even the request made by the Officer who was present before the State Information Commission at the time of hearing, allowed the appeal vide its order dated 26th February, 2008, directing the Commissioner for State Excise to initiate action against the appellant as per the Service Rules and that the action should be taken within two months and the same would be reported within one month thereafter to the State Information Commission. It will be useful to reproduce the relevant part of the order dated 26th February, 2008, passed by the State Information Commissioner:

> "The applicant has prefer First appeal before the Collector on 1.3.2007, the said application was received to the State Excise Office on 4.3.2007 and on 11.4.2007 it was informed to the applicant, that he has not mentioned the specific period regarding the information. The

Public Information Officer, ought to have been informed to the applicant after receiving his first application regarding the specific period of information but, here the public information officer has not consider positively, the application of the applicant and not taken any decision. On the application given by the applicant, the public information officer ought to have been informed to the applicant on or before 28.1.2007 and as per the said Act, 2005 there is delay 73 days for informing the applicant and this shows that, the Public Information Officer has not perform his duty which is casted upon him and he is negligent it reveals after going through the documents by the State Commission. Therefore, it is order that, while considering above said matter, the concerned Public Information Officer, has made delay of 73 days for informing to the applicant and therefore he has shown the negligence while performing his duty. Therefore, it is ordered to the Commissioner of State Excise Maharashtra State to take appropriate action as per the Service Rules and Regulation against the concerned Public Information Officer within the two months from this order and thereafter, the compliance report will be submitted within one month in the office of State Commission. As the applicant has not mentioned the specific period for information in his original application and therefore, the Public Information Officer was unable to supply him information. There is no order to the Public Information Officer to give information to the applicant as per his application. It is necessary for all the applicant those who want the information under the said Act, he should fill up the form properly and it is confirmed that, whether he has given detail information while submitting the application as

per the proforma and this would be confirm while making the application, otherwise the Public Information Officer will not in position to give expected information to the applicant. At the time of filing the application, it is necessary for the applicant, to fill-up the form properly and it was the prime duty of the applicant.

As per the above mentioned, the second appeal filed by the applicant is hereby decided as follows:

O R D E R

1. The appeal is decided.

2. As the concern Public Information Officer has shown his negligence while performing his duty, therefore, the Commissioner of State Excise, State of Maharashtra has to take appropriate action as per the service rules within two months from the date of order and thereafter, within one month they should submit their compliance report to the State Commission."

9. The legality and correctness of the above order was challenged by the appellant before the High Court by filing the writ petition under Article 226 of the Constitution of India. The appellant had taken various grounds challenging the correctness of this order. However, the High Court, vide its order dated 18th December, 2008, dismissed the writ petition observing that the appellant ought to have passed the appropriate orders in the

matter rather than keeping respondent No.2 waiting. It also noticed the contention that the application was so general and vague in nature that the information sought for could not be provided. However, it did not accept the same.

10. It is contended on behalf of the appellant that the order of the State Information Commission, as affirmed by the High Court, is in violation of the principles of natural justice and is contrary to the very basic provisions of Section 20 of the Act. The order does not satisfy any of the ingredients spelt out in the provisions of Section 20(2) of the Act. The State Information Commission did not decide the appeal, it only directed action to be taken against the appellant though the appeal as recorded in the order had been decided. It can, therefore, be inferred that there is apparent non-application of mind.

11. The impugned orders do not take the basic facts of the case into consideration that after a short duration the appellant was transferred from the post in question and had acted upon the application seeking information within the prescribed time. Thus,

no default, much less a negligence, was attributable to the appellant.

12. Despite service, nobody appeared on behalf of the State Information Commission. The State filed no counter affidavit.

13. Since the primary controversy in the case revolves around the interpretation of the provisions of Section 20 of the Act, it will be necessary for us to refer to the provisions of Section 20 of the Act at this stage itself. Section 20 reads as under:

> "Section 20: Penalties:-(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in, furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him."

14. State Information Commissions exercise very wide and certainly quasi judicial powers. In fact their functioning is akin to the judicial system rather than the executive decision making process.

11

15. It is a settled principle of law and does not require us to discuss this principle with any elaboration that adherence to the principles of natural justice is mandatory for such Tribunal or bodies discharging such functions.

16. The State Information Commission has been vested with wide powers including imposition of penalty or taking of disciplinary action against the employees. Exercise of such power is bound to adversely affect or bring civil consequences to the delinquent. Thus, the provisions relating to penalty or to penal consequences have to be construed strictly. It will not be open to the Court to give them such liberal construction that it would be beyond the specific language of the statute or would be in violation to the principles of natural justice.

17. The State Information Commission is performing adjudicatory functions where two parties raise their respective issues to which the State Information Commission is expected to apply its mind and pass an order directing disclosure of the information asked for or declining the same. Either way, it affects the rights of the parties who have raised rival contentions before the Commission.

If there were no rival contentions, the matter would rest at the level of the designated Public Information Officer or immediately thereafter. It comes to the State Information Commission only at the appellate stage when rights and contentions require adjudication. The adjudicatory process essentially has to be in consonance with the principles of natural justice, including the doctrine of *audi alteram partem*. Hearing the parties, application of mind and recording of reasoned decision are the basic elements of natural justice. It is not expected of the Commission to breach any of these principles, particularly when its orders are open to judicial review. Much less to Tribunals or such Commissions, the Courts have even made compliance to the principle of rule of natural justice obligatory in the class of administrative matters as well. In the case of *A.K. Kraipak & Ors.* v. *Union of India & Ors.* [(1969) 2 SCC 262], the Court held as under :

> "17. ... It is not necessary to examine those decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding...
>
> The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate

only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.... The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (*1*) no one shall be a judge in his own case (*Nemo debet esse judex propria causa*) and (*2*) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George* v. *University of Kerala* the rules of natural justice are not embodied rules.

> What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

18. In the case of *Kranti Associates (P) Ltd. & Ors.* v. *Masood Ahmed Khan & Ors.* [(2010) 9 SCC 496], the Court dealt with the question of demarcation between the administrative orders and quasi-judicial orders and the requirement of adherence to natural justice. The Court held as under :

> "47. Summarising the above discussion, this Court holds:
>
> (*a*) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (*b*) A quasi-judicial authority must record reasons in support of its conclusions.
>
> (*c*) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(*d*) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(*e*) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(*f*) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(*g*) Reasons facilitate the process of judicial review by superior courts.

(*h*) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(*i*) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(*j*) Insistence on reason is a requirement for both judicial accountability and transparency.

(*k*) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(*l*) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(*m*) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in *Defence of Judicial Candor*.)

(*n*) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See *Ruiz Torija* v. *Spain* EHRR, at 562 para 29 and *Anya* v. *University of Oxford*, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(*o*) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development

> of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process'."

19. The Court has also taken the view that even if cancellation of the poll were an administrative act that *per se* does not repel the application of the principles of natural justice. The Court further said that classification of functions as judicial or administrative is a stultifying shibboleth discarded in India as in England. Today, in our jurisprudence, the advances made by the natural justice far exceed old frontiers and if judicial creativity blights penumbral areas, it is also for improving the quality of Government in injecting fair play into its wheels. Reference in this regard can be made to *Mohinder Singh Gill* v. *Chief Election Commissioner* [(1978) 1 SCC 405].

20. Referring to the requirement of adherence to principles of natural justice in adjudicatory process, this Court in the case of *Namit Sharma* v. *Union of India* [2012 (8) SCALE 593], held as under:

> "97. It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its

> decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be made to the judgments of this Court in the cases of *Siemens Engineering & Manufacturing Co. of India Ltd.* v. *Union of India & Anr.* [(1976) 2 SCC 981]; and *Assistant Commissioner, Commrcial Tax Department Works Contract and Leasing, Kota* v. *Shukla & Brothers* [(2010) 4 SCC 785]."

21. We may notice that proviso to Section 20(1) specifically contemplates that before imposing the penalty contemplated under Section 20(1), the Commission shall give a reasonable opportunity of being heard to the concerned officer. However, there is no such specific provision in relation to the matters covered under Section 20(2). Section 20(2) empowers the Central or the State Information Commission, as the case may be, at the

time of deciding a complaint or appeal for the reasons stated in that section, to recommend for disciplinary action to be taken against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the relevant service rules. Power to recommend disciplinary action is a power exercise of which may impose penal consequences. When such a recommendation is received, the disciplinary authority would conduct the disciplinary proceedings in accordance with law and subject to satisfaction of the requirements of law. It is a 'recommendation' and not a 'mandate' to conduct an enquiry. 'Recommendation' must be seen in contradistinction to 'direction' or 'mandate'. But recommendation itself vests the delinquent Public Information Officer or State Public Information Officer with consequences which are of serious nature and can ultimately produce prejudicial results including misconduct within the relevant service rules and invite minor and/or major penalty.

22. Thus, the principles of natural justice have to be read into the provisions of Section 20(2). It is a settled canon of civil jurisprudence including service jurisprudence that no person be

condemned unheard. Directing disciplinary action is an order in the form of recommendation which has far reaching civil consequences. It will not be permissible to take the view that compliance with principles of natural justice is not a condition precedent to passing of a recommendation under Section 20(2). In the case of *Udit Narain Singh Malpharia* v. *Additional Member, Board of Revenue, Bihar* [AIR 1963 SC 786], the Court stressed upon compliance with the principles of natural justice in judicial or quasi-judicial proceedings. Absence of such specific requirement would invalidate the order. The Court, reiterating the principles stated in the English Law in the case of *King v. Electricity Commissioner*, held as under :

> "The following classic test laid down by Lord Justice Atkin, as he then was, in *King* v. *Electricity Commissioners* and followed by this Court in more than one decision clearly brings out the meaning of the concept of judicial act:
>
> > "Wherever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

> Lord Justice Slesser in *King* v. *London County Council* dissected the concept of judicial act laid down by Atkin, L.J., into the following heads in his judgment: "Wherever any body of persons (*1*) having legal authority (*2*) to determine questions affecting rights of subjects and (*3*) having the duty to act judicially (*4*) act in excess of their legal authority — a writ of certiorari may issue." It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore, exercising a judicial or quasi-judicial act cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi-judicial acts, *ex hypothhesi* it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it."

23. Thus, the principle is clear and settled that right of hearing, even if not provided under a specific statute, the principles of natural justice shall so demand, unless by specific law, it is excluded. It is more so when exercise of authority is likely to vest the person with consequences of civil nature.

24. In light of the above principles, now we will examine whether there is any violation of principles of natural justice in the present case.

25. Vide letter dated 12th February, 2008, the appellant was informed by the Excise Department, Nanded, when he was posted at Akola that hearing was fixed for 25th February, 2008. He submitted a request for adjournment which, admittedly, was received and placed before the office of the State Information Commission. In addition thereto, another officer of the Department had appeared, intimated the State Information Commission and requested for adjournment, which was declined. It was not that the appellant had been avoiding appearance before the State Information Commission. It was the first date of hearing and in the letter dated 25th February, 2008, he had given a reasonable cause for his absence before the Commission on 25th February, 2008. However, on 26th February, 2008, the impugned order was passed. The appellant was entitled to a hearing before an order could be passed against him under the provisions of Section 20(2) of the Act. He was granted no such hearing. The

State Information Commission not only recommended but directed initiation of departmental proceedings against the appellant and even asked for the compliance report. If such a harsh order was to be passed against the appellant, the least that was expected of the Commission was to grant him a hearing/reasonable opportunity to put forward his case. We are of the considered view that the State Information Commission should have granted an adjournment and heard the appellant before passing an order Section under 20(2) of the Act. On that ground itself, the impugned order is liable to be set aside. It may be usefully noticed at this stage that the appellant had a genuine case to explain before the State Information Commission and to establish that his case did not call for any action within the provisions of Section 20(2). Now, we would deal with the other contention on behalf of the appellant that the order itself does not satisfy the requirements of Section 20(2) and, thus, is unsustainable in law. For this purpose, it is necessary for the Court to analyse the requirement and scope of Section 20(2) of the Act. Section 20(2) empowers a Central Information Commission or the State Information Commission :

(a) at the time of deciding any complaint or appeal;

(b) if it is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of Section 7 (i.e. 30 days);

(c) malafidely denied the request for information or intentionally given incorrect, incomplete or misleading information; or

(d) destroyed information which was the subject of the request or obstructed in any manner in furnishing the information;

(e) then it shall recommend for disciplinary action against the stated persons under the relevant servicerules.

26. From the above dissected language of the provision, it is clear that first of all an opinion has to be formed by the Commission. This opinion is to be formed at the time of deciding any complaint or appeal after hearing the person concerned. The opinion formed has to have basis or reasons and must be relatable

to any of the defaults of the provision. It is a penal provision as it vests the delinquent with civil consequences of initiation of and/or even punishment in disciplinary proceedings. The grounds stated in the Section are exhaustive and it is not for the Commission to add other grounds which are not specifically stated in the language of Section 20(2). The section deals with two different proceedings. Firstly, the appeal or complaint filed before the Commission is to be decided and, secondly, if the Commission forms such opinion, as contemplated under the provisions, then it can recommend that disciplinary proceedings be taken against the said delinquent Central Public Information Officer or State Public Information Officer. The purpose of the legislation in requiring both these proceedings to be taken together is obvious not only from the language of the section but even by applying the mischief rule wherein the provision is examined from the very purpose for which the provision has been enacted. While deciding the complaint or the appeal, if the Commission finds that the appeal is without merit or the complaint is without substance, the information need not be furnished for reasons to be recorded. If such be the decision, the question of recommending disciplinary

action under Section 20(2) may not arise. Still, there may be another situation that upon perusing the records of the appeal or the complaint, the Commission may be of the opinion that none of the defaults contemplated under Section 20(2) is satisfied and, therefore, no action is called for. To put it simply, the Central or the State Commission have no jurisdiction to add to the exhaustive grounds of default mentioned in the provisions of Section 20(2). The case of default must strictly fall within the specified grounds of the provisions of Section 20(2). This provision has to be construed and applied strictly. Its ambit cannot be permitted to be enlarged at the whims of the Commission.

27. Now, let us examine if any one or more of the stated grounds under Section 20(2) were satisfied in the present case which would justify the recommendation by the Commission of taking disciplinary action against the appellant. The appellant had received the application from respondent No.2 requiring the information sought for on 3rd January, 2007. He had, much within the period of 30 days (specified under Section 7), sent the application to the concerned department requiring them to furnish

the requisite information. The information had not been received. May be after the expiry of the prescribed period, another letter was written by the department to respondent No.2 to state the period for which the information was asked for. This letter was written on 11th April, 2007. To this letter, respondent No.2 did not respond at all. In fact, he made no further query to the office of the designated Public Information Officer as to the fate of his application and instead preferred an appeal before the Collector and thereafter appeal before the State Information Commission. In the meanwhile, the appellant had been transferred in the Excise Department from Nanded to Akola. At this stage, we may recapitulate the relevant dates. The application was filed on 3rd January, 2007, upon which the appellant had acted and vide his letter dated 19th January, 2007 had forwarded the application for requisite information to the concerned department. The appeal was filed by respondent no.2 under Section 19(1) of the Act before the Collector, Nanded on 1st March, 2007. On 4th March, 2007, the appeal was forwarded to the office of the Excise Department. On 4th April, 2007, the appellant had been transferred from Nanded to Akola. On 11th April, 2007, other officer from the Department had

asked respondent no.2 to specify the period for which the information was required. If the appellant was given an opportunity and had appeared before the Commission, he might have been able to explain that there was reasonable cause and he had taken all reasonable steps within his power to comply with the provisions. The Commission is expected to formulate an opinion that must specifically record the finding as to which part of Section 20(2) the case falls in. For instance, in relation to failure to receive an application for information or failure to furnish the information within the period specified in Section 7(1), it should also record the opinion if such default was persistent and without reasonable cause.

28. It appears that the facts have not been correctly noticed and, in any case, not in their entirety by the State Information Commission. It had formed an opinion that the appellant was negligent and had not performed the duty cast upon him. The Commission noticed that there was 73 days delay in informing the applicant and, thus, there was negligence while performing duties. If one examines the provisions of Section 20(2) in their entirety

then it becomes obvious that every default on the part of the concerned officer may not result in issuance of a recommendation for disciplinary action. The case must fall in any of the specified defaults and reasoned finding has to be recorded by the Commission while making such recommendations. 'Negligence' *per se* is not a ground on which proceedings under Section 20(2) of the Act can be invoked. The Commission must return a finding that such negligence, delay or default is persistent and without reasonable cause. In our considered view, the Commission, in the present case, has erred in not recording such definite finding. The appellant herein had not failed to receive any application, had not failed to act within the period of 30 days (as he had written a letter calling for information), had not malafidely denied the request for information, had not furnished any incorrect or misleading information, had not destroyed any information and had not obstructed the furnishing of the information. On the contrary, he had taken steps to facilitate the providing of information by writing the stated letters. May be the letter dated 11th April, 2007 was not written within the period of 30 days requiring respondent No.2 to furnish details of the period for which

such information was required but the fact remained that such letter was written and respondent No.2 did not even bother to respond to the said enquiry. He just kept on filing appeal after appeal. After April 4, 2007, the date when the appellant was transferred to Akola, he was not responsible for the acts of omissions and/or commission of the office at Nanded.

29. Another aspect of this case which needs to be examined by the Court is that the appeal itself has not been decided though it has so been recorded in the impugned order. The entire impugned order does not direct furnishing of the information asked for by respondent No.1. It does not say whether such information was required to be furnished or not or whether in the facts of the case, it was required of respondent No.2 to respond to the letter dated 11th April, 2007 written by the Department to him. All these matters were requiring decision of the Commission before it could recommend the disciplinary action against the appellant, particularly, in the facts of the present case.

30. All the attributable defaults of a Central or State Public Information Officer have to be without any reasonable cause and

persistently. In other words, besides finding that any of the stated defaults have been committed by such officer, the Commission has to further record its opinion that such default in relation to receiving of an application or not furnishing the information within the specified time was committed persistently and without a reasonable cause. Use of such language by the Legislature clearly shows that the expression 'shall' appearing before 'recommend' has to be read and construed as 'may'. There could be cases where there is reasonable cause shown and the officer is able to demonstrate that there was no persistent default on his part either in receiving the application or furnishing the requested information. In such circumstances, the law does not require recommendation for disciplinary proceedings to be made. It is not the legislative mandate that irrespective of the facts and circumstances of a given case, whether reasonable cause is shown or not, the Commission must recommend disciplinary action merely because the application was not responded to within 30 days. Every case has to be examined on its own facts. We would hasten to add here that wherever reasonable cause is not shown to the satisfaction of the Commission and the

Commission is of the opinion that there is default in terms of the Section it must send the recommendation for disciplinary action in accordance with law to the concerned authority. In such circumstances, it will have no choice but to send recommendatory report. The burden of forming an opinion in accordance with the provisions of Section 20(2) and principles of natural justice lies upon the Commission.

31. We are of the considered opinion that the appellant had shown that the default, if any on his part, was not without reasonable cause or result of a persistent default on his part. On the contrary, he had taken steps within his power and authority to provide information to respondent No.2. It was for the department concerned to react and provide the information asked for. In the present case, some default itself is attributable to respondent No.2 who did not even care to respond to the letter of the department dated 11th April, 2007. The cumulative effect of the above discussion is that we are unable to sustain the order passed by the State Information Commission dated 26th February, 2008 and the judgment of the High Court under appeal. Both the

judgments are e set aside and the appeal is allowed. We further direct that the disciplinary action, if any, initiated by the department against the appellant shall be withdrawn forthwith.

32. Further, we direct the State Information Commission to decide the appeal filed by respondent No.2 before it on merits and in accordance with law. It will also be open to the Commission to hear the appellant and pass any orders as contemplated under Section 20(2), in furtherance to the notice issued to the appellant. However, in the facts and circumstances of the case, there shall be no orders as to costs.

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

.....,J.
[Madan B. Lokur]

New Delhi;
December 13, 2012

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9052 OF 2012
(Arising out of SLP (C) No.20217 of 2011)

Bihar Public Service Commission ... Appellant

Versus

Saiyed Hussain Abbas Rizwi & Anr. ... Respondents

J U D G M E N T

Swatanter Kumar, J.

1. Leave granted.

2. The Bihar Public Service Commission (for short, 'the Commission) published advertisement No.6 of 2000 dated 10th May, 2000 in the local papers of the State of Bihar declaring its intention to fill up the posts of 'State Examiner of Questioned Documents', in Police Laboratory in Crime Investigation Department, Government of Bihar, Patna. The advertisement,

inter alia, stated that written examination would be held if adequate number of applications were received. As very limited number of applications were received, the Commission, in terms of the advertisement, decided against the holding of written examination. It exercised the option to select the candidates for appointment to the said post on the basis of *viva voce* test alone. The Commission completed the process of selection and recommended the panel of selected candidates to the State of Bihar.

3. One Saiyed Hussain Abbas Rizwi, respondent No.1 herein, claiming to be a public spirited citizen, filed an application before the Commission (appellant herein) under the Right to Information Act, 2005 (for short "the Act") on 16th December, 2008 seeking information in relation to eight queries. These queries concerned the interview which was held on 30th September, 2002 and 1st October, 2002 by the Commission with regard to the above advertisement. These queries, *inter alia*, related to providing the names, designation and addresses of the subject experts present in the Interview Board, names and addresses of the candidates who appeared, the interview statement with certified photocopies of the marks of all the

candidates, criteria for selection of the candidates, tabulated statement containing average marks allotted to the candidates from matriculation to M.Sc. during the selection process with the signatures of the members/officers and certified copy of the merit list. This application remained pending with the Public Information Officer of the Commission for a considerable time that led to filing of an appeal by respondent No.1 before the State Information Commission. When the appeal came up for hearing, the State Information Commission vide its order dated 30th April, 2009 had directed the Public Information Officer-cum-Officer on Special Duty of the Commission that the information sought for be made available and the case was fixed for 27th August, 2009 when the following order was passed :

> "The applicant is present. A letter dated 12.08.2009 of the Public Information Officer, Bihar Public Service Commission, Patna has been received whereby the required paragraph-wise information which could be supplied, has been given to the applicant. Since the information which could be supplied has been given to the applicant, the proceedings of the case are closed."

4. At this stage, we may also notice that the Commission, vide its letter dated 12th August, 2009, had furnished the

information nearly to all the queries of respondent No.1. It also stated that no written test had been conducted and that the name, designation and addresses of the members of the Interview Board could not be furnished as they were not required to be supplied in accordance with the provisions of Section 8(1)(g) of the Act.

5. Aggrieved from the said order of the Information Commission dated 27th August, 2009, respondent No.1 challenged the same by filing a writ before the High Court of Judicature at Patna. The matter came up for hearing before a learned Judge of that Court, who, vide judgment dated 27th November, 2009 made the following observations and dismissed the writ petition :

> "If information with regard to them is disclosed, the secrecy and the authenticity of the process itself may be jeopardized apart from that information would be an unwarranted invasion into privacy of the individual. Restricting giving this information has a larger public purpose behind it. It is to maintain purity of the process of selection. Thus, in view of specific provision in Section 8(1)(j), in my view, the information could not be demanded as matter of right. The designated authority in that organization also did not consider it right to divulge the

information in larger public interest, as provided in the said provision."

6. Feeling aggrieved, respondent No.1 challenged the judgment of the learned Single Judge before the Division Bench of that Court by filing a letters patent appeal being LPA No.102 of 2010. The Division Bench, amongst others, noticed the following contentions :

(i) that third party interest was involved in providing the information asked for and, therefore, could properly be denied in terms of Section 2(n) read with Sections 8(1)(j) and 11 of the Act.

(ii) that respondent No.1 (the applicant) was a mere busybody and not a candidate himself and was attempting to meddle with the affairs of the Commission needlessly.

7. The Division Bench took the view that the provisions of Section 8(1)(j) were not attracted in the facts of the case in hand inasmuch as this provision had application in respect of law enforcement agency and for security purposes. Since no such consideration arose with respect to the affairs of the Commission and its function was in public domain, reliance on

the said provision for denying the information sought for was not tenable in law. Thus, the Court in its order dated 20th January, 2011 accepted the appeal, set aside the order of the learned Single Judge and directed the Commission to communicate the information sought for to respondent No.1. The Court directed the Commission to provide the names of the members of the Interview Board, while denying the disclosure of and providing photocopies of the papers containing the signatures and addresses of the members of the Interview Board.

8. The Commission challenging the legality and correctness of the said judgment has filed the present appeal by way of special leave.

9. The question that arises for consideration in the present case is as to whether the Commission was duty bound to disclose the names of the members of the Interview Board to any person including the examinee. Further, when the Commission could take up the plea of exemption from disclosure of information as contemplated under Section 8 of the Act in this regard.

10. Firstly, we must examine the purpose and scheme of this Act. For this purpose, suffice would it be to refer to the judgment of this Court in the case of *Namit Sharma* v. *Union of India* [2012 (8) SCALE 593], wherein this Court has held as under :

> "27. In terms of the Statement of Objects and Reasons of the Act of 2002, it was stated that this law was enacted in order to make the government more transparent and accountable to the public. It was felt that in the present democratic framework, free flow of information for citizens and non-Government institutions suffers from several bottlenecks including the existing legal framework, lack of infrastructure at the grass root level and an attitude of secrecy within the Civil Services as a result of the old framework of rules. The Act was to deal with all such aspects. The purpose and object was to make the government more transparent and accountable to the public and to provide freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto."

11. The scheme of the Act contemplates for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in

order to promote transparency and accountability in the working of every public authority. It was aimed at providing free access to information with the object of making governance more transparent and accountable. Another right of a citizen protected under the Constitution is the right to privacy. This right is enshrined within the spirit of Article 21 of the Constitution. Thus, the right to information has to be balanced with the right to privacy within the framework of law.

12. Where Section 3 of the Act grants right to citizens to have access to information, there Section 4 places an obligation upon the public authorities to maintain records and provide the prescribed information. Once an application seeking information is made, the same has to be dealt with as per Sections 6 and 7 of the Act. The request for information is to be disposed of within the time postulated under the provisions of Section 7 of the Act. Section 8 is one of the most important provisions of the Act as it is an exception to the general rule of obligation to furnish information. It gives the category of cases where the public authority is exempted from providing the information. To such exemptions, there are inbuilt exceptions under some of the provisions, where despite exemption, the

Commission may call upon the authority to furnish the information in the larger public interest. This shows the wide scope of these provisions as intended by the framers of law. In such cases, the Information Commission has to apply its mind whether it is a case of exemption within the provisions of the said section.

13. Right to information is a basic and celebrated fundamental/basic right but is not uncontrolled. It has its limitations. The right is subject to a dual check. Firstly, this right is subject to the restrictions inbuilt within the Act and secondly the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemption, non-applicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case.

14. Now, we have to examine whether the Commission is a public authority within the meaning of the Act. The expression 'public authority' has been given an exhaustive definition under

section 2(h) of the Act as the Legislature has used the word 'means' which is an expression of wide connotation. Thus, 'public authority' is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories under Section 2(h) of the Act. In terms of Section 2(h)(a), a body or an institution which is established or constituted by or under the Constitution would be a public authority. Public Service Commission is established under Article 315 of the Constitution of India and as such there cannot be any escape from the conclusion that the Commission shall be a public authority within the scope of this section.

15. Section 2(f) again is exhaustive in nature. The Legislature has given meaning to the expression 'information' and has stated that it shall mean any material in any form including papers, samples, data material held in electronic form, etc. Right to information under Section 2(j) means the 'right to information' accessible under this Act which is held by or under the control of any public authority and includes the right to inspection of work, documents, records, taking notes, extracts, taking certified sample of materials, obtaining information in

the form of diskettes, floppies and video cassettes, etc. The right sought to be exercised and information asked for should fall within the scope of 'information' and 'right to information' as defined under the Act.

16. Thus, what has to be seen is whether the information sought for in exercise of right to information is one that is permissible within the framework of law as prescribed under the Act. If the information called for falls in any of the categories specified under Section 8 or relates to the organizations to which the Act itself does not apply in terms of section 24 of the Act, the public authority can take such stand before the commission and decline to furnish such information. Another aspect of exercise of this right is that where the information asked for relates to third party information, the Commission is required to follow the procedure prescribed under Section 11 of the Act.

17. Before the High Court, reliance had been placed upon Section 8(1)(j) and Section 11 of the Act. On facts, the controversy in the present case falls within a very narrow compass. Most of the details asked for by the applicant have already been furnished. The dispute between the parties

related only to the first query of the applicant, that is, with regard to disclosure of the names and addresses of the members of the Interview Board.

18. On behalf of the Commission, reliance was placed upon Section 8(1)(j) and Section 11 of the Act to contend that disclosure of the names would endanger the life of the members of the interview board and such disclosure would also cause unwarranted invasion of the privacy of the interviewers. Further, it was contended that this information related to third party interest. The expression 'third party' has been defined in Section 2(n) of the Act to mean a person other than the citizen making a request for information and includes a public authority. For these reasons, they were entitled to the exemption contemplated under Section 8(1)(j) and were not liable to disclose the required information. It is also contended on behalf of the Commission that the Commission was entitled to exemption under Sections 8(1)(e) and 8(1)(g) read together.

19. On the contrary, the submission on behalf of the applicant was that it is an information which the applicant is entitled to receive. The Commission was not entitled to any exemption

under any of the provisions of Section 8, and therefore, was obliged to disclose the said information to the applicant.

20. In the present case, we are not concerned with the correctness or otherwise of the method adopted for selection of the candidates. Thus, the fact that no written examination was held and the selections were made purely on the basis of *viva voce*, one of the options given in the advertisement itself, does not arise for our consideration. We have to deal only with the plea as to whether the information asked for by the applicant should be directed to be disclosed by the Commission or whether the Commission is entitled to the exemption under the stated provisions of Section 8 of the Act.

21. Section 8 opens with the *non obstante* language and is an exception to the furnishing of information as is required under the relevant provisions of the Act. During the course of the hearing, it was not pressed before us that the Commission is entitled to the exemption in terms of Section 8(1)(j) of the Act. In view of this, we do not propose to discuss this issue any further nor would we deal with the correctness or otherwise of the impugned judgment of the High Court in that behalf.

22. Section 8(1)(e) provides an exemption from furnishing of information, if the information available to a person is in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. In terms of Section 8(1)(g), the public authority is not obliged to furnish any such information the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement and security purposes. If the concerned public authority holds the information in fiduciary relationship, then the obligation to furnish information is obliterated. But if the competent authority is still satisfied that in the larger public interest, despite such objection, the information should be furnished, it may so direct the public authority. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions.

This aspect has been discussed in some detail in the judgment of this Court in the case of *Central Board of Secondary Education (supra)*. Section 8(1)(e), therefore, carves out a protection in favour of a person who possesses information in his fiduciary relationship. This protection can be negated by the competent authority where larger public interest warrants the disclosure of such information, in which case, the authority is expected to record reasons for its satisfaction. Another very significant provision of the Act is 8(1)(j). In terms of this provision, information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. It will not be in consonance with the spirit of these provisions, if in a mechanical manner, directions

are passed by the appropriate authority to disclose information which may be protected in terms of the above provisions. All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. Such exemption would be available to such authority or department.

23. The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression 'public interest' must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression 'public interest', like 'public purpose', is not capable of any precise definition . It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. [*State of Bihar* v. *Kameshwar Singh* (AIR 1952 SC 252)]. It also means the general welfare of the public that warrants recommendation and protection;

something in which the public as a whole has a stake [Black's Law Dictionary (Eighth Edition)].

24. The satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. Certain matters, particularly in relation to appointment, are required to be dealt with great confidentiality. The information may come to knowledge of the authority as a result of disclosure by others who give that information in confidence and with complete faith, integrity and fidelity. Secrecy of such information shall be maintained, thus, bringing it within the ambit of fiduciary capacity. Similarly, there may be cases where the disclosure has no relationship to any public activity or interest or it may even cause unwarranted invasion of privacy of the individual. All these protections have to be given their due implementation as they spring from statutory exemptions. It is not a decision simpliciter between private interest and public interest. It is a matter where a

constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India.

25. First of all, the Court has to decide whether in the facts of the present case, the Commission holds any fiduciary relationship with the examinee or the interviewers. Discussion on this question need not detain us any further as it stands fully answered by a judgment of this Court in the case of *Central Board of Secondary Education & Anr.* v. *Aditya Bandopadhyay & Ors.* [(2011) 8 SCC 497] wherein the Court held as under :

> "**40.** There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others.

Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "information available to a person in his fiduciary relationship" are used in Section 8(1)(*e*) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary—a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/ mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with

reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body.

42. The duty of examining bodies is to subject the candidates who have completed a course of study or a period of training in accordance with its curricula, to a process of verification/examination/testing of their knowledge, ability or skill, or to ascertain whether they can be said to have successfully completed or passed the course of study or training. Other specialised examining bodies may simply subject the candidates to a process of verification by an examination, to find out whether such person is suitable for a particular post, job or assignment. An examining body, if it is a public authority entrusted with public functions, is required to act fairly, reasonably, uniformly and consistently for public good and in public interest.

43. This Court has explained the role of an examining body in regard to the process of holding examination in the context of examining whether it amounts to "service" to a consumer, in *Bihar School Examination Board* v. *Suresh Prasad Sinha* in the following manner: (SCC p. 487, paras 11-13)

> "*11*. ... The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide

this function as partly statutory and partly administrative.

12. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its 'services' to any candidate. Nor does a student who participates in the examination conducted by the Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-à-vis other examinees. The process is not, therefore, availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.

13. ... The fact that in the course of conduct of the examination, or evaluation of answer scripts, or furnishing of marksheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a

> service provider for a consideration, nor convert the examinee into a consumer....”
>
> It cannot therefore be said that the examining body is in a fiduciary relationship either with reference to the examinee who participates in the examination and whose answer books are evaluated by the examining body.
>
> XXX XXX XXX
>
> **49.** The examining body entrusts the answer books to an examiner for evaluation and pays the examiner for his expert service. The work of evaluation and marking the answer book is an assignment given by the examining body to the examiner which he discharges for a consideration. Sometimes, an examiner may assess answer books, in the course of his employment, as a part of his duties without any specific or special remuneration. In other words, the examining body is the “principal” and the examiner is the “agent” entrusted with the work, that is, the evaluation of answer books. Therefore, the examining body is not in the position of a fiduciary with reference to the examiner.”
>
> (emphasis supplied)

26. We, with respect, would follow the above reasoning of the Bench and, thus, would have no hesitation in holding that in the present case, the examining body (the Commission), is in no fiduciary relationship with the examinee (interviewers) or the candidate interviewed. Once the fiduciary relationship is not

established, the obvious consequence is that the Commission cannot claim exemption as contemplated under Section 8(1)(e) of the Act. The question of directing disclosure for a larger public interest, therefore, would not arise at all.

27. In *CBSE case* (supra), this Court had clearly stated the view that an examiner who examines the answer sheets holds the relationship of principal and agent with the examining body. Applying the same principle, it has to be held that the interviewers hold the position of an 'agent' vis-a-vis the examining body which is the 'principal'. This relationship *per se* is not relatable to any of the exemption clauses but there are some clauses of exemption, the foundation of which is not a particular relationship like fiduciary relationship. Clause 8(1)(g) can come into play with any kind of relationship. It requires that where the disclosure of information would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes, the information need not be provided. The High Court has rejected the application of Section 8(1)(g) on the ground that it applies only with regard to law enforcement or security purposes and does not have

general application. This reasoning of the High Court is contrary to the very language of Section 8(1)(g). Section 8(1)(g) has various clauses in itself.

28. Now, let us examine the provisions of Section 8(1)(g) with greater emphasis on the expressions that are relevant to the present case. This section concerns with the cases where no obligation is cast upon the public authority to furnish information, the disclosure of which would endanger (a) the life (b) physical safety of any person. The legislature, in its wisdom, has used two distinct expressions. They cannot be read or construed as being synonymous. Every expression used by the Legislature must be given its intended meaning and, in fact, a purposeful interpretation. The expression 'life' has to be construed liberally. 'Physical safety' is a restricted term while life is a term of wide connotation. 'Life' includes reputation of an individual as well as the right to live with freedom. The expression ' life' also appears in Article 21 of the Constitution and has been provided a wide meaning so as to *inter alia* include within its ambit the right to live with dignity, right to shelter, right to basic needs and even the right to reputation. The expression life under section 8(1(g) the Act, thus, has to be

understood in somewhat similar dimensions. The term 'endanger' or 'endangerment' means the act or an instance of putting someone or something in danger; exposure to peril or such situation which would hurt the concept of life as understood in its wider sense [refer Black's Law Dictionary (Eighth Edition)]. Of course, physical safety would mean the likelihood of assault to physical existence of a person. If in the opinion of the concerned authority there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of Section 8(1)(g) of the Act. The disclosure of information which would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The expression 'for law enforcement or security purposes' is to be read *ejusdem generis* only to the expression 'assistance given in confidence' and not to any other clause of the section. On the plain reading of Section 8(1)(g), it becomes clear that the said clause is complete in itself. It cannot be said to have any reference to the expression 'assistance given in confidence for

law enforcement or security purposes'. Neither the language of the Section nor the object of the Section requires such interpretation. It would not further the cause of this section. Section 8 attempts to provide exemptions and once the language of the Section is unambiguous and squarely deals with every situation, there is no occasion for the Court to frustrate the very object of the Section. It will amount to misconstruing the provisions of the Act. The High Court though has referred to Section 8(1)(j) but has, in fact, dealt with the language of Section 8(1)(g). The reasoning of the High Court, therefore, is neither clear in reference to provision of the Section nor in terms of the language thereof.

29. Now, the ancillary question that arises is as to the consequences that the interviewers or the members of the interview board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. Firstly, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers.

Declaration of collective marks to the candidate is one thing and that, in fact, has been permitted by the authorities as well as the High Court. We see no error of jurisdiction or reasoning in this regard. But direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(g) of the Act. *CBSE case* (supra) has given sufficient reasoning in this regard and at this stage, we may refer to paragraphs 52 and 53 of the said judgment which read as under :

> "**52.** When an examining body engages the services of an examiner to evaluate the answer books, the examining body expects the examiner not to disclose the information regarding evaluation to anyone other than the examining body. Similarly the examiner also expects that his name and particulars would not be disclosed to the candidates whose answer books are evaluated by him. In the event of such information being made known, a disgruntled examinee who is not satisfied with the evaluation of the answer books, may act to the prejudice of the examiner by attempting to endanger his physical safety. Further, any apprehension on the part of the examiner that there may be danger to his physical safety, if his identity becomes known to the examinees, may come in the way of effective discharge of his duties. The above applies not only to the examiner, but also to the scrutiniser, co-ordinator and

head examiner who deal with the answer book.

53. The answer book usually contains not only the signature and code number of the examiner, but also the signatures and code number of the scrutiniser/co-ordinator/head examiner. The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(*g*) of the RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under Section 8(1)(*g*) of the RTI Act. Those portions of the answer books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered, or otherwise severed from the non-exempted part of the answer books, under Section 10 of the RTI Act."

30. The above reasoning of the Bench squarely applies to the present case as well**.** The disclosure of names and addresses of the members of the Interview Board would *ex facie* endanger their lives or physical safety. The possibility of a failed

candidate attempting to take revenge from such persons cannot be ruled out. On the one hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose. Furthermore, the view of the High Court in the judgment under appeal that element of bias can be traced and would be crystallized only if the names and addresses of the examiners/interviewers are furnished is without any substance. The element of bias can hardly be co-related with the disclosure of the names and addresses of the interviewers. Bias is not a ground which can be considered for or against a party making an application to which exemption under Section 8 is pleaded as a defence. We are unable to accept this reasoning of the High Court. Suffice it to note that the reasoning of the High Court is not in conformity with the principles stated by this Court in the *CBSE case* (supra). The transparency that is expected to be maintained in such process would not take within its ambit the disclosure of the information called for under query No.1 of the application. Transparency in such cases is relatable to the process where selection is based on collective wisdom and collective marking. Marks are required

to be disclosed but disclosure of individual names would hardly hold relevancy either to the concept of transparency or for proper exercise of the right to information within the limitation of the Act.

31. For the reasons afore-stated, we accept the present appeal, set aside the judgment of the High Court and hold that the Commission is not bound to disclose the information asked for by the applicant under Query No.1 of the application.

.....J.
(Swatanter Kumar)

.....J.
(Sudhansu Jyoti Mukhopadhaya)

New Delhi,
December 13, 2012

ITEM NO.30 COURT NO.4 SECTION IVA

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

Petition(s) for Special Leave to Appeal (Civil)...../2013
CC 1853/2013

(From the judgement and order dated 15/06/2012 in WA No.3255/2010, of The HIGH COURT OF KARNATAKA AT BANGALORE)

KARNATAKA INFORMATION COMMISSIONER Petitioner(s)

VERSUS

STATE PUBLIC INFORMATION OFFICER & ANR Respondent(s)

(With appln(s) for c/delay in filing SLP and office report))

Date: 18/01/2013 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE H.L. GOKHALE

For Petitioner(s) Mr. V.N. Raghupathy,Adv.

For Respondent(s)

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

Delay condoned.

This petition filed by Karnataka Information Commissioner for setting aside order dated 15.6.2012 passed by the Division Bench of the Karnataka High Court in Writ Appeal No.3255/2010 (GM-RES) titled Karnataka Information Commission v. State Public Information Officer and another cannot but be described as a frivolous piece of litigation which deserves to be dismissed at the threshold with exemplary costs.

Respondent No.2 filed an application under Section 6(1) of the Right to Information Act, 2005 (for short, 'the Act') and sought certain documents and information from the Public Information Officer - Deputy Registrar

(Establishment) of the High Court of Karnataka (respondent No.1). His prayer was for supply of certified copies of some information/documents regarding guidelines and rules pertaining to scrutiny and classification of writ petitions and the procedure followed by the Karnataka High Court in respect of Writ Petition Nos.26657 of 2004 and 17935 of 2006.

Respondent No.1 disposed of the application of respondent No.2 vide order dated 3.8.2007 and intimated him that the information sought by him is available in the Karnataka High Court Act and the Rules and he can obtain the certified copies of the order sheets of the two writ petitions by filing appropriate application under the High Court Rules.

Respondent No.2 filed complaint dated 17.1.2008 under Section 18 of the Act before the Karnataka Information Commission (for short, 'the Commission')and made a grievance that the certified copies of the documents had not been made available to him despite payment of the requisite fees. The Commission allowed the complaint of respondent No.2 and directed respondent No.1 to furnish the High Court Act, Rules and certified copies of order sheets free of cost.

Respondent No.1 challenged the aforesaid order in Writ Petition No.9418/2008. The learned Single Judge allowed the same and quashed the order of the Commission by making the following observations:

> **"The information as sought for by the respondent in respect of Item Nos. 1, 3 and 4 mentioned above are available in Karnataka High Court Act and Rules made thereunder. The said Act and Rules are available in market. If not available, the respondent has to obtain copies of the same from the publishers. It is not open for the**

respondent to ask for copies of the same from the petitioner. But strangely, the Karnataka Information Commission has directed the petitioner to furnish the copies of the Karnataka High Court Act & Rules free of cost under Right to Information Act. The impugned order in respect of the same is illegal and arbitrary.

The information in respect of Item Nos.6 to 17 is relating to Writ Petition No.26657/2004 and Writ Petition No. 17935/2006. The respondent is a party to the said proceedings. Thus, according to the Rules of the High Court, it is open for the respondent to file an application for certified copies of the order sheet or the relevant documents for obtaining the same. (See Chapter-17 of Karnataka High Court Rules, 1959). As it is open for the respondent to obtain certified copies of the order sheet pending as well as the disposed of matters, the State Chief Information Commissioner is not justified in directing the petitioner to furnish copies of the same free of costs. If the order of the State Chief Information Commissioner is to be implemented, then, it will lead to illegal demands. Under the Rules, any person who is party or not a party to the proceedings can obtain the orders of the High Court as per the procedure prescribed in the Rules mentioned supra. The State Chief Information Commissioner has passed the order without applying his mind to the relevant Rules of the High Court. The State Chief Information Commissioner should have adverted to the High Court Rules before proceeding further. Since the impugned order is illegal and arbitrary, the same is liable to be quashed. Accordingly, the following order is made."

Respondent No.2 did not challenge the order of the learned Single Judge. Instead, the Commission filed an appeal along with an application for condonation of 335 days' delay. The Division Bench dismissed the application for condonation of delay and also held that the Commission cannot be treated as an aggrieved person.

We have heard Shri V. N. Raghupathy, learned counsel for the petitioner.

What has surprised us is that while the writ

appeal was filed by the Commission, the special leave petition has been preferred by the Karnataka Information Commissioner. Learned counsel could not explain as to how the petitioner herein, who was not an appellant before the Division Bench of the High Court can challenge the impugned order. He also could not explain as to what was the locus of the Commission to file appeal against the order of the learned Single Judge whereby its order had been set aside.

The entire exercise undertaken by the Commission and the Karnataka Information Commissioner to challenge the orders of the learned Single Judge and the Division Bench of the High Court shows that the concerned officers have wasted public money for satisfying their ego. If respondent No.2 felt aggrieved by the order of the learned Single Judge, nothing prevented him from challenging the same by filing writ appeal. However, the fact of the matter is that he did not question the order of the learned Single Judge. The Commission and the Karnataka Information Commissioner had no legitimate cause to challenge the order passed by the learned Single Judge and the Division Bench of the High Court. Therefore, the writ appeal filed by the commission was totally unwarranted and misconceived and the Division Bench of the High Court did not commit any error by dismissing the same.

With the above observations, the special leave petition is dismissed. For filing a frivolous petition, the petitioner is saddled with cost of Rs.1,00,000/-. The amount of cost shall be deposited by the petitioner with the Supreme Court Legal Services Committee within a period of 2 months from today. If the needful is not done, the

Secretary of the Supreme Court Legal Services Committee shall recover the amount of cost from the petitioner as arrears of land revenue.

(Parveen Kr.Chawla)
Court Master

(Phoolan Wati Arora)
Court Master

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2013
(arising out of SLP(C)No.22609 of 2012)

R.K. JAIN …. APPELLANT

VERSUS

UNION OF INDIA & ANR. ….RESPONDENTS

J UD G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

2. In this appeal, the appellant challenges the final judgment and order dated 20th April, 2012 passed by the Delhi High Court in L.P.A. No. 22/2012. In the said order, the Division Bench dismissed the appeal against the order of the learned Single Judge dated 8th December, 2011, wherein the Single Judge held that "the information sought by the appellant herein is the third party information wherein third party may plead a privacy defence and the proper question would be as to whether divulging of such an information is in the public interest or not." Thus, the matter has been remitted back to Chief Information Commissioner to

consider the issue after following the procedure under Section 11 of the Right to Information Act.

3. The factual matrix of the case is as follows:

The appellant filed an application to Central Public Information Officer (hereinafter referred to as the 'CPIO') under Section 6 of the Right to Information Act, 2005 (hereinafter referred to as the 'RTI Act') on 7th October, 2009 seeking the copies of all note sheets and correspondence pages of file relating to one Ms. Jyoti Balasundram, Member/CESTAT. The Under Secretary, who is the CPIO denied the information by impugned letter dated 15th October, 2009 on the ground that the information sought attracts Clause 8(1)(j) of the RTI Act, which reads as follows:-

"R-20011-68/2009 – ADIC – CESTAT
Government of India
Ministry of Finance
Department of Revenue
New Delhi, the 15.10.09

To
Shri R.K. Jain
1512-B, Bhishm Pitamah Marg,
Wazir Nagar,
New Delhi – 110003

Subject: Application under RTI Act.

Sir,
Your RTI application No.RTI/09/2406 dated 7.10.2009 seeks information from File No.27-

3/2002 Ad-1-C. The file contains analysis of Annual Confidential Report of Smt. Jyoti Balasundaram only which attracts clause 8 (1) (j) of RTI Act. Therefore the information sought is denied.

Yours faithfully,

(Victor James)
Under Secretary to the Govt. of India"

4. On an appeal under Section 19 of the RTI Act, the Director (Headquarters) and Appellate Authority by its order dated 18th December, 2009 disallowed the same citing same ground as cited by the CPIO; the relevant portion of which reads as follows:

"2. I have gone through the RTI application dated 07.10.2009, wherein the Appellant had requested the following information;

(A) Copies of all note sheets and correspondence pages of File No. 27/3/2002 – Ad. IC relating to Ms. Jyoti Balasundaram.
(B) Inspection of all records, documents, files and note sheets of File No.27/3/2002 – Ad. IC.
(C) Copies of records pointed out during / after inspection.

3. I have gone through the reply dated 15.10.2009 of the Under Secretary, Ad. IC-CESTAT given to the Appellant stating that as the file contained analysis of the Annual Confidential Report of Ms. Jyoti Balasundaram, furnishing of information is exempted under Section 9 (1) (j) of the R.T.I. Act.

5. The provision of Section 8 (1) (j) of the RTI Act, 2005 under which the information has been denied by the CPIO is reproduced hereunder:

"Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information……"

6. File No.27/3/2002- Ad.1C deals with follow-up action on the ACR for the year 2000-2001 in respect of Ms. Jyoti Balasundaram, Member (Judicial), CEGAT" (now CESTAT). The matter discussed therein is personal and I am not inclined to accept the view of the Appellant the since Ms. Jyoti Balasundaram is holding the post of Member (Judicial), CESTAT, larger public interest is involved, which therefore, ousts the exemption provided under Section 8 (1) (j). Moreover, Ms. Jyoti Balasundaram is still serving in the CESTAT and the ACR for the year 2000-2001 is still live and relevant insofar as her service is concerned. Therefore, it may not be proper to rush up to the conclusion that the matter is over and therefore, the information could have been given by the CPIO under Section 8(1) (i). The file contains only 2 pages of the notes and 5 pages of the correspondence, in which the ACR of the officer and the matter connected thereto have been discussed, which is exempt from disclosure under the aforesaid Section. The file contains no other information, which can be segregated and provided to the Appellant.

7. In view of the above, the appeal is disallowed."

5. Thereafter, the appellant preferred a second appeal before the Central Information Commission under Section 19 (3) of the RTI Act which was also rejected on 22nd April, 2010 with the following observations:-

"4. Appellant's plea is that since the matter dealt in the above-mentioned file related to the integrity of a public servant, the disclosure of the requested information should be authorized in public interest.

5. It is not in doubt that the file referred to by the appellant related to the Annual Confidential Record of a third-party, Ms. Jyoti Balasundaram and was specific to substantiation by the Reporting Officer of the comments made in her ACRs about the third – party's integrity. Therefore, appellant's plea that the matter was about a public servant's integrity per-se is not valid. The ACR examines all aspects of the performance and the personality of a public servant – integrity being one of them. An examination of the aspect of integrity as part of the CR cannot, therefore, be equated with the vigilance enquiry against a public servant. Appellant was in error in equating the two.

6. It has been the consistent position of this Commission that ACR grades can and should be disclosed to the person to whom the ACRs related and not to the third – parties except under exceptional circumstances. Commission's decision in P.K. Sarvin Vs. Directorate General of Works (CPWD); Appeal No. CIC/WB/A/2007/00422; Date of Decision; 19.02.2009 followed a Supreme Court order in Dev Dutt Vs. UOI (Civil Appeal No. 7631/2002).

7. An examination on file of the comments made by the reporting and the reviewing officers in the ACRs of a public servant, stands on the same footing as the ACRs itself. It cannot, therefore, be authorized to be disclosed to a third-party. In fact, even disclosure of such files to the

public servant to whom the ACRs may relate is itself open to debate.

8. In view of the above, I am not in a position to authorize disclosure of the information."

6. On being aggrieved by the above order, the appellant filed a writ petition bearing W.P(C) No. 6756 of 2010 before the Delhi High Court which was rejected by the learned Single Judge vide judgment dated 8th December, 2011 relying on a judgment of Delhi High Court in ***Arvind Kejriwal vs. Central Public Information Officer*** reported in ***AIR 2010 Delhi 216***. The learned Single Judge while observing that except in cases involving overriding public interest, the ACR record of an officer cannot be disclosed to any person other than the officer himself/herself, remanded the matter to the Central Information Commission (CIC for short) for considering the issue whether, in the larger public interest, the information sought by the appellant could be disclosed. It was observed that if the CIC comes to a conclusion that larger public interest justifies the disclosure of the information sought by the appellant, the CIC would follow the procedure prescribed under Section 11 of Act.

7. On an appeal to the above order, by the impugned judgment dated 20th April, 2012 the Division Bench of

Delhi High Court in LPA No.22 of 2012 dismissed the same. The Division Bench held that the judgment of the Delhi High Court Coordinate Bench in ***Arvind Kejriwal case (supra)*** binds the Court on all fours to the said case also.

The Division Bench further held that the procedure under Section 11 (1) is mandatory and has to be followed which includes giving of notice to the concerned officer whose ACR was sought for. If that officer, pleads private defence such defence has to be examined while deciding the issue as to whether the private defence is to prevail or there is an element of overriding public interest which would outweigh the private defence.

8. Mr. Prashant Bhushan, learned counsel for the appellant submitted that the appellant wanted information in a separate file other than the ACR file, namely, the "follow up action" which was taken by the Ministry of Finance about the remarks against 'integrity' in the ACR of the Member. According to him, it was different from asking the copy of the ACR itself. However, we find that the learned Single Judge at the time of hearing ordered for production of the original records and after perusing the same came to

the conclusion that the information sought for was not different or distinguished from ACR. The learned Single Judge held that the said file contains correspondence in relation to the remarks recorded by the President of the CESTAT in relation to Ms. Jyoti Balasundaram, a Member and also contains the reasons why the said remarks have eventually been dropped. Therefore, recordings made in the said file constitute an integral part of the ACR record of the officer in question.

Mr. Bhushan then submitted that ACR of a public servant has a relationship with public activity as he discharges public duties and, therefore, the matter is of a public interest; asking for such information does not amount to any unwarranted invasion in the privacy of public servant. Referring to this Court's decision in the case of ***State of U.P. vs. Raj Narain, AIR 1975 SC 865,*** it was submitted that when such information can be supplied to the Parliament, the information relating to the ACR cannot be treated as personal document or private document.

9. It was also contended that with respect to this issue there are conflicting decisions of Division Bench of Kerala High Court in ***Centre for Earth Sciences***

Studies vs. Anson Sebastian reported in ***2010 (2) KLT 233*** and the Division Bench of Delhi High Court in ***Arvind Kejriwal vs. Central Public Information Officer*** reported in ***AIR 2010 Delhi 216.***

10. Shri A. S. Chandiok, learned Additional Solicitor General appearing for the respondents, in reply contended that the information relating to ACR relates to the personal information and may cause unwarranted invasion of privacy of the individual, therefore, according to him the information sought for by the appellant relating to analysis of ACR of Ms. Jyoti Balasundaram is exempted under Section 8(1)(j) of the RTI Act and hence the same cannot be furnished to the appellant. He relied upon decision of this Court in ***Girish Ramchandra Deshpande vs. Central Information Commissioner and others,*** reported in ***(2013) 1 SCC 212.***

11. We have heard the learned counsel for the parties, perused the records, the judgements as referred above and the relevant provisions of the Right to Information Act, 2005.

12. Section 8 deals with exemption from disclosure of information. Under clause (j) of Section 8(1), there shall be no obligation to give any citizen information which relates to personal information the disclosure of

which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information. The said clause reads as follows:-

> ***"Section 8 - Exemption from disclosure of information.-*** *(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--*
>
> *xxx xxx xxx*
>
> *xxx xxx xxx*
>
> **(j)** information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:
>
> Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

13. On the other hand Section 11 deals with third party information and the circumstances when such information can be disclosed and the manner in which it is to be disclosed, if so decided by the Competent Authority. Under Section 11(1), if the information relates to or has been supplied by a third party and

has been treated as confidential by the third party, and if the Central Public Information Officer or a State Public Information Officer intends to disclose any such information or record on a request made under the Act, in such case after written notice to the third party of the request, the Officer may disclose the information, if the third party agrees to such request or if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. Section 11(1) is quoted hereunder:

> "***Section 11 - Third party information.-*** *(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*
>
> *Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible*

harm or injury to the interests of such third party."

14. In ***Centre for Earth Sciences Studies vs. Anson Sebastian*** reported in ***2010(2) KLT 233*** the Kerala High Court considered the question whether the information sought relates to personal information of other employees, the disclosure of which is prohibited under Section 8(1) (j) of the RTI Act. In that case the Kerala High Court noticed that the information sought for by the first respondent pertains to copies of documents furnished in a domestic enquiry against one of the employees of the appellant-organization. Particulars of confidential reports maintained in respect of co-employees in the above said case (all of whom were Scientists) were sought from the appellant-organisation. The Division Bench of Kerala High Court after noticing the relevant provisions of RTI Act held that documents produced in a domestic enquiry cannot be treated as documents relating to personal information of a person, disclosure of which will cause unwarranted invasion of privacy of such person. The Court further held that the confidential reports of the employees maintained by the employer cannot be treated as records pertaining to personal

information of an employee and publication of the same is not prohibited under Section 8(1) (j) of the RTI Act.

15. The Delhi High Court in ***Arvind Kejriwal vs. Central Public Information Officer*** reported in ***AIR 2010 Delhi 216*** considered Section 11 of the RTI Act. The Court held that once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole World. Therefore, for providing the information the procedure outlined under Section 11(1) cannot be dispensed with. The following was the observation made by the Delhi High Court in ***Arvind Kejriwal (supra):***

> *"22. Turning to the case on hand, the documents of which copies are sought are in the personal files of officers working at the levels of Deputy Secretary, Joint Secretary, Director, Additional Secretary and Secretary in the Government of India. Appointments to these posts are made on a comparative assessment of the relative merits of various officers by a departmental promotion committee or a selection committee, as the case may be. The evaluation of the past performance of these officers is contained in the ACRs. On the basis of the comparative assessment a grading is given. Such information cannot but be viewed as personal to such officers. Vis-à-vis a person who is not an employee of the Government of India and is seeking such information as a member of the public, such information has to be viewed as*

Constituting 'third party information'. This can be contrasted with a situation where a government employee is seeking information concerning his own grading, ACR etc. That obviously does not involve 'third party' information.

23. What is, however, important to note is that it is not as if such information is totally exempt from disclosure. When an application is made seeking such information, notice would be issued by the CIC or the CPIOs or the State Commission, as the case may be, to such 'third party' and after hearing such third party, a decision will be taken by the CIC or the CPIOs or the State Commission whether or not to order disclosure of such information. The third party may plead a 'privacy' defence. But such defence may, for good reasons, be overruled. In other words, after following the procedure outlined in Section 11(1) of the RTI Act, the CIC may still decide that information should be disclosed in public interest overruling any objection that the third party may have to the disclosure of such information.

24. Given the above procedure, it is not possible to agree with the submission of Mr. Bhushan that the word 'or' occurring in Section 11(1) in the phrase information "which relates to or has been supplied by a third party" should be read as 'and'. Clearly, information relating to a third party would also be third party information within the meaning of Section 11(1) of the RTI Act. Information provided by such third party would of course also be third party information. These two distinct categories of third party information have been recognized under Section 11(1) of the Act. It is not possible for this Court in the circumstances to read the word 'or' as 'and'. The mere fact that inspection of such files was permitted, without following the mandatory procedure under Section 11(1) does not mean that, at the stage of furnishing copies of the documents inspected, the said procedure can be waived. In fact, the procedure should have been followed even prior to permitting inspection, but now the clock cannot be put back as far as that is concerned.

25. The logic of the Section 11(1) RTI Act is plain. Once the information seeker is provided information relating to a third party, it is no longer in the private domain. Such information seeker can then disclose in turn such information to the whole world. There may be an officer who may not want the whole world to know why he or she was overlooked for promotion. The defence of privacy in such a case cannot be lightly brushed aside saying that since the officer is a public servant he or she cannot possibly fight shy of such disclosure. There may be yet another situation where the officer may have no qualms about such disclosure. And there may be a third category where the credentials of the officer appointed may be thought of as being in public interest to be disclosed. The importance of the post held may also be a factor that might weigh with the information officer. This exercise of weighing the competing interests can possibly be undertaken only after hearing all interested parties. Therefore the procedure under Section 11(1) RTI Act.

26. This Court, therefore, holds that the CIC was not justified in overruling the objection of the UOI on the basis of Section 11(1) of the RTI Act and directing the UOI and the DoPT to provide copies of the documents as sought by Mr. Kejriwal. Whatever may have been the past practice when disclosure was ordered of information contained in the files relating to appointment of officers and which information included their ACRs, grading, vigilance clearance etc., the mandatory procedure outlined under Section 11(1) cannot be dispensed with. The short question framed by this Court in the first paragraph of this judgment was answered in the affirmative by the CIC. This Court reverses the CIC's impugned order and answers it in the negative.

27. The impugned order dated 12th June 2008 of the CIC and the consequential order dated 19th November 2008 of the CIC are hereby set aside. The appeals by Mr. Kejriwal will be restored to the file of the CIC for compliance with the procedure outlined under Section 11(1) RTI Act limited to the information Mr. Kejriwal now seeks."

16. Recently similar issue fell for consideration before this Court in ***Girish Ramchandra Deshpande v. Central Information Commissioner and others*** reported in ***(2013) 1 SCC 212.*** That was a case in which Central Information Commissioner denied the information pertaining to the service career of the third party to the said case and also denied the details relating to assets, liabilities, moveable and immovable properties of the third party on the ground that the information sought for was qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. In that case this Court also considered the question whether the orders of censure/punishment, etc. are personal information and the performance of an employee/officer in an organization, commonly known as Annual Confidential Report can be disclosed or not. This Court after hearing the parties and noticing the provisions of RTI Act held:

> *"**11.** The petitioner herein sought for copies of all memos, show-cause notices and censure/punishment awarded to the third respondent from his employer and also details viz. movable and immovable properties and also the details of his investments, lending and borrowing from banks and other financial institutions. Further, he has also sought for the details of gifts stated to have been accepted by the third respondent, his family members and friends and relatives at the marriage of his son. The information mostly sought for finds a place in the income tax returns of the third respondent. The question*

that has come up for consideration is: whether the abovementioned information sought for qualifies to be "personal information" as defined in clause (j) of Section 8(1) of the RTI Act.

12. *We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.*

13. *The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.*

14. *The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.*

15. *We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed."*

17. In view of the discussion made above and the decision in this Court in ***Girish Ramchandra Deshpande(supra),*** as the appellant sought for inspection of documents relating to the ACR of the Member, CESTAT, inter alia, relating to adverse entries in the ACR and the 'follow up action' taken therein on the question of integrity, we find no reason to interfere with the impugned judgment passed by the Division Bench whereby the order passed by the learned Single Judge was affirmed. In absence of any merit, the appeal is dismissed but there shall be no order as to costs.

……..……..J.
(G.S. SINGHVI)

…….J.
(SUDHANSU JYOTI MUKHOPADHAYA)

NEW DELHI,
APRIL 16, 2013.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5892 OF 2006

SUKHDEV SINGH ... APPELLANT(s)

Versus

UNION OF INDIA AND OTHERS ... RESPONDENT(s)

O R D E R

While granting leave on December 12, 2006, a two Judge Bench (S.B. Sinha and Markandey Katju, JJ.) felt that there was inconsistency in the decisions of this Court in *U.P. Jal Nigam and others vs. Prabhat Chandra Jain and others*[1], and *Union of India and another vs. Major Bahadur Singh*[2] and consequently, opined that the matter should be heard by a larger Bench. This is how the matter has come up for consideration before us.

2. The referral order dated December 12, 2006 reads as follows:

> **"The appellant herein was appointed as Deputy Director of Training on or about 13.11.1992. He**

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1 **(1996)2 SCC 363**

2 **(2006)1 SCC 368**

attended a training programme on Computer Applied Technology. He was sent on deputation on various occasions in 1997,1998 and yet again in 2000. Indisputably, remarks in his Annual Confidential Reports throughout had been "Outstanding" or "Very good". He, however, in two years i.e. 2000-2001 and 2001-2002 obtained only "Good" remark in his Annual Confidential Report. The effect of such a downgrading falls for our consideration. The Union of India issued a Office Memorandum on 8.2.2002 wherein the Bench mark for promotion was directed to be "Very Good"in terms of clause 3.2 thereof. It is also not in dispute that Guidelines for the Departmental Promotion Committees had been issued by the Union of India wherein, inter alia, it was directed as follows:

".....6.2.1(b) The DPC should assess the suitability of the employees for promotion on the basis of their Service Records and with particular reference to the CRs for five preceding years irrespective of the qualifying service prescribed in the Service/Recruitment Rules. The 'preceding five years' for the aforesaid purpose shall be decided as per the guidelines contained in the DoP & T O.M No.22011/9/98-Estt.(D), dated 8.9.1998, which prescribe the Model Calendar for DPC read with OM of even number, dated 16.6.2000.(If more than one CR have been written for a particular year, all the CRs for the relevant years shall be considered together as the CR for one year}."

The question as to whether such a downgradation of Annual Confidential Report would amount to adverse remark and thus it would be required to be communicated or not fell for consideration before this Court in U.P. Jal Nigam and Ors. Vs. Prabhat Chandra Jain and Ors. - (1996) 2 SCC 363 in the following terms:

" We need to explain these observations of the High Court. The Nigam has rules, whereunder an adverse entry is required to be communicated to the employee concerned, but not downgrading of an entry. It has been urged on behalf of the Nigam that when the nature of the entry does not reflect any adverseness that is not required to be communicated. As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both have a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the

personal file of the officer concerned and inform him of the change in the form of an advice. If the variation warranted be not permissible, then the very purpose of writing annual confidential reports would be frustrated. Having achieved an optimum level the employee on his part may slacken in his work, relaxing secure by his one-time achievement. This would be an undesirable situation. All the same the sting of adverseness must, in all events, not be reflected in such variations, as otherwise, they shall be communicated as such. It may be emphasised that even a positive confidential entry in a given case can perilously be adverse and to say that an adverse entry should always be qualitatively damaging may not be true. In the instant case we have seen the service record of the first respondent. No reason for the change is mentioned. The downgrading is reflected by comparison. This cannot sustain. Having explained in this manner the case of the first respondent and the system that should prevail in the Jal Nigam we do not find any difficulty in accepting the ultimate result arrived at by the High Court."

Several High Courts as also the Central Administrative Tribunal in their various judgments followed the decision of this Court in U.P. Jal Nigam(supra), inter alia, to hold that in the event the said adverse remarks are not communicated causing deprivation to the employee to make an effective representation there against, thus should be ignored. Reference may be made to 2003(1) ATJ 130, Smt. T.K.Aryaveer Vs.Union of India & Ors, 2005(2) ATJ, Page 12, 2005(1) ATJ 509-A.B. Gupta Vs. Union of India & Ors. and 2003(2) SCT 514- Bahadur Singh Vs. Union of India & Ors.

Our attention, however, has been drawn by the learned Additional Solicitor General appearing for the respondents to a recent decision of this Court in Union of India & Anr. Vs. Major Bahadur Singh - (2006) 1 SCC 368 where a Division Bench of this Court sought to distinguish the U.P. Jal Nigam(supra) stating as follows:

"8. As has been rightly submitted by learned counsel for the appellants U.P. Jal Nigam case has no universal application. The judgment itself shows that it was intended to be meant only for the employees of U.P.Jal Nigam only."

With utmost respect, we are of the opinion that the judgment of U.P.Jal Nigam(supra) cannot held to be applicable only to its own

> **employees. It has laid down a preposition of law. Its applicability may depend upon the rules entirely in the field but by it cannot be said that no law has been laid down therein. We, therefore, are of the opinion that the matter should be heard by a larger Bench.**

3. Subsequent to the above two decisions, in the case of *Dev Dutt vs. Union of India and others*[3] , this Court had an occasion to consider the question about the communication of the entry in the ACR of a public servant (other than military service). A two Judge Bench on elaborate and detailed consideration of the matter and also after taking into consideration the decision of this Court in *U.P. Jal Nigam*[1] and principles of natural justice exposited by this Court from time to time particularly in *A.K. Praipak vs. Union of India*[4]; *Maneka Gandhi vs. Union of India*[5]; *Union of India vs. Tulsi Ram Patel*[6]; *Canara Bank vs. V.K. Awasthy*[7] and *State of Maharashtra vs. Public Concern for Governance Trust*[8] concluded that every entry in the ACR of a public service must be communicated to him within a

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3 **(2008)8 SCC 725**
4 **(1969)2 SCC 262**
5 **(1978)1 SCC 248**
6 **(1985)3 SCC 398**
7 **(2005)6 SCC 321**
8 **(2007)3 SCC 587**

reasonable period whether it is poor, fair, average, good or very good entry. This is what this Court in paragraphs 17 & 18 of the report in Dev Dutt[3] at page 733:

> **"In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.**
>
> **Thus it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder."**

4. Then in paragraph 22 at page 734 of the report, this Court made the following weighty observations:

> **"It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidical structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the**

> **morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted."**

5. In paragraphs 37 & 41 of the report, this Court then observed as follows:

> **"We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.**
>
> **In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."**

6. We are in complete agreement with the view in Dev Dutt[3] particularly paragraphs 17, 18, 22, 37 & 41 as quoted above. We approve the same.

7. A three Judge Bench of this Court in *Abhijit Ghosh Dastidar vs. Union of India and others*[9] followed

9 **(2009)16 SCC 146**

Dev Dutt[3]. In paragraph 8 of the Report, this Court with reference to the case under consideration held as under:

> **"Coming to the second aspect, that though the benchmark "very good" is required for being considered for promotion admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the ACR of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and as such violative of Article 14 of the Constitution. The same view has been reiterated in the above referred decision relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him."**

8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his

work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR – poor, fair, average, good or very good – must be communicated to him/her within a reasonable period.

9. The decisions of this Court in *Satya Narain Shukla vs. Union of India and others*[10] and *K.M. Mishra vs. Central Bank of India and others*[11] and the other decisions of this Court taking a contrary view are declared to be not laying down a good law.

11. Insofar as the present case is concerned, we

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10 **(2006) 9 SCC 69**
11 **(2008) 9 SCC 120**

are informed that the appellant has already been promoted. In view thereof, nothing more is required to be done. Civil Appeal is disposed of with no order as to costs. However, it will be open to the appellant to make a representation to the concerned authorities for retrospective promotion in view of the legal position stated by us. If such a representation is made by the appellant, the same shall be considered by the concerned authorities appropriately in accordance with law.

11 I.A. No. 3 of 2011 for intervention is rejected. It will be open to the applicant to pursue his legal remedy in accordance with law.

.....J.
(R.M. LODHA)

.....J.
(MADAN B. LOKUR)

.....J.
(KURIAN JOSEPH)

NEW DELHI
APRIL 23, 2013.
ITEM NO.102 COURT NO.4 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 5892 OF 2006

SUKHDEV SINGH **Appellant (s)**

VERSUS

UNION OF INDIA & ORS. **Respondent(s)**

(With appln(s) for Intervention/Impleadment and office report)

Date: 23/04/2013 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE R.M. LODHA
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Appellant(s)
Mr. Ansar Ahmad Chaudhary,Adv.

For Respondent(s) **Mr. Mohan Parasaran, SG**
Mr. D.L. Chidananda, Adv.
Mr. Asgha G. Nair, Adv.
Mr. S.N. Terdal, Adv.

Mr. Harinder Mohan Singh ,Adv
Ms. Shabana, Adv.

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

Civil Appeal is dismissed with no order as to costs. I.A. No. 3 of 2011 is rejected.

Pending application(s), if any, stands disposed of.

(Pardeep Kumar) **(Renu Diwan)**
Court Master **Court Master**

[SIGNED REPORTABLE ORDER IS PLACED ON THE FILE]

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6362 OF 2013
(Arising out of SLP(C) No.16870/2012)

Union Public Service Commission ...Appellant

versus

Gourhari Kamila ...Respondent

WITH

CIVIL APPEAL NO. 6363 OF 2013
(Arising out of SLP(C) No.16871/2012)

CIVIL APPEAL NO. 6364 OF 2013
(Arising out of SLP(C) No.16872/2012)

CIVIL APPEAL NO. 6365 OF 2013
(Arising out of SLP(C) No.16873/2012)

O R D E R

Leave granted.

These appeals are directed against judgment dated 12.12.2011 of the Division Bench of the Delhi High Court whereby the letters patent appeals filed by appellant - Union Public Service Commission (for short, 'the Commission') questioning the correctness of the orders passed by the learned Single Judge were dismissed and the directions given by the Chief Information Commissioner (CIC) to the Commission to provide information to the respondents about the candidates who had competed with them in the selection was upheld.

For the sake of convenience we may notice the facts from the appeal arising out of SLP(C) No.16870/2012.

In response to advertisement No.13 issued by the Commission, the respondent applied for recruitment as Deputy Director (Ballistics) in Central Forensic Science Laboratory, Ballistic Division under the Directorate of Forensic Science, Ministry of Home Affairs. After the selection process was completed, the respondent submitted application dated 17.3.2010 under the Right to Information Act, 2005 (for short, 'the Act') for supply of following information/documents:

"1. What are the criteria for the short listing of the candidates?

2. How many candidates have been called for the interview?

3. Kindly provide the names of all the short listed candidates called for interview held on 16.3.2010.

4. How many years of experience in the relevant field (Analytical methods and research in the field of Ballistics) mentioned in the advertisement have been considered for the short listing of the candidates for the interview held for the date on 16.3.2010?

5. Kindly provide the certified xerox copies of experience certificates of all the candidates called for the interview on 16.3.2010 who have claimed the experience in the relevant field as per records available in the UPSC and as mentioned by the candidates at Sl.No.10(B) of Part-I of their application who are called for the interview held on 16.3.2010.

6. Kindly provide the certified xerox copies of M.Sc. and B.Sc. degree certificates of all the candidates as per records available in the UPSC who are called for the interview held on 16.3.2010.

7. Kindly provide the certified xerox copies of UGC guidelines and the Govt. of India Gazette notification regarding whether the Degree in M.Sc. Applied Mathematics and the Degree in M.Sc. Mathematics are equivalent or not as per available records in the UPSC.

8. Kindly provide the certified xerox copies of UGC guidelines and the Govt. of India Gazette notification regarding whether the Degree in M.Sc. Applied Physics and the Degree in M.Sc. Physics are equivalent or not as per available records in the UPSC."

Deputy Secretary and Central Public Information Officer (CPIO) of the Commission send reply dated 16.4.2010, the relevant portions of which are reproduced below:

"Point 1 to 4: As the case is subjudice in Central Administrative Tribunal (Principal Bench), Hyderabad, hence the information cannot be provided.

Point 5 & 6: Photocopy of experience certificate and M.Sc. and B.Sc. degree certificates of called candidates cannot be given as the candidates have given their personal details to the Commission is a fiduciary relationship with expectation that this information will not be disclosed to others. Hence, disclosures of personal information of candidates held in a fiduciary capacity is exempted from disclosures under Section 8(l)(e) of the RTI Act, 2005. Further disclosures of these details to another candidate is not likely to serve any public interest of activity and hence is exempted under Section 8(1)(j) of the said Act.

Point 7 & 8: For copy of UGC Guidelines and Gazette notification, you may contact University Grant Commission, directly, as UGC is a distinct public authority."

The respondent challenged the aforesaid communication by filing an appeal under Section 19(1) of the Act, which was partly allowed by the Appellate Authority and a direction was given to the Commission to provide information sought by the respondent under point Nos. 1 to 3 of the application.

The order of the Appellate Authority did not satisfy the respondent, who filed further appeal under Section 19(3) of the Act. The CIC allowed the appeal and directed the Commission to supply the remaining information and the documents.

The Commission challenged the order of the CIC in Writ Petition Civil No. 3365/2011, which was summarily dismissed by the learned Single Judge of the High Court by making a cryptic observation that he is not inclined to interfere with the order of the CIC because the information asked for cannot be treated as exempted under Section 8(1)(e), (g) or (j) of the Act. The letters patent appeal filed by the Commission was dismissed by the Division Bench of the High Court.

Ms. Binu Tamta, learned counsel for the Commission, relied upon the

judgment in Central Board of Secondary Education and another v. Aditya Bandopadhyay and others (2011) 8 SCC 497 and argued that the CIC committed serious error by ordering supply of information and the documents relating to other candidates in violation of Section 8 of the Act which postulates exemption from disclosure of information made available to the Commission. She emphasised that relationship between the Commission and the candidates who applied for selection against the advertised post is based on trust and the Commission cannot be compelled to disclose the information and documents produced by the candidates more so because no public interest is involved in such disclosure. Ms. Tamta submitted that if view taken by the High Court is treated as correct, then it will become impossible for the Commission to function because lakhs of candidates submit their applications for different posts advertised by the Commission. She placed before the Court 62nd Annual Report of the Commission for the year 2011-12 to substantiate her statement.

We have considered the argument of the learned counsel and scrutinized the record. In furtherance of the liberty given by the Court on 01.03.2013, Ms. Neera Sharma, Under Secretary of the Commission filed affidavit dated 18.3.2013, paragraphs 2 and 3 of which read as under:

> "2. That this Hon'ble Court vide order dated 1.3.2013 was pleased to grant three weeks' time to the petitioner to produce a statement containing the details of various examinations and the number of candidates who applied and/or appeared in the written examination and/or interviewed. In response thereto it is submitted that during the year 2011-12 the Commission conducted following examinations:
>
> For Civil Services/Posts
>
> a. Civil Services (Preliminary) Examination, 2011 (CSP)
>
> b. Civil Services (Main) Examination, 2011 (CSM)
>
> c. Indian Forest Service Examination, 2011 (IFo.S)
>
> d. Engineering Services Examination, 2011 (ESE)
>
> e. Indian Economic Service/Indian Statistical Service Examination, 2011 (IES/ISS)
>
> f. Geologists' Examination, 2011 (GEOL)
>
> g. Special Class Railways Apprentices' Examination, 2011 (SCRA)
>
> h. Special Class Railways Apprentices' Examination, 2011 (SCRA)
>
> i. Central Police Forces (Assistant Commandants) Examination, 2011 (CPF)
>
> j. Central Industrial Security Force (Assistant Commandants) Limited Departmental Competitive Examination, 2010 & 2011 (CISF).
>
> For Defence Services
>
> a. Two examinations for National Defence Academy and naval Academy (NDA & NA) - National Defence Academy and Naval Academy Examination (I), 2011 and National Defence Academy and Naval Academy Examination (II), 2011.
>
> b. Two examinations for Combined Defence Services (CDS) - Combined Defence Services Examination (II), 2011 and Combined Defence Services Examination (I), 2012.
>
> 3. That in case of recruitment by examination during the year 2011-2012 the number of applications received by Union Public Service Commission (UPSC) was 21,02,131 and the number of candidate who appeared in the examination was 9,59,269. The number of candidates interviewed in 2011-2012 was 9938. 6863 candidates were recommended

for appointment during the said period."

Chapter 3 of the Annual Report of the Commission shows that during the years 2009-10, 2010-11 and 2011-12 lakhs of applications were received for various examinations conducted by the Commission. The particulars of these examinations and the figures of the applications are given below:

Exam	2009-10	2010-11	2011-12
Civil			
l. CS(P)	409110	547698	499120
2. CS(M)	11894	12271	11837
3. IFoS	43262	59530	67168
4. ESE	139751	157649	191869
5. IES/ISS	6989	7525	9799
6. SOLCE	-	2321	-
7. CMS	33420	33875	-
8. GEOL	4919	5262	6037
9. CPF	111261	135268	162393
10. CISF, LDCE	659	-	729
11. SCRA	135539	165038	197759
			190165
Total Civil	896804	1126437	1336876
Defence			
l. NDA & NA (I)	277290	374497	317489
2. NDA & NA(II)	150514	193264	211082
3. CDS(II)	89604	99017	100043
4. CDS (I)	86575	99815	136641
Total Defence	603983	766593	765255
Grand Total	1500787	1893030	2102131

In Aditya Bandopadhyay's case, this Court considered the question whether examining bodies, like, CBSE are entitled to seek exemption under Section 8(1)(e) of the Act. After analysing the provisions of the Act, the Court observed:

> "There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-'-vis another partner and an employer vis-'-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.
>
> In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "information available to a person in his fiduciary relationship" are used in Section 8(1)(e) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary-a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company

with reference to a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body.

This Court has explained the role of an examining body in regard to the process of holding examination in the context of examining whether it amounts to "service" to a consumer, in Bihar School Examination Board v. Suresh Prasad Sinha (2009) 8 SCC 483 in the following manner:

> "11. ... The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative.
>
> 12. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its 'services' to any candidate. Nor does a student who participates in the examination conducted by the Board, hire or avail of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-'-vis other examinees. The process is not, therefore, availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.
>
> 13. ... The fact that in the course of conduct of the examination, or evaluation of answer scripts, or furnishing of marksheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service provider for a consideration, nor convert the examinee into a consumer...."

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

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

One of the duties of the fiduciary is to make thorough disclosure of all the relevant facts of all transactions between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be

liable to make a full disclosure of the evaluated answer books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer book, Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer book, seeking inspection or disclosure of it."

(emphasis supplied)

By applying the ratio of the aforesaid judgment, we hold that the CIC committed a serious illegality by directing the Commission to disclose the information sought by the respondent at point Nos. 4 and 5 and the High Court committed an error by approving his order.

We may add that neither the CIC nor the High Court came to the conclusion that disclosure of the information relating to other candidates was necessary in larger public interest. Therefore, the present case is not covered by the exception carved out in Section 8(1)(e) of the Act.

Before concluding, we may observe that in the appeal arising out of SLP (C) No.16871/2012, respondent Naresh Kumar was a candidate for the post of Senior Scientific Officer (Biology) in Forensic Science Laboratory. He asked information about other three candidates who had competed with him and the nature of interviews. The appeal filed by him under Section 19(3) was allowed by the CIC without assigning reasons. The writ petition filed by the Commission was dismissed by the learned Single Judge by recording a cryptic order and the letters patent appeal was dismissed by the Division Bench. In the appeal arising out of SLP (C) No.16872/2012, respondent Udaya Kumara was a candidate for the post of Deputy Government counsel in the Department of Legal Affairs, Ministry of Law and Justice. He sought information regarding all other candidates and orders similar to those passed in the other two cases were passed in his case as well. In the appeal arising out of SLP (C) No.16873/2012, respondent N. Sugathan (retired Biologist) sough information on various issues including the candidates recommended for appointment on the posts of Senior Instructor (Fishery Biology) and Senior Instructor (Craft and Gear) in the Central Institute of Fisheries, Nautical and Engineering Training. In his case also, similar orders were passed by the CIC, the learned Single Judge and the Division Bench of the High Court. Therefore, what we have observed qua the case of Gourhari Kamila would equally apply to the remaining three cases.

In the result, the appeals are allowed, the impugned judgment and the orders passed by the learned Single Judge and the CIC are set aside.

.....J.
[G.S. SINGHVI]

.....J.
[V. GOPALA GOWDA]

NEW DELHI;
AUGUST 06, 2013.

ITEM NO.26 COURT NO.2 SECTION XIV

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

Petition(s) for Special Leave to Appeal (Civil) No(s).16870/2012
(From the judgement and order dated 12/12/2011 in LPA No.803/2011 of The HIGH COURT OF DELHI AT N. DELHI)

U.P.S.C. Petitioner(s)

VERSUS

GOURHARI KAMILA Respondent(s)
(With prayer for interim relief and office report)
WITH
SLP(C) NO. 16871 of 2012
(With prayer for interim relief and office report)
SLP(C) NO. 16872 of 2012
(With appln(s) for permission to file reply to the rejoinder and with prayer for interim relief and office report)
SLP(C) NO. 16873 of 2012
(With prayer for interim relief and office report)
(for final disposal)

Date: 06/08/2013 These Petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Ms. Binu Tamta,Adv.

For Respondent(s) None

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

(Parveen Kr.Chawla)		(Usha Sharma)
Court Master		Court Master

[signed order is placed on the file]

10

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPEALLATE JURISDICTION

CIVIL APPEAL NO. 9017 OF 2013
(Arising out of SLP (C) No.24290 of 2012)

Thalappalam Ser. Coop. Bank
Ltd. and others Appellants

Versus

State of Kerala and others
Respondents

WITH

CIVIL APPEAL NOs. 9020, 9029 & 9023 OF 2013
(Arising out of SLP (C) No.24291 of 2012, 13796 and 13797 of 2013)

J U D G M E N T

K.S. Radhakrishnan, J.

1. Leave granted.

2. We are, in these appeals, concerned with the question whether a co-operative society registered under the Kerala Co-operative Societies Act, 1969 (for short "the Societies

Act") will fall within the definition of "public authority" under Section 2(h) of the Right to Information Act, 2005 (for short "the RTI Act") and be bound by the obligations to provide information sought for by a citizen under the RTI Act.

3. A Full Bench of the Kerala High Court, in its judgment reported in AIR 2012 Ker 124, answered the question in the affirmative and upheld the Circular No.23 of 2006 dated 01.06.2006, issued by the Registrar of the Co-operative Societies, Kerala stating that all the co-operative institutions coming under the administrative control of the Registrar, are "public authorities" within the meaning of Section 2(h) of the RTI Act and obliged to provide information as sought for. The question was answered by the Full Bench in view of the conflicting views expressed by a Division Bench of the Kerala High Court in Writ Appeal No.1688 of 2009, with an earlier judgment of the Division Bench reported in ***Thalapalam Service Co-operative Bank Ltd.*** v. ***Union of India*** AIR 2010 Ker 6, wherein the Bench took the view that the question as to whether a co-operative society will fall under

Section 2(h) of the RTI Act is a question of fact, which will depend upon the question whether it is substantially financed, directly or indirectly, by the funds provided by the State Government which, the Court held, has to be decided depending upon the facts situation of each case.

4. Mr. K. Padmanabhan Nair, learned senior counsel appearing for some of the societies submitted that the views expressed by the Division Bench in ***Thalapalam Service Co-operative Bank Ltd.*** (supra) is the correct view, which calls for our approval. Learned senior counsel took us through the various provisions of the Societies Act as well as of the RTI Act and submitted that the societies are autonomous bodies and merely because the officers functioning under the Societies Act have got supervisory control over the societies will not make the societies public authorities within the meaning of Section 2(h) of the RTI Act. Learned senior counsel also submitted that these societies are not owned, controlled or substantially financed, directly or indirectly, by the State Government. Learned senior

counsel also submitted that the societies are not statutory bodies and are not performing any public functions and will not come within the expression “state” within the meaning under Article 12 of the Constitution of India.

5. Mr. Ramesh Babu MR, learned counsel appearing for the State, supported the reasoning of the impugned judgment and submitted that such a circular was issued by the Registrar taking into consideration the larger public interest so as to promote transparency and accountability in the working of every co-operative society in the State of Kerala. Reference was also made to various provisions of the Societies Act and submitted that those provisions would indicate that the Registrar has got all pervading control over the societies, including audit, enquiry and inspection and the power to initiate surcharge proceedings. Power is also vested on the Registrar under Section 32 of the Societies Act to supersede the management of the society and to appoint an administrator. This would indicate that though societies are body corporates, they are under the statutory control of

the Registrar of Co-operative Societies. Learned counsel submitted that in such a situation they fall under the definition of "pubic authority" within the meaning of Section 2(h) of the RTI Act. Shri Ajay, learned counsel appearing for the State Information Commission, stated that the applicability of the RTI Act cannot be excluded in terms of the clear provision of the Act and they are to be interpreted to achieve the object and purpose of the Act. Learned counsel submitted that at any rate having regard to the definition of "information" in Section 2(f) of the Act, the access to information in relation to Societies cannot be denied to a citizen.

Facts:

6. We may, for the disposal of these appeals, refer to the facts pertaining to Mulloor Rural Co-operative Society Ltd. In that case, one Sunil Kumar stated to have filed an application dated 8.5.2007 under the RTI Act seeking particulars relating to the bank accounts of certain members of the society, which the society did not provide. Sunil

Kumar then filed a complaint dated 6.8.2007 to the State Information Officer, Kerala who, in turn, addressed a letter dated 14.11.2007 to the Society stating that application filed by Sunil Kumar was left unattended. Society, then, vide letter dated 24.11.2007 informed the applicant that the information sought for is "confidential in nature" and one warranting "commercial confidence". Further, it was also pointed out that the disclosure of the information has no relationship to any "public activity" and held by the society in a "fiduciary capacity". Society was, however, served with an order dated 16.1.2008 by the State Information Commission, Kerala, stating that the Society has violated the mandatory provisions of Section 7(1) of the RTI Act rendering themselves liable to be punished under Section 20 of the Act. State Information Officer is purported to have relied upon a circular No.23/2006 dated 01.06.2006 issued by the Registrar, Co-operative Societies bringing in all societies under the administrative control of the Registrar of Co-operative Societies, as "public authorities" under Section 2(h) of the RTI Act.

7. Mulloor Co-operative Society then filed Writ Petition No.3351 of 2008 challenging the order dated 16.1.2008, which was heard by a learned Single Judge of the High Court along with other writ petitions. All the petitions were disposed of by a common judgment dated 03.04.2009 holding that all co-operative societies registered under the Societies Act are public authorities for the purpose of the RTI Act and are bound to act in conformity with the obligations in Chapter 11 of the Act and amenable to the jurisdiction of the State Information Commission. The Society then preferred Writ Appeal No.1688 of 2009. While that appeal was pending, few other appeals including WA No.1417 of 2009, filed against the common judgment of the learned Single Judge dated 03.04.2009 came up for consideration before another Division Bench of the High Court which set aside the judgment of the learned Single Judge dated 03.04.2009, the judgment of which is reported in AIR 2010 Ker 6. The Bench held that the obedience to Circular No.23 dated 1.6.2006 is optional in the sense that if the Society feels that it satisfies

the definition of Section 2(h), it can appoint an Information Officer under the RTI Act or else the State Information Commissioner will decide when the matter reaches before him, after examining the question whether the Society is substantially financed, directly or indirectly, by the funds provided by the State Government. The Division Bench, therefore, held that the question whether the Society is a public authority or not under Section 2(h) is a disputed question of fact which has to be resolved by the authorities under the RTI Act.

8. Writ Appeal No.1688 of 2009 later came up before another Division Bench, the Bench expressed some reservations about the views expressed by the earlier Division Bench in Writ Appeal No.1417 of 2009 and vide its order dated 24.3.2011 referred the matter to a Full Bench, to examine the question whether co-operative societies registered under the Societies Act are generally covered under the definition of Section 2(h) of the RTI Act. The Full Bench answered the question in the affirmative giving a

liberal construction of the words "public authority", bearing in mind the "transformation of law" which, according to the Full Bench, is to achieve transparency and accountability with regard to affairs of a public body.

9. We notice, the issue raised in these appeals is of considerable importance and may have impact on similar other Societies registered under the various State enactments across the country.

10. The State of Kerala has issued a letter dated 5.5.2006 to the Registrar of Co-operative Societies, Kerala with reference to the RTI Act, which led to the issuance of Circular No.23/2006 dated 01.06.2006, which reads as under:

"G1/40332/05

Registrar of Co-operative Societies,
Thiruvananthapuram, Dated 01.06.2006

Circular No.23/2006

Sub: Right to Information Act, 2005- Co-operative Institutions included in the definition of "Public Authority"

Ref: Governments Letter No.3159/P.S.1/06
Dated 05.05.2006

According to Right to Information Act, 2005, sub-section (1) and (2) of Section 5 of the Act severy public authority within 100 days of the enactment of this Act designate as many officers as public information officers as may be necessary to provide information to persons requesting for information under the Act. In this Act Section 2(h) defines institutions which come under the definition of public authority. As per the reference letter the government informed that, according to Section 2(h) of the Act all institutions formed by laws made by state legislature is a "public authority" and therefore all co-operative institutions coming under the administrative control of The Registrar of co-operative societies are also public authorities.

In the above circumstance the following directions are issued:

1. All co-operative institutions coming under the administrative control of the Registrar of co-operative societies are "public authorities" under the Right to Information Act, 2005 (central law No.22 of 2005). Co-operative institutions are bound to give all information to applications under the RTI Act, if not given they will be subjected to punishment under the Act. For this all co-operative societies should appoint public information/assistant public information officers immediately and this should be published in the government website.

2. For giving information for applicants government order No.8026/05/government administration department act

and rule can be applicable and 10 rupees can be charged as fees for each application. Also as per GAD Act and rule and the government Order No.2383/06 dated 01.04.2006.

3. Details of Right to Information Act are available in the government website (www.kerala.gov.in.....) or right to information gov.in) other details regarding the Act are also available in the government website.

4. Hereafter application for information from co-operative institutions need not be accepted by the information officers of this department. But if they get such applications it should be given back showing the reasons or should be forwarded to the respective co-operative institutions with necessary directions and the applicant should be informed about this. In this case it is directed to follow the time limit strictly.

5. It is directed that all joint registrars/assistant registrars should take immediate steps to bring this to the urgent notice of all co-operative institutions. They should inform to this office the steps taken within one week. The Government Order No.2389/06 dated 01.04.2006 is also enclosed.

Sd/-
V. Reghunath
Registrar of co-operative societies (in charge)"

11. The State Government, it is seen, vide its letter dated 5.5.2006 has informed the Registrar of Co-operative

Societies that, as per Section 2(h) of the Act, all institutions formed by laws made by State Legislature is a "public authority" and, therefore, all co-operative institutions coming under the administrative control of the Registrar of Co-operative Societies are also public authorities.

12. We are in these appeals concerned only with the co-operative societies registered or deemed to be registered under the Co-operative Societies Act, which are not owned, controlled or substantially financed by the State or Central Government or formed, established or constituted by law made by Parliament or State Legislature.

Co-operative Societies and Article 12 of the Constitution:

13. We may first examine, whether the Co-operative Societies, with which we are concerned, will fall within the expression "State" within the meaning of Article 12 of the Constitution of India and, hence subject to all constitutional limitations as enshrined in Part III of the Constitution. This

Court in ***U.P. State Co-operative Land Development Bank Limited*** v. ***Chandra Bhan Dubey and others*** (1999) 1 SCC 741, while dealing with the question of the maintainability of the writ petition against the U.P. State Co-operative Development Bank Limited held the same as an instrumentality of the State and an authority mentioned in Article 12 of the Constitution. On facts, the Court noticed that the control of the State Government on the Bank is all pervasive and that the affairs of the Bank are controlled by the State Government though it is functioning as a co-operative society, it is an extended arm of the State and thus an instrumentality of the State or authority as mentioned under Article 12 of the Constitution. In ***All India Sainik Schools employees' Association*** v. ***Defence Minister-cum-Chairman Board of Governors, Sainik Schools Society, New Delhi and others*** (1989) Supplement 1 SCC 205, this Court held that the Sainik School society is "State" within the meaning of Article 12 of the Constitution after having found that the entire funding is by the State Government and by the Central Government

and the overall control vests in the governmental authority and the main object of the society is to run schools and prepare students for the purpose feeding the National Defence Academy.

14. This Court in ***Executive Committee of Vaish Degree College, Shamli and Others v. Lakshmi Narain and Others*** (1976) 2 SCC 58, while dealing with the status of the Executive Committee of a Degree College registered under the Co-operative Societies Act, held as follows:

> "10.....It seems to us that before an institution can be a statutory body it must be created by or under the statute and owe its existence to a statute. This must be the primary thing which has got to be established. Here a distinction must be made between an institution which is not created by or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. There have been a number of institutions which though not created by or under any statute have adopted certain statutory provisions, but that by itself is not, in our opinion, sufficient to clothe the institution with a statutory character....."

15. We can, therefore, draw a clear distinction between a body which is created by a Statute and a body which, after

having come into existence, is governed in accordance with the provisions of a Statute. Societies, with which we are concerned, fall under the later category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Co-operative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suites and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a society vests in the general body of its members and every society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of Societies are concerned, as Statute says, is the general body and not the Registrar of Cooperative Societies or State Government.

16. This Court in ***Federal Bank Ltd. v. Sagar Thomas and Others*** (2003) 10 SCC 733, held as follows:

> "32. Merely because Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests of the depositors etc. as provided under Section 5(*c*)(*a*) of the Banking Regulation Act does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. As to the provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now a judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for the acquiring authority".

17. Societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the State exercises any direct or indirect control over the affairs of the society

which is deep and all pervasive. Supervisory or general regulation under the statute over the co-operative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State. Above principle has been approved by this Court in ***S.S. Rana*** v. ***Registrar, Co-operative Societies and another*** (2006) 11 SCC 634. In that case this Court was dealing with the maintainability of the writ petition against the Kangra Central Co-operative Society Bank Limited, a society registered under the provisions of the Himachal Pradesh Co-operative Societies Act, 1968. After examining various provisions of the H.P. Co-operative Societies Act this Court held as follows:

> **"9.** It is not in dispute that the Society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which

reference has been made by Mr Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder. The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (*1*) How was the Society created? (*2*) Whether it enjoys any monopoly character? (*3*) Do the functions of the Society partake to statutory functions or public functions? and (*4*) Can it be characterised as public authority?

11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia* v. *Khalid Mujib Sehravardi*. [See *Zoroastrian Coop. Housing Society Ltd.* v. *Distt. Registrar, Coop. Societies (Urban)*.]

12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of

> the society and the State or statutory authorities would have nothing to do with its day-to-day functions."

18. We have, on facts, found that the Co-operative Societies, with which we are concerned in these appeals, will not fall within the expression "State" or "instrumentalities of the State" within the meaning of Article 12 of the Constitution and hence not subject to all constitutional limitations as enshrined in Part III of the Constitution. We may, however, come across situations where a body or organization though not a State or instrumentality of the State, may still satisfy the definition of public authority within the meaning of Section 2(h) of the Act, an aspect which we may discuss in the later part of this Judgment.

Constitutional provisions and Co-operative autonomy:

19. Rights of the citizens to form co-operative societies voluntarily, is now raised to the level of a fundamental right and State shall endeavour to promote their autonomous functioning. The Parliament, with a view to enhance public faith in the co-operative institutions and to insulate them to

avoidable political or bureaucratic interference brought in Constitutional (97th Amendment) Act, 2011, which received the assent of the President on 12.01.2012, notified in the Gazette of India on 13.01.2012 and came into force on 15.02.2012.

20. Constitutional amendment has been effected to encourage economic activities of co-operatives which in turn help progress of rural India. Societies are expected not only to ensure autonomous and democratic functioning of co-operatives, but also accountability of the management to the members and other share stake-holders. Article 19 protects certain rights regarding freedom of speech. By virtue of above amendment under Article 19(1)(c) the words "co-operative societies" are added. Article 19(1)(c) reads as under:

> "19(1)(c) – All citizens shall have the right to form associations or unions or co-operative societies".

Article 19(1)(c), therefore, guarantees the freedom to form an association, unions and co-operative societies. Right to

form a co-operative society is, therefore, raised to the level of a fundamental right, guaranteed under the Constitution of India. Constitutional 97th Amendment Act also inserted a new Article 43B with reads as follows :-

> "the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies".

21. By virtue of the above-mentioned amendment, Part IX-B was also inserted containing Articles 243ZH to 243ZT. Cooperative Societies are, however, not treated as units of self-government, like Panchayats and Municipalities.

22. Article 243(ZL) dealing with the supersession and suspension of board and interim management states that notwithstanding anything contained in any law for the time being in force, no board shall be superseded or kept under suspension for a period exceeding six months. It provided further that the Board of any such co-operative society shall not be superseded or kept under suspension where there is no government shareholding or loan or financial assistance

or any guarantee by the Government. Such a constitutional restriction has been placed after recognizing the fact that there are co-operative societies with no government share holding or loan or financial assistance or any guarantee by the government.

23. Co-operative society is a state subject under Entry 32 List I Seventh Schedule to the Constitution of India. Most of the States in India enacted their own Co-operative Societies Act with a view to provide for their orderly development of the cooperative sector in the state to achieve the objects of equity, social justice and economic development, as envisaged in the Directive Principles of State Policy, enunciated in the Constitution of India. For co-operative societies working in more than one State, The Multi State Co-operative Societies Act, 1984 was enacted by the Parliament under Entry 44 List I of the Seventh Schedule of the Constitution. Co-operative society is essentially an association or an association of persons who have come

together for a common purpose of economic development or for mutual help.

Right to Information Act

24. The RTI Act is an Act enacted to provide for citizens to secure, access to information under the control of public authorities and to promote transparency and accountability in the working of every public authority. The preamble of the Act reads as follows:

> "An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.
>
> WHEREAS the Constitution of India has established democratic Republic;
>
> AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

> AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;
>
> AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;
>
> NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

25. Every public authority is also obliged to maintain all its record duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such record is facilitated. Public authority has also to carry out certain other functions also, as provided under the Act.

26. The expression "public authority" is defined under Section 2(h) of the RTI Act, which reads as follows:

"**2. Definitions.**_ In this Act, unless the context otherwise requires :

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

(a) by or under the Constitution;

(b) by any other law made by Parliament;

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

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

(i) body owned, controlled or substantially financed;

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

27. Legislature, in its wisdom, while defining the expression "public authority" under Section 2(h), intended to embrace only those categories, which are specifically included, unless the context of the Act otherwise requires. Section 2(h) has used the expressions 'means' and includes'. When a word is defined to 'mean' something, the definition is *prima facie* restrictive and where the word is defined to 'include' some

other thing, the definition is *prima facie* extensive. But when both the expressions "means" and "includes" are used, the categories mentioned there would exhaust themselves. Meanings of the expressions 'means' and 'includes' have been explained by this Court in ***Delhi Development Authority*** v. ***Bhola Nath Sharma (Dead) by LRs and others*** (2011) 2 SCC 54, (in paras 25 to 28). When such expressions are used, they may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to those words and expressions.

28. Section 2(h) exhausts the categories mentioned therein. The former part of 2(h) deals with:

(1) an authority or body or institution of self-government established by or under the Constitution,

(2) an authority or body or institution of self-government established or constituted by any other law made by the Parliament,

(3) an authority or body or institution of self-government established or constituted by any other law made by the State legislature, and

(4) an authority or body or institution of self-government established or constituted by notification issued or order made by the appropriate government.

29. Societies, with which we are concerned, admittedly, do not fall in the above mentioned categories, because none of them is either a body or institution of self-government, established or constituted under the Constitution, by law made by the Parliament, by law made by the State Legislature or by way of a notification issued or made by the appropriate government. Let us now examine whether they fall in the later part of Section 2(h) of the Act, which embraces within its fold:

(5) a body owned, controlled or substantially financed, directly or indirectly by funds provided by the appropriate government,

(6) non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate government.

30 The expression 'Appropriate Government' has also been defined under Section 2(a) of the RTI Act, which reads as follows :

> "**2(a)**. "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly-
>
> (i) by the Central Government or the Union territory administration, the Central Government;
> (ii) by the State Government, the State Government."

31. The RTI Act, therefore, deals with bodies which are owned, controlled or substantially financed, directly or indirectly, by funds provided by the appropriate government and also non-government organizations substantially financed, directly or indirectly, by funds provided by the appropriate government, in the event of which they may fall within the definition of Section 2(h)(d)(i) or (ii) respectively. As already pointed out, a body, institution or an organization, which is neither a State within the meaning of Article 12 of the Constitution or instrumentalities, may still answer the definition of public authority under Section 2(h)d (i) or (ii).

(a) **Body owned by the appropriate government** – A body owned by the appropriate government clearly falls under Section 2(h)(d)(i) of the Act. A body owned, means to

have a good legal title to it having the ultimate control over the affairs of that body, ownership takes in its fold control, finance etc. Further discussion of this concept is unnecessary because, admittedly, the societies in question are not owned by the appropriate government.

(b) **Body Controlled by the Appropriate Government**

A body which is controlled by the appropriate government can fall under the definition of public authority under Section 2h(d)(i). Let us examine the meaning of the expression "controlled" in the context of RTI Act and not in the context of the expression "controlled" judicially interpreted while examining the scope of the expression "State" under Article 12 of the Constitution or in the context of maintainability of a writ against a body or authority under Article 226 of the Constitution of India. The word "control" or "controlled" has not been defined in the RTI Act, and hence, we have to understand the scope of the expression 'controlled' in the context of the words which exist prior and subsequent i.e. "body owned" and

"substantially financed" respectively. The meaning of the word "control" has come up for consideration in several cases before this Court in different contexts. In ***State of West Bengal and another v. Nripendra Nath Bagchi***, AIR 1966 SC 447 while interpreting the scope of Article 235 of the Constitution of India, which confers control by the High Court over District Courts, this Court held that the word "control" includes the power to take disciplinary action and all other incidental or consequential steps to effectuate this end and made the following observations :

> "The word 'control', as we have seen, was used for the first time in the Constitution and it is accompanied by the word 'vest' which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.... In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, ..."

32. The above position has been reiterated by this Court in ***Chief Justice of Andhra Pradesh and others v. L.V.A. Dixitulu and others*** (1979) 2 SCC 34. In ***Corporation of the City of Nagpur Civil Lines, Nagpur and another v. Ramchandra and others*** (1981) 2 SCC 714, while interpreting the provisions of Section 59(3) of the City of Nagpur Corporation Act, 1948, this Court held as follows :

> "4. It is thus now settled by this Court that the term "control" is of a very wide connotation and amplitude and includes a large variety of powers which are incidental or consequential to achieve the powers-vested in the authority concerned....."

33. The word "control" is also sometimes used synonyms with superintendence, management or authority to direct, restrict or regulate by a superior authority in exercise of its supervisory power. This Court in ***The Shamrao Vithal Co-operative Bank Ltd. v. Kasargode Pandhuranga Mallya*** (1972) 4 SCC 600, held that the word "control" does not comprehend within itself the adjudication of a claim made by a co-operative society against its members. The

meaning of the word "control" has also been considered by this Court in ***State of Mysore v. Allum Karibasappa & Ors.*** (1974) 2 SCC 498, while interpreting Section 54 of the Mysore Cooperative Societies Act, 1959 and Court held that the word "control" suggests check, restraint or influence and intended to regulate and hold in check and restraint from action. The expression "control" again came up for consideration before this Court in ***Madan Mohan Choudhary v. State of Bihar & Ors.*** (1999) 3 SCC 396, in the context of Article 235 of the Constitution and the Court held that the expression "control" includes disciplinary control, transfer, promotion, confirmation, including transfer of a District Judge or recall of a District Judge posted on ex-cadre post or on deputation or on administrative post etc. so also premature and compulsory retirement. Reference may also be made to few other judgments of this Court reported in ***Gauhati High Court and another v. Kuladhar Phukan and another*** (2002) 4 SCC 524, ***State of Haryana v. Inder Prakash Anand HCS and others*** (1976) 2 SCC 977, ***High Court of Judicature for Rajasthan v. Ramesh***

Chand Paliwal and Another (1998) 3 SCC 72, ***Kanhaiya Lal Omar v. R.K. Trivedi and others*** (1985) 4 SCC 628, ***TMA Pai Foundation and others v. State of Karnataka*** (2002) 8 SCC 481, ***Ram Singh and others v. Union Territory, Chandigarh and others*** (2004) 1 SCC 126, etc.

34. We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate government must be a control of a substantial nature. The mere 'supervision' or 'regulation' as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate government, the control of the body by the appropriate government would also be substantial and not merely supervisory or regulatory. Powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory in nature,

which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. Management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Co-operative Societies Act.

35. We are, therefore, of the view that the word "controlled" used in Section 2(h)(d)(i) of the Act has to be understood in the context in which it has been used vis-a-vis a body owned or substantially financed by the appropriate government, that is the control of the body is of such a degree which amounts to substantial control over the management and affairs of the body.

SUBSTANTIALLY FINANCED

36. The words "substantially financed" have been used in Sections 2(h)(d)(i) & (ii), while defining the expression public

authority as well as in Section 2(a) of the Act, while defining the expression "appropriate Government". A body can be substantially financed, directly or indirectly by funds provided by the appropriate Government. The expression "substantially financed", as such, has not been defined under the Act. "Substantial" means "in a substantial manner so as to be substantial". In ***Palser v. Grimling*** (1948) 1 All ER 1, 11 (HL), while interpreting the provisions of Section 10(1) of the Rent and Mortgage Interest Restrictions Act, 1923, the House of Lords held that "substantial" is not the same as "not unsubstantial" i.e. just enough to avoid the *de minimis* principle. The word "substantial" literally means solid, massive etc. Legislature has used the expression "substantially financed" in Sections 2(h)(d)(i) and (ii) indicating that the degree of financing must be actual, existing, positive and real to a substantial extent, not moderate, ordinary, tolerable etc.

37. We often use the expressions "questions of law" and "substantial questions of law" and explain that any question

of law affecting the right of parties would not by itself be a substantial question of law. In ***Black's Law Dictionary (6th Edn.)***, the word 'substantial' is defined as 'of real worth and importance; of considerable value; valuable. Belonging to substance; actually existing; real: not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal. Synonymous with material.' The word 'substantially' has been defined to mean 'essentially; without material qualification; in the main; in substance; materially.' In the Shorter Oxford English Dictionary (5th Edn.), the word 'substantial' means 'of ample or considerable amount of size; sizeable, fairly large; having solid worth or value, of real significance; sold; weighty; important, worthwhile; of an act, measure etc. having force or effect, effective, thorough.' The word 'substantially' has been defined to mean 'in substance; as a substantial thing or being; essentially, intrinsically.' Therefore the word 'substantial' is not synonymous with 'dominant' or 'majority'. It is closer to 'material' or 'important' or 'of considerable value.' 'Substantially' is closer

to 'essentially'. Both words can signify varying degrees depending on the context.

38. Merely providing subsidiaries, grants, exemptions, privileges etc., as such, cannot be said to be providing funding to a substantial extent, unless the record shows that the funding was so substantial to the body which practically runs by such funding and but for such funding, it would struggle to exist. The State may also float many schemes generally for the betterment and welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD etc., but those facilities or assistance cannot be termed as “substantially financed” by the State Government to bring the body within the fold of “public authority” under Section 2(h)(d)(i) of the Act. But, there are instances, where private educational institutions getting ninety five per cent grant-in-aid from the appropriate government, may answer the definition of public authority under Section 2(h)(d)(i).

NON-GOVERNMENT ORGANISATIONS:

39. The term "Non-Government Organizations" (NGO), as such, is not defined under the Act. But, over a period of time, the expression has got its own meaning and, it has to be seen in that context, when used in the Act. Government used to finance substantially, several non-government organizations, which carry on various social and welfare activities, since those organizations sometimes carry on functions which are otherwise governmental. Now, the question, whether an NGO has been substantially financed or not by the appropriate Government, may be a question of fact, to be examined by the authorities concerned under the RTI Act. Such organization can be substantially financed either directly or indirectly by funds provided by the appropriate Government. Government may not have any statutory control over the NGOs, as such, still it can be established that a particular NGO has been substantially financed directly or indirectly by the funds provided by the appropriate Government, in such an event, that organization

will fall within the scope of Section 2(h)(d)(ii) of the RTI Act. Consequently, even private organizations which are, though not owned or controlled but substantially financed by the appropriate Government will also fall within the definition of "public authority" under Section 2(h)(d)(ii) of the Act.

BURDEN TO SHOW:

40. The burden to show that a body is owned, controlled or substantially financed or that a non-government organization is substantially financed directly or indirectly by the funds provided by the appropriate Government is on the applicant who seeks information or the appropriate Government and can be examined by the State Information Commission or the Central Information Commission as the case may be, when the question comes up for consideration. A body or NGO is also free to establish that it is not owned, controlled or substantially financed directly or indirectly by the appropriate Government.

41. Powers have been conferred on the Central Information Commissioner or the State Information Commissioner under Section 18 of the Act to inquire into any complaint received from any person and the reason for the refusal to access to any information requested from a body owned, controlled or substantially financed, or a non-government organization substantially financed directly or indirectly by the funds provided by the appropriate Government. Section 19 of the Act provides for an appeal against the decision of the Central Information Officer or the State Information Officer to such officer who is senior in rank to the Central Information Officer or the State Information Officer, as the case may be, in each public authority. Therefore, there is inbuilt mechanism in the Act itself to examine whether a body is owned, controlled or substantially financed or an NGO is substantially financed, directly or indirectly, by funds provided by the appropriate authority.

42. Legislative intention is clear and is discernible from Section 2(h) that intends to include various categories,

discussed earlier. It is trite law that the primarily language employed is the determinative factor of the legislative intention and the intention of the legislature must be found in the words used by the legislature itself. In ***Magor and St. Mellons Rural District Council*** v. ***New Port Corporation*** (1951) 2 All ER 839(HL) stated that the courts are warned that they are not entitled to usurp the legislative function under the guise of interpretation. This Court in ***D.A. Venkatachalam and others*** v. ***Dy. Transport Commissioner and others*** (1977) 2 SCC 273, ***Union of India*** v. ***Elphinstone Spinning and Weaving Co. Ltd. and others*** (2001) 4 SCC 139, ***District Mining Officer and others*** v. ***Tata Iron & Steel Co. and another*** (2001) 7 SCC 358, ***Padma Sundara Rao (Dead) and others*** v. ***State of Tamil Nadu and others*** (2002) 3 SCC 533, ***Maulvi Hussain Haji Abraham Umarji*** v. ***State of Gujarat and another*** (2004) 6 SCC 672 held that the court must avoid the danger of an *apriori* determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the

provisions to be interpreted is somehow fitted. It is trite law that words of a statute are clear, plain and unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of the consequences, meaning thereby when the language is clear and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the statute speaks for itself. This Court in ***Kanai Lal Sur*** v. ***Paramnidhi Sadhukhan*** AIR 1957 SC 907 held that "if the words used are capable of one construction only then it would not be open to courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act."

43. We are of the view that the High Court has given a complete go-bye to the above-mentioned statutory principles and gone at a tangent by mis-interpreting the meaning and content of Section 2(h) of the RTI Act. Court has given a liberal construction to expression "public authority" under Section 2(h) of the Act, bearing in mind the

"transformation of law" and its "ultimate object" i.e. to achieve "transparency and accountability", which according to the court could alone advance the objective of the Act. Further, the High Court has also opined that RTI Act will certainly help as a protection against the mismanagement of the society by the managing committee and the society's liabilities and that vigilant members of the public body by obtaining information through the RTI Act, will be able to detect and prevent mismanagement in time. In our view, the categories mentioned in Section 2(h) of the Act exhaust themselves, hence, there is no question of adopting a liberal construction to the expression "public authority" to bring in other categories into its fold, which do not satisfy the tests we have laid down. Court cannot, when language is clear and unambiguous, adopt such a construction which, according to the Court, would only advance the objective of the Act. We are also aware of the opening part of the definition clause which states "unless the context otherwise requires". No materials have been made available to show that the cooperative societies, with which we are concerned,

in the context of the Act, would fall within the definition of Section 2(h) of the Act.

Right to Information and the Right to Privacy

44. People's right to have access to an official information finds place in Resolution 59(1) of the UN General Assembly held in 1946. It states that freedom of information is a fundamental human right and the touchstone to all the freedoms to which the United Nations is consecrated. India is a party to the International Covenant on Civil and Political Rights and hence India is under an obligation to effectively guarantee the right to information. Article 19 of the Universal Declaration of Human Rights also recognizes right to information. Right to information also emanates from the fundamental right guaranteed to citizens under Article 19(1)(a) of the Constitution of India. Constitution of India does not explicitly grant a right to information. In ***Bennet Coleman & Co. and others Vs. Union of India and others*** (1972) 2 SCC 788, this Court observed that it is indisputable that by "Freedom of Press" meant the right of all citizens to speak,

publish and express their views and freedom of speech and expression includes within its compass the right of all citizens to read and be informed. In ***Union of India Vs. Association of Democratic Reforms and another*** (2002) 5 SCC 294, this Court held that the right to know about the antecedents including criminal past of the candidates contesting the election for Parliament and State Assembly is a very important and basic facets for survival of democracy and for this purpose, information about the candidates to be selected must be disclosed. In ***State of U.P. Vs. Raj Narain and others*** (1975) 4 SCC 428, this Court recognized that the right to know is the right that flows from the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution. In ***People's Union for Civil Liberties (PUCL) and others Vs. Union of India and another*** (2003) 4 SCC 399, this Court observed that the right to information is a facet of freedom of speech and expression contained in Article 19(1)(a) of the Constitution of India. Right to information thus indisputably is a

fundamental right, so held in several judgments of this Court, which calls for no further elucidation.

45. The Right to Information Act, 2005 is an Act which provides for setting up the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. Preamble of the Act also states that the democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. Citizens have, however, the right to secure access to information of only those matters which are "under the control of public authorities", the purpose is to hold "Government and its instrumentalities" accountable to the governed. Consequently, though right to get information is a fundamental right guaranteed under Article 19(1)(a) of the Constitution, limits are being prescribed under the Act itself,

which are reasonable restrictions within the meaning of Article 19(2) of the Constitution of India.

46. Right to privacy is also not expressly guaranteed under the Constitution of India. However, the Privacy Bill, 2011 to provide for the right to privacy to citizens of India and to regulate the collection, maintenance and dissemination of their personal information and for penalization for violation of such rights and matters connected therewith, is pending. In several judgments including ***Kharak Singh Vs. State of U.P. and others*** AIR 1963 SC 1295, ***R. Rajagopal alias R.R. Gopal and another Vs. State of Tamil Nadu and others*** (1994) 6 SCC 632, ***People's Union for Civil Liberties (PUCL) Vs. Union of India and another*** (1997) 1 SCC 301 and ***State of Maharashtra Vs. Bharat Shanti Lal Shah and others*** (2008) 13 SCC 5, this Court has recognized the right to privacy as a fundamental right emanating from Article 21 of the Constitution of India. Right to privacy is also recognized as a basic human right under

Article 12 of the Universal Declaration of Human Rights Act, 1948, which states as follows:

> "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attack upon his honour and reputation. Everyone has the right to the protection of law against such interference or attacks."

Article 17 of the International Covenant on Civil and Political Rights Act, 1966, to which India is a party also protects that right and states as follows:

> "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence nor to unlawful attacks on his honour and reputation...."

This Court in ***R. Rajagopal*** (supra) held as follows :-

> "The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters."

Restrictions and Limitations:

47. Right to information and Right to privacy are, therefore, not absolute rights, both the rights, one of which falls under Article 19(1)(a) and the other under Article 21 of the Constitution of India, can obviously be regulated, restricted and curtailed in the larger public interest. Absolute or uncontrolled individual rights do not and cannot exist in any modern State. Citizens' right to get information is statutorily recognized by the RTI Act, but at the same time limitations are also provided in the Act itself, which is discernible from the Preamble and other provisions of the Act. First of all, the scope and ambit of the expression "public authority" has been restricted by a statutory definition under Section 2(h) limiting it to the categories mentioned therein which exhaust itself, unless the context otherwise requires. Citizens, as already indicated by us, have a right to get information, but can have access only to the information "held" and under the "control of public authorities", with limitations. If the

information is not statutorily accessible by a public authority, as defined in Section 2(h) of the Act, evidently, those information will not be under the "control of the public authority". Resultantly, it will not be possible for the citizens to secure access to those information which are not under the control of the public authority. Citizens, in that event, can always claim a right to privacy, the right of a citizen to access information should be respected, so also a citizen's right to privacy.

48. Public authority also is not legally obliged to give or provide information even if it is held, or under its control, if that information falls under clause (j) of Sub-section (1) of Section 8. Section 8(1)(j) is of considerable importance so far as this case is concerned, hence given below, for ready reference:-

> **"8. Exemption from disclosure of information –** (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen –
>
> (a) to (i) xxx xxx xxx

> (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."

49. Section 8 begins with a non obstante clause, which gives that Section an overriding effect, in case of conflict, over the other provisions of the Act. Even if, there is any indication to the contrary, still there is no obligation on the public authority to give information to any citizen of what has been mentioned in clauses (a) to (j). Public authority, as already indicated, cannot access all the information from a private individual, but only those information which he is legally obliged to pass on to a public authority by law, and also only those information to which the public authority can have access in accordance with law. Even those information, if personal in nature, can be made available only subject to the limitations provided in Section 8(j) of the

RTI Act. Right to be left alone, as propounded in ***Olmstead v. The United States*** reported in 1927 (277) US 438 is the most comprehensive of the rights and most valued by civilized man.

50. Recognizing the fact that the right to privacy is a sacrosanct facet of Article 21 of the Constitution, the legislation has put a lot of safeguards to protect the rights under Section 8(j), as already indicated. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve larger public interest, the public authority or the officer concerned is not legally obliged to provide those information. Reference may be made to a recent judgment of this Court in ***Girish Ramchandra Deshpande v. Central Information Commissioner and*** **others** (2013) 1 SCC 212, wherein this Court held that since there is no *bona fide* public interest in seeking information, the disclosure of said information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the Act. Further, if the authority

finds that information sought for can be made available in the larger public interest, then the officer should record his reasons in writing before providing the information, because the person from whom information is sought for, has also a right to privacy guaranteed under Article 21 of the Constitution.

51. We have found, on facts, that the Societies, in these appeals, are not public authorities and, hence, not legally obliged to furnish any information sought for by a citizen under the RTI Act. All the same, if there is any dispute on facts as to whether a particular Society is a public authority or not, the State Information Commission can examine the same and find out whether the Society in question satisfies the test laid in this judgment. Now, the next question is whether a citizen can have access to any information of these Societies through the Registrar of Cooperative Societies, who is a public authority within the meaning of Section 2(h) of the Act.

Registrar of Cooperative Societies

52. Registrar of Cooperative Societies functioning under the Cooperative Societies Act is a public authority within the meaning of Section 2(h) of the Act. As a public authority, Registrar of Co-operative Societies has been conferred with lot of statutory powers under the respective Act under which he is functioning. He is also duty bound to comply with the obligations under the RTI Act and furnish information to a citizen under the RTI Act. Information which he is expected to provide is the information enumerated in Section 2(f) of the RTI Act subject to the limitations provided under Section 8 of the Act. Registrar can also, to the extent law permits, gather information from a Society, on which he has supervisory or administrative control under the Cooperative Societies Act. Consequently, apart from the information as is available to him, under Section 2(f), he can also gather those information from the Society, to the extent permitted by law. Registrar is also not obliged to disclose those information if those information fall under Section 8(1)(j) of the Act. No provision has been brought to our knowledge indicating that,

under the Cooperative Societies Act, a Registrar can call for the details of the bank accounts maintained by the citizens or members in a cooperative bank. Only those information which a Registrar of Cooperative Societies can have access under the Cooperative Societies Act from a Society could be said to be the information which is "held" or "under the control of public authority". Even those information, Registrar, as already indicated, is not legally obliged to provide if those information falls under the exempted category mentioned in Section 8(j) of the Act. Apart from the Registrar of Co-operative Societies, there may be other public authorities who can access information from a Co-operative Bank of a private account maintained by a member of Society under law, in the event of which, in a given situation, the society will have to part with that information. But the demand should have statutory backing.

53. Consequently, an information which has been sought for relates to personal information, the disclosure of which has no relationship to any public activity or interest or which

would cause unwarranted invasion of the privacy of the individual, the Registrar of Cooperative Societies, even if he has got that information, is not bound to furnish the same to an applicant, unless he is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing.

54. We, therefore, hold that the Cooperative Societies registered under the Kerala Co-operative Societies Act will not fall within the definition of "public authority" as defined under Section 2(h) of the RTI Act and the State Government letter dated 5.5.2006 and the circular dated 01.06.2006 issued by the Registrar of Co-operative Societies, Kerala, to the extent, made applicable to societies registered under the Kerala Co-operative Societies Act would stand quashed in the absence of materials to show that they are owned, controlled or substantially financed by the appropriate Government. Appeals are, therefore, allowed as above, however, with no order as to costs.

.....J.
(K.S. Radhakrishnan)

.....J.
(A.K. Sikri)

New Delhi,
October 07, 2013

'REPORTABLE'

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 4467 of 2015
(Arising out of SLP(C)No. 22488 of 2012)

Bilaspur Raipur Kshetriya Gramin Bank
and another .....Appellant(s)

versus

Madanlal Tandon .....Respondent(s)

JUDGMENT

M. Y. EQBAL, J.

Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 17th February, 2012, whereby Division Bench of the High Court of Chhattisgarh in the writ appeal preferred by the appellants upheld the order of the learned Single Judge and directed payment towards respondent's claim of salary up to Rs.5,00,000/- with all consequential benefits.

3. The factual matrix of the case is that the respondent was working as a Field Supervisor in the appellant Bank since 1981. In February, 1984, a charge-sheet was issued to him for having committed misconduct and after a departmental inquiry, an order dated 5.7.1984 was passed by the Disciplinary Authority imposing punishment of stoppage of his two annual increments. Thereafter a second charge-sheet was issued to the respondent in November, 1987 alleging that the respondent had committed several financial irregularities in various loan cases. An inquiry was conducted, wherein fourteen charges were found proved against the respondent and three charges were not found proved. Consequently, the punishment of removal from service was inflicted against the respondent on 1.10.1991. Respondent preferred an appeal before the Board of Directors of the appellant Bank, but the same was dismissed.

4. The respondent, therefore, moved the High Court by way of writ petition, inter alia contending that both the charge-sheets being identical, the second inquiry was not competent. It was also contended that along with the second charge-sheet, neither the list of documents nor the documents sought to be relied upon were supplied. It was also contended by the respondent-writ petitioner that appropriate opportunity was not afforded to him to have inspection of the relevant documents and as such the respondent was not in a position to reply the said show cause notice effectively and to defend him in the inquiry. Learned Single Judge of the High Court rejected his first contention and held that the charges were not identical and, therefore, the second inquiry was competent. However, it was held that along with the charge-sheet and imputation of charges, there was no list of documents and list of witnesses were also not supplied as such the respondent was not afforded an opportunity to put forward his case in response to show cause notice along with the charge-sheet. Observing that the object of rules of natural justice is to

ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service, learned Single Judge of the High Court quashed the orders of removal passed by the appellant and allowed the writ petition of the respondent with all consequential benefits.

5. Aggrieved by aforesaid decision, the appellants preferred writ appeal, wherein Division Bench of the High Court, after perusing the record, found that although the show cause notice was served along with 17 charges, but no documents were supplied along with the show cause to the respondent. Even the list of documents sought to be relied during the inquiry was not supplied along with the show cause. The Division Bench opined that it is trite law that when a delinquent employee is facing disciplinary proceeding, he is entitled to be afforded with a reasonable opportunity to meet the charges against him in an effective manner. If the copies

of the documents are not supplied to the concerned employee, it would be difficult for him to prepare his defence and to cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are false or baseless.

6. The Division Bench of the High Court further observed that in the instant case neither the list of witnesses nor the list of documents was supplied to the respondent along with the charge-sheet. Though during the course of inquiry some documents were supplied to him but those documents, on which the reliance was placed by the Inquiry Officer for holding various charges proved, were not supplied to the respondent. The High Court further observed that the respondent is out of employment since 01.10.1991 and his claim for arrears of salary, as stated by counsel for both the parties, would be more than 45-50 lakhs. The Bank's money is public money and a huge amount cannot be paid to anyone for doing no work. The principle of "no work no pay" has been

evolved in view of the public interest that an employee who does not discharge his duty is not entitled to arrears of salary at the cost of public exchequer. By way of impugned judgment, the High Court, therefore, concluded that in the facts and circumstances of the case a lump-sum payment of Rs. 5,00,000/- towards the claim of salary, would be just and proper in this matter. The respondent was also held to be entitled to all other consequential benefits.

7. Hence, the present appeal by special leave by the appellant Bank and its Board of Directors. It is worth to mention here that the respondent has not come to this Court against the impugned judgment passed by the High Court.

8. We have heard Mr. Akshat Shrivastava, learned counsel for the appellants and Mr. T.V.S. Raghavendra Sreyas, learned counsel for the respondent. We have also perused the

impugned order passed by the Division Bench of the High Court. The only controversy that falls for our consideration is as to whether the documents, which were the basis of the charges leveled against the respondent, were supplied to the respondent or not?

9. Indisputably, no documents were supplied to the respondent along with the charge-sheet on the basis of which charges were framed. Some of the documents were given during departmental inquiry, but relevant documents on the basis of which findings were recorded were not made available to the respondent. It further appears that the list of documents and witnesses were also not supplied and some of the documents were produced during the course of inquiry.

10. Admittedly, show cause notice was served along with 17 charges, but all the documents were not supplied to the

respondent. A perusal of the impugned order will show that when the Division Bench, during the course of arguments, asked the learned counsel appearing for the appellants whether documents viz. P-21, P-25, P-23, P-19, P-30, P-31 & P-32 were supplied to the respondent, on the basis of which various charges have been held to be proved, learned counsel was not able to demonstrate that the above documents were supplied to the respondent even during the course of inquiry. The Division Bench then following a catena of decisions of this Court came to the conclusion that the order of punishment cannot be sustained in law. However, taking into consideration the fact that the respondent was out of employment since 1991, a lump sum payment of Rs.5,00,000/- towards the salary would meet the ends of justice.

11. After giving our anxious consideration, we do not find any reason to differ with the finding recorded by the learned

Single Judge and also the Division Bench of the High Court in writ appeal. Therefore, this civil appeal is dismissed.

.....J.
(M.Y. Eqbal)

.....J.
(S.A. Bobde)

New Delhi
May 15, 2015

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFERRED CASE (CIVIL) NO. 91 OF 2015
(Arising out of Transfer Petition (Civil) No. 707 of 2012)

Reserve Bank of India .....Petitioner(s)

versus

Jayantilal N. Mistry .....Respondent(s)

With

TRANSFERRED CASE (CIVIL) NO. 92 OF 2015
(Arising out of Transfer Petition (Civil) No. 708 of 2012)

I.C.I.C.I Bank Limited ..... Petitioner(s)

versus

S.S. Vohra and others .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 93 OF 2015
(Arising out of Transfer Petition (Civil) No. 711 of 2012)

National Bank for Agriculture
and Rural Development .....Petitioner(s)

versus

Kishan Lal Mittal .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 94 OF 2015
(Arising out of Transfer Petition (Civil) No. 712 of 2012)

Reserve Bank of India .....Petitioner(s)

versus

P.P. Kapoor .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 95 OF 2015
(Arising out of Transfer Petition (Civil) No. 713 of 2012)

Reserve Bank of India .....Petitioner(s)

versus

Subhas Chandra Agrawal .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 96 OF 2015
(Arising out of Transfer Petition (Civil) No. 715 of 2012)

Reserve Bank of India .....Petitioner(s)

versus

Raja M. Shanmugam .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 97 OF 2015
(Arising out of Transfer Petition (Civil) No. 716 of 2012)

National Bank for Agriculture
and Rural Development .....Petitioner(s)

versus

Sanjay Sitaram Kurhade .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 98 OF 2015
(Arising out of Transfer Petition (Civil) No. 717 of 2012)

Reserve Bank of India .....Petitioner(s)

versus

K.P. Muralidharan Nair .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 99 OF 2015
(Arising out of Transfer Petition (Civil) No. 718 of 2012)

Reserve Bank of India .....Petitioner(s)

versus

Ashwini Dixit .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 100 OF 2015
(Arising out of Transfer Petition (Civil) No. 709 of 2012)

Reserve Bank of India .....Petitioner(s)

versus

A.Venugopal and another .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 101 OF 2015
(Arising out of Transfer Petition (Civil) No. 714 of 2012)

Reserve Bank of India .....Petitioner(s)

versus

Dr. Mohan K. Patil and others .....Respondent(s)

JUDGMENT

M.Y. EQBAL, J.

The main issue that arises for our consideration in these transferred cases is as to whether all the information sought for under the Right to Information Act, 2005 can be denied by the Reserve Bank of India and other Banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other. If the answer to above question is in negative, then upto what extent the information can be provided under the 2005 Act.

2. It has been contended by the RBI that it carries out inspections of banks and financial institutions on regular basis and the inspection reports prepared by it contain a wide range of information that is collected in a fiduciary capacity. The facts in brief of the Transfer Case No.91 of 2015 are that during May-June, 2010 the statutory inspection of Makarpura Industrial Estate Cooperative Bank Ltd. was conducted by RBI under the Banking Regulation Act, 1949. Thereafter, in October 2010, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sr. No.	**Information sought**	**Reply**
1.	Procedure Rules and Regulations of Inspection being carried out on Co-operative Banks	RBI is conducting inspections under Section 35 of the B.R. Act 1949 (AACS) at prescribed intervals.
2.	Last RBI investigation and audit report carried out by Shri Santosh Kumar during 23rd April, 2010 to 6th May, 2010 sent to Registrar of the Cooperative of the Gujarat State, Gandhinagar on Makarpura Industrial Estate Co-op Bank Ltd Reg. No.2808	The Information sought is maintained by the bank in a fiduciary capacity and was obtained by Reserve Bank during the course of inspection of the bank and hence cannot be given to the outsiders. Moreover, disclosure of such information may harm the interest of the bank & banking system. Such information is also exempt from disclosure under Section 8(1) (a) & (e) of the RTI Act,

		2005.
3.	Last 20 years inspection (carried out with name of inspector) report on above bank and action taken report.	Same as at (2) above
4.	(i) Reports on all co-operative banks gone on liquidation (ii) action taken against all Directors and Managers for recovery of public funds and powers utilized by RBI and analysis and procedure adopted.	(i) Same as at (2) above (ii) This information is not available with the Department
5.	Name of remaining co-operative banks under your observations against irregularities and action taken reports	No specific information has been sought
6.	Period required to take action and implementations	No specific information has been sought

3. On 30.3.2011, the First Appellate Authority disposed of the appeal of the respondent agreeing with the reply given by CPIO in query No.2, 3 & first part of 4, relying on the decision of the Full Bench of CIC passed in the case of *Ravin Ranchochodlal Patel and another vs. Reserve Bank of India*. Thereafter, in the second appeal preferred by the aggrieved respondent, the Central Information Commission by the impugned order dated 01.11.2011, directed RBI to provide

information as per records to the Respondent in relation to queries Nos.2 to 6 before 30.11.2011. Aggrieved by the decision of the Central Information Commission (CIC), petitioner RBI moved the Delhi High Court by way of a Writ Petition inter alia praying for quashing of the aforesaid order of the CIC. The High Court, while issuing notice, stayed the operation of the aforesaid order.

4. Similarly, in Transfer Case No. 92 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sr. No.	**Information sought**	**Reply**
1.	The Hon'ble FM made a written statement on the Floor of the House which inter alia must have been made after verifying the records from RBI and the Bank must have the copy of the facts as reported by FM. Please supply copy of the note sent to FM	In the absence of the specific details, we are not able to provide any information.
2.	The Hon'ble FM made a statement that some of the banks like SBI, ICICI Bank Ltd, Bank of Baroda, Dena Bank, HSBC Bank etc. were issued letter of displeasure for violating FEMA guidelines for opening of accounts where as some other banks were even	We do not have this information.

	fined Rupees one crore for such violations. Please give me the names of the banks with details of violations committed by them.	
3.	'Advisory Note' issued to ICICI Bank for account opened by some fraudsters at its Patna Branch Information sought about "exact nature of irregularities committed by the bank under "FEMA". Also give list of other illegalities committed by IBL and other details of offences committed by IBL through various branches in India and abroad along with action taken by the Regulator including the names and designations of his officials branch name, type of offence committed etc. The exact nature of offences committed by Patna Branch of the bank and other branches of the bank and names of his officials involved, type of offence committed by them and punishment awarded by concerned authority, names and designation of the designated authority, who investigated the above case and his findings and punishment awarded."	An Advisory Letter had been issued to the bank in December, 2007 for the bank's Patna branch having failed to (a) comply with the RBI guidelines on customer identification, opening/operating customer accounts, (b) the bank not having followed the normal banker's prudence while opening an account in question. As regards the list of supervisory action taken by us, it may be stated that the query is too general and not specific. Further, we may state that Supervisory actions taken were based on the scrutiny conducted under Section 35 of the Banking Regulation (BR) Act. The information in the scrutiny report is held in fiduciary capacity and the disclosure of which can affect the economic interest of the country and also affect the commercial confidence of the bank. And such information is also exempt from disclosure under Section 8(1)(a)(d) & (e) of the RTI Act (extracts enclosed). We, therefore, are unable to accede to your request.
4.	Exact nature of irregularities committed by ICICI Bank in Hong Kong	In this regard, self explicit print out taken from the website of Securities and Futures Commission, Hong Kong is enclosed.
5.	ICICI Bank's Moscow Branch involved in money laundering act.	We do not have the information.
6.	Imposition of fine on ICICI	We do not have any information to

	Bank under Section 13 of the PMLA for loss of documents in floods .	furnish in this regard.
7.	Copy of the Warning or 'Advisory Note' issued twice issued to the bank in the last two years and reasons recorded therein. Name and designation of the authority who conducted this check and his decision to issue an advisory note only instead of penalties to be imposed under the Act.	As regards your request for copies/details of advisory letters to ICICI Bank, we may state that such information is exempt from disclosure under Section 8(1)(a)(d) and (e) of the RTI Act. The scrutiny of records of the ICICI Bank is conducted by our Department of Banking Supervision (DBS). The Chief General Manager-in charge of the DBS, Centre Office Reserve Bank of India is Shri S. Karuppasamy.

5. In this matter, it has been alleged by the petitioner RBI that the respondent is aggrieved on account of his application form for three-in-one account with the Bank and ICICI Securities Limited (ISEC) lost in the floods in July, 2005 and because of non-submission of required documents, the Trading account with ISEC was suspended, for which respondent approached the District Consumer Forum, which rejected the respondent's allegations of tempering of records and dismissed the complaint of the respondent. His appeal was also dismissed by the State Commission. Respondent then moved an application under the Act of 2005 pertaining to

the suspension of operation of his said trading account. As the consumer complaint as well as the abovementioned application did not yield any result for the respondent, he made an application under the Act before the CPIO, SEBI, appeal to which went up to the CIC, the Division Bench of which disposed of his appeal upholding the decision of the CPIO and the Appellate Authority of SEBI. Thereafter, in August 2009, respondent once again made the present application under the Act seeking aforesaid information. Being aggrieved by the order of the appellate authority, respondent moved second appeal before the CIC, who by the impugned order directed the CPIO of RBI to furnish information pertaining to Advisory Notes as requested by the respondent within 15 working days. Hence, RBI approached Bombay High Court by way of writ petition.

6. In Transfer Case No. 93 of 2015, the Respondent sought following information from the CPIO of National Bank for Agriculture and Rural Development under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	Copies of inspection reports of Apex Co-operative Banks of various States/Mumbai DCCB from 2005 till date	Furnishing of information is exempt under Section 8(1)(a) of the RTI Act.
2.	Copies of all correspondences with Maharashtra State Govt./RBI/any other agency of State/Central Co-operative Bank from January, 2010 till date.	Different Departments in NABARD deal with various issues related to MSCB. The query is general in nature. Applicant may please be specific in query/information sought.
3.	Provide confirmed/draft minutes of meetings of Governing Board/Board of Directors/Committee of Directors of NABARD from April, 2007 till date	Furnishing of information is exempt under Sec. 8(1)(d) of the RTI Act.
4.	Provide information on compliance of Section 4 of RTI Act, 2005 by NABARD	Compliance available on the website of NABARD i.e. www.nabard.org
5.	Information may be provided on a CD	-

7. The First Appellate Authority concurred with the CPIO and held that inspection report cannot be supplied in terms of Section 8(1)(a) of the RTI Act. The Respondent filed Second Appeal before the Central Information Commission, which was allowed. The RBI filed writ petition before the High Court challenging the order of the CIC dated 14.11.2011 on identical

issue and the High Court stayed the operation of the order of the CIC.

8. In Transfer Case No. 94 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sl. No.	**Information Sought**	**Reply**
1.	As mentioned at 2(a) what is RBI doing about uploading the entire list of Bank defaulters on the bank's website? When will it be done? Why is it not done?	Pursuant to the then Finance Minister's Budget Speech made in Parliament on 28th February, 1994, in order to alert the banks and FIs and put them on guard against the defaulters to other lending institutions. RBI has put in place scheme to collect details about borrowers of banks and FIs with outstanding aggregating Rs. 1 crore and above which are classified as 'Doubtful' or 'Loss or where suits are filed, as on 31st March and 30th September each year. In February 1999, Reserve Bank of India had also introduced a scheme for collection and dissemination of information on cases of willful default of borrowers with outstanding balance of Rs. 25 lakh and above. At present, RBI disseminates list of above said non suit filed 'doubtful' and 'loss' borrowed accounts of Rs.1 crore and above on half-yearly basis (i.e. as on March 31 and September 30) to banks and FIs. for <u>their confidential</u> use. The list of non-suit filed accounts of willful defaulters of Rs. 25 lakh and above is also disseminated on quarterly

		basis to banks and FIs for their confidential use. Section 45 E of the Reserve Bank of India Act 1934 prohibits the Reserve Bank from disclosing 'credit information' except in the manner provided therein. (iii) However, Banks and FIs were advised on October 1, 2002 to furnish information in respect of suit-filed accounts between Rs. 1 lakh and Rs. 1 crore from the period ended March, 2002 in a phased manner to CIBIL only. CIBIL is placing the list of defaulters (suit filed accounts) of Rs. 1 crore and above and list of willful defaulters (suit filed accounts) of Rs. 25 lakh and above as on March 31, 2003 and onwards on its website (www.cibil.com)

9. The Central Information Commission heard the parties through video conferencing. The CIC directed the CPIO of the petitioner to provide information as per the records to the Respondent in relation to query Nos. 2(b) and 2(c) before 10.12.2011. The Commission has also directed the Governor RBI to display this information on its website before 31.12.2011, in fulfillment of its obligations under Section 4(1) (b) (xvii) of the Right to Information Act, 2005 and to update it each year.

10. In Transfer Case No.95 of 2015, following information was sought and reply to it is tabulated hereunder:

Sl. No.	Information Sought	Reply
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 of 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	
2.	Complete list of banks which were issued show cause notices before fine was imposed as also referred in enclosed news clippings mentioning also default for which show cause notice was issued to each of such banks.	-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	The names of the 19 banks and details of penalty imposed on them are

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

11. In the Second Appeal, the CIC heard the respondent via telephone and the petitioner through video conferencing. As

directed by CIC, the petitioner filed written submission. The CIC directed the CPIO of the Petitioner to provide complete information in relation to queries 1 2 and 3 of the original application of the Respondent before 15.12.2011.

12. In Transfer Case No. 96 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	**Information Sought**	**Reply**
1.	Before the Orissa High Court RBI has filed an affidavit stating that the total mark to market losses on account of currency derivatives is to the tune of more than Rs. 32,000 crores Please give bank wise breakup of the MTM Losses	The Information sought by you is exempted under Section 8(1)(a) & (e) of RTI Act, which state as under; 8(1) notwithstanding anything contained in this Act, there shall be no obligation to give any citizen (a) information disclosure of which would prejudicially affect the sovereignty and integrity of India the security strategic scientific or economic interests of the state, relation with foreign State or lead to incitement of an offence. (e) Information available to a person in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.
2.	What is the latest figure available with RBI of the amount of losses suffered by Indian Business	Please refer to our response to 1 above.

	houses? Please furnish the latest figures bank wise and customer wise.	
3.	Whether the issue of derivative losses to Indian exporters was discussed in any of the meetings of Governor/Deputy Governor or senior official of the Reserve Bank of India? If so please furnish the minutes of the meeting where the said issue was discussed	We have no information in this matter.
4.	Any other Action Taken Reports by RBI in this regard.	We have no information in this matter.

13. The CIC allowed the second appeal and directed the CPIO FED of the Petitioner to provide complete information in queries 1, 2, 9 and 10 of the original application of the Respondent before 05.01.2012. The CPIO, FED complied with the order of the CIC in so far queries 2, 9 and 10 are concerned. The RBI filed writ petition for quashing the order of CIC so far as it directs to provide complete information as per record on query No.1.

14. In Transfer Case No. 97 of 2015, the Respondent sought following information from the CPIO of National Bank for

Agriculture and Rural Development under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	The report made by NABARD regarding 86 N.P.A. Accounts for Rs. 3806.95 crore of Maharashtra State Co-operative Bank Ltd. (if any information of my application is not available in your Office/Department/ Division/Branch, transfer this application to the concerned Office/Department/ Division/Branch and convey me accordingly as per the provision of Section 6 (3) of Right to Information Act, 2005.	Please refer to your application dated 19 April, 2011 seeking information under the RTI Act, 2005 which was received by us on 06th May, 2011. In this connection, we advise that the questions put forth by you relate to the observations made in the Inspection Report of NABARD pertaining to MSCB which are confidential in nature. Since furnishing the information would impede the process of investigation or apprehension or prosecution of offenders, disclosure of the same is exempted under Section 8(1)(h) of the Act.

15. In Transfer Case No. 98 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	What contraventions and violations were made by SCB in respect of RBI instructions on derivatives for which RBI has imposed penalty of INR 10 lakhs on SCB in exercise of its powers vested under Section 47(1)(b) of Banking Regulation Act, 1949 and as stated in the RBI press release dated April 26, 2011 issued by Department of Communications RBI	The bank was penalized along with 18 other banks for contravention of various instructions issued by the Reserve Bank of India in respect of derivatives, such as, failure to carry out due diligence in regard to suitability of products, selling derivative products to users not having risk management policies and not verifying the underlying/adequacy of underlying and eligible limits under past performance route. The information is also available on our website under press releases.
2.	Please provide us the copies/details of all the complaints filed with RBI against SCB, accusing SCB of mis-selling derivative products, failure to carry out due diligence in regard to suitability of products, not verifying the underlying/adequacy of underlying and eligible limits under past performance and various other non-compliance of RBI instruction on derivatives. Also, please provide the above information in the following format . Date of the complaint Name of the complaint Subject matter of the complaint Brief description of the facts and	Complaints are received by Reserve Bank of India and as they constitute the third party information, the information requested by you cannot be disclosed in terms of Section 8(1)(d) of the RTI Act, 2005.

	accusations made by the complaint. Any other information available with RBI with respect to violation/contraventions by SCB of RBI instructions on derivatives.	
3.	Please provide us the copies of all the written replies/correspondences made by SCB with RBI and the recordings of all the oral submissions made by SCB to defend and explain the violations/contraventions made by SCB	The action has been taken against the bank based on the findings of the Annual Financial Inspection (AFI) of the bank which is conducted under the provisions of Sec.35 of the BR Act, 1949. The findings of the inspection are confidential in nature intended specifically for the supervised entities and for corrective action by them. The information is received by us in fiduciary capacity disclosure of which may prejudicially affect the economic interest of the state. As such the information cannot be disclosed in terms of Section 8(1) (a) and (e) of the RTI Act, 2005
4.	Please provide us the details/copies of the findings recordings, enquiry reports, directive orders file notings and/or any information on the investigations conducted by RBI against SCB in respect of non-compliance by SCB thereby establishing violations by SCBV in respect of non compliances of RBI instructions on derivatives. Please also provide the above information in the following format. . Brief violations/contraventions made by	-do-

	SCB . In brief SCB replies/defense/explanation against each violations/contraventions made by it under the show cause notice. . RBI investigations/notes/on the SCB Replies/defense/explanations for each of the violation/contravention made by SCB. . RBI remarks/findings with regard to the violations/contraventions made by SCB.	

16. In Transfer Case No. 99 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	**Information Sought**	**Reply**
1.	That, what action has the department taken against scams/financial irregularities of United Mercantile Cooperative Bank Ltd as mentioned in the enclosed published news. Provide day to day progress report of the action taken.	1. Enquiry was carried out against scams/financial irregularities of United Mercantile Cooperative Bank Ltd. as mentioned in the enclosed published news. 2. Note/explanation has been called for from the bank vide our letter dated 8th July, 2011 regarding errors mentioned in enquiry report. 3. The other information asked here is based on the conclusions of Inspection Report. We

		would like to state that conclusions found during inspections are confidential and the reports are finalized on the basis of information received from banks. We received the information from banks in a confident capacity. Moreover, disclosure of such information may cause damage to the banking system and financial interests of the state. Disclosure of such type of information is exempted under Section 8(1)(a) and (e) of RTI Act, 2005.
2.	That permission for opening how many extension counters was obtained by United Mercantile Cooperative Bank Ltd from RBI. Provide details of expenditure incurred for constructing the extension counters. Had the bank followed tender system for these constructions, if yes, provide details of concerned tenders.	United Mercantile Cooperative Bank Ltd. was permitted to open 5, extension counters. The information regarding expenditure incurred on construction of these extension counters and tenders are not available with Reserve Bank of India.

17. In Transfer Case No. 100 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	Under which Grade The George Town Co-operative Bank Ltd., Chennai, has been categorised as on 31.12.2006?	The classification of banks into various grades are done on the basis of inspection findings which is based on information/ documents obtained in a fiduciary capacity and cannot be disclosed to outsiders. It is also exempted under Section 8(1)(e) of right to Information Act, 2005.

18. The Appellate Authority observed that the CPIO, UBD has replied that the classification of banks into various grades is done on the basis of findings recorded in inspection which are based on information/documents obtained in a fiduciary capacity and cannot be disclosed to outsiders. The CPIO, UBD has stated that the same is exempted under Section 8(1)(e) of RTI Act. Apart from the fact that information sought by the appellant is sensitive and cannot be disclosed, it could also harm the competitive position of the co-operative bank. Therefore, exemption from disclosure of the Information is available under Section 8(1)(d) of the RTI Act.

19. In Transfer Case No. 101 of 2015, with regard to Deendayal Nagri Shakari Bank Ltd, District Beed, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	**Information Sought**	**Reply**
1.	Copies of complaints received by RBI against illegal working of the said bank, including violations of the Standing Orders of RBI as well as the provisions under Section 295 of the Companies Act, 1956.	Disclosure of information regarding complaints received from third parties would harm the competitive position of a third party. Further such information is maintained in a fiduciary capacity and is exempted from disclosure under Sections 8(1)(d) and (e) of the RTI Act.
2.	Action initiated by RBI against the said bank, including all correspondence between RBI and the said bank officials.	(a) A penalty of Rs. 1 lakh was imposed on Deendayal Nagri Sahakari Bank Ltd. for violation of directives on loans to directors/their relatives/concerns in which they are interested. The bank paid the penalty on 08.10.2010. (b) As regards correspondence between RBI and the, co-operative bank, it is advised that such information is maintained by RBI in

		fiduciary capacity and hence cannot be given to outsiders. Moreover disclosure of such information may harm the interest of the bank and banking system. Such information is exempt from disclosure under Section 8(1)(a) and (e) of the RTI Act.
3.	Finding of the enquiry made by RBI, actions proposed and taken against the bank and its officials-official notings, decisions, and final orders passed and issued.	Such information is maintained by the bank in a fiduciary capacity and is obtained by RBI during the course of inspection of the bank and hence cannot be given to outsiders. The disclosure of such information would harm the competitive position of a third party. Such information is, therefore, exempted from disclosure under Section 8(1)(d) and (e) of the RTI Act. As regards action taken against the bank, are reply at S. No.2 (a) above.
4.	Confidential letters received by RBI from the Executive Director of Vaishnavi Hatcheries Pvt. Ltd. complaining about the illegal working and pressure policies of the bank and its chairman for misusing the authority of digital signature for sanction of the backdated resignations of the chairman of the bank and few other directors of the companies details of action taken by RBI on that.	See reply at S. NO.2 (a) above.

20. The First Appellate Authority observed that the CPIO had furnished the information available on queries 2 and 4. Further information sought in queries 1 and 3 was exempted under Section 8(1)(a)(d) and (e) of the RTI Act.

21. Various transfer petitions were, therefore, filed seeking transfer of the writ petitions pending before different High Courts. On 30.5.2015, while allowing the transfer petitions filed by Reserve Bank of India seeking transfer of various writ petitions filed by it in the High Courts of Delhi and Bombay, this Court passed the following orders:

> "Notice is served upon the substantial number of respondents. Learned counsel for the respondents have no objection if Writ Petition Nos. 8400 of 2011, 8605 of 2011, 8693 of 2011, 8583 of 2011, 32 of 2012, 685 of 2012, 263 of 2012 and 1976 of 2012 pending in the High Court of Delhi at New Delhi and Writ Petition (L) Nos. 2556 of 2011, 2798 of 2011 and 4897 of 2011 pending in the High Court of Bombay are transferred to this Court and be heard together. In the meanwhile, the steps may be taken to serve upon the unserved respondents.
>
> Accordingly, the transfer petitions are allowed and the above mentioned writ petitions are withdrawn to this Court. The High Court of Delhi and the High Court of Bombay are directed to remit the entire record of the said writ petitions to this Court within four weeks."

22. Mr. T.R. Andhyarujina, learned senior counsel appearing for the petitioner-Reserve Bank of India, assailed the impugned orders passed by the Central Information Commissioner as illegal and without jurisdiction. Learned Counsel referred various provisions of The Reserve Bank of India Act, 1934; The Banking Regulation Act, 1949 and The Credit Information Companies (Regulation) Act, 2005 and made the following submissions:-

> I) The Reserve Bank of India being the statutory authority has been constituted under the Reserve Bank of India Act, 1934 for the purpose of regulating and controlling the money supply in the country. It also acts as statutory banker with the Government of India and State Governments and manages their public debts. In addition, it regulates and supervises Commercial Banks and Cooperative Banks in the country. The RBI exercises control over the volume of credit, the rate of interest chargeable on loan and advances and deposits in order to ensure the economic stability. The RBI is also vested with the powers to determine **"Banking Policy"** in the interest of banking system, monetary stability and sound economic growth.
>
> The RBI in exercise of powers of powers conferred under Section 35 of the Banking Regulation Act, 1949 conducts inspection of the banks in the country.
>
> II) The RBI in its capacity as the regulator and supervisor of the banking system of the country access to various information collected and kept by the banks. The inspecting team and the officers carry out inspections of different banks and much of the information accessed by the inspecting officers of RBI would be confidential. Referring Section 28 of the Banking Regulation Act, it was submitted that the RBI in the public interest may publish

the information obtained by it, in a consolidated form but not otherwise.

III) The role of RBI is to safeguard the economic and financial stability of the country and it has large contingent of expert advisors relating to matters deciding the economy of the entire country and nobody can doubt the bona fide of the bank. In this connection, learned counsel referred the decision of this Court in the case of ***Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India,*** 1992 Vol. 2 SCC 343.

IV) Referring the decision in the case of ***B. Suryanarayana Vs. N. 1453 The Kolluru Parvathi Co-Op. Bank Ltd.***, 1986 AIR (AP) 244, learned counsel submitted that the Court will be highly chary to enter into and interfere with the decision of Reserve Bank of India. Learned Counsel also referred to the decision in the case of ***Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India,*** 1992 Vol. 2 SCC 343 and contended that Courts are not to interfere with the economic policy which is a function of the experts.

V) That the RBI is vested with the responsibility of regulation and supervision of the banking system. As part of its supervisory role, RBI supervises and monitors the banks under its jurisdiction through on-site inspection conducted on annual basis under the statutory powers derived by it under section 35 of the Banking Regulation Act 1949, off-site returns on key financial parameters and engaging banks in dialogue through periodical meetings. RBI may take supervisory actions where warranted for violations of its guidelines/directives. The supervisory actions would depend on the seriousness of the offence, systemic implications and may range from imposition of penalty, to issue of strictures or letters of warning. While RBI recognizes and promotes enhanced transparency in banks disclosures to the public, as transparency strengthens market discipline, a bank may not be able to disclose all data that may be relevant to assess its risk profile, due to the inherent need to preserve confidentially in relation to its customers. In this light, while mandatory disclosures include certain prudential parameters such as capital adequacy, level of Non Performing Assets etc., the supervisors themselves may not disclose all or some information obtained on-site or off-site. In some countries, wherever there are supervisory concerns, “prompt corrective action” programmes are normally put in place, which may or may not be publicly disclosed. Circumspection in disclosures by the supervisors arises from the potential market reaction that such disclosure might trigger, which

> may not be desirable. Thus, in any policy of transparency, there is a need to build processes which ensure that the benefits of supervisory disclosure are appropriately weighed against the risk to stakeholders, such as depositors.
> VI) As per the RBI policy, the reports of the annual financial inspection, scrutiny of all banks/ financial institutions are confidential document cannot be disclosed. As a matter of fact, the annual financial inspection/ scrutiny report reflect the supervisor's critical assessment of banks and financial institutions and their functions. Disclosure of these scrutiny and information would create misunderstanding/ misinterpretation in the minds of the public. That apart, this may prove significantly counter productive. Learned counsel submitted that the disclosure of information sought for by the applicant would not serve the public interest as it will give adverse impact in public confidence on the bank. This has serious implication for financial stability which rests on public confidence. This will also adversely affect the economic interest of the State and would not serve the larger public interest.

23. The specific stand of petitioner Reserve Bank of India is that the information sought for is exempted under Section 8(1) (a), (d) and (e) of the Right to Information Act, 2005. As the regulator and supervisor of the banking system, the RBI has discretion in the disclosure of such information in public interest.

24. Mr. Andhyarujina, learned senior counsel, referred various decisions to the High Court and submitted that the disclosure of information would prejudicially affect the economic interest of the State. Further, if the information

sought for is sensitive from the point of adverse market reaction leading to systematic crisis for financial stability.

25. Learned senior counsel put heavy reliance on the Full Bench decision of the Central Information Commissioner and submitted that while passing the impugned order, the Central Information Commissioner completely overlooked the Full Bench decision and ignored the same. According to the learned counsel, the Bench, which passed the impugned order, is bound to follow the Full Bench decision. The Commission also erred in holding that the Full Bench decision is *per incuriam* as the Full Bench has not considered the statutory provisions of Section 8 (2) of the Right to Information Act, 2005.

26. Learned senior counsel also submitted that the Commission erred in holding that even if the information sought for is exempted under Section 8(1) (a), (d) or (e) of the Right to Information Act, Section 8(2) of the RTI Act would mandate the disclosure of the information.

27. Learned senior counsel further submitted that the basic question of law is whether the Right to Information Act, 2005 overrides various provisions of special statutes which confer confidentiality in the information obtained by the RBI.; If the Respondents are right in their contention, these statutory provisions of confidentiality in the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934 and the Credit Information Companies (Regulation) Act, 2005 would be repealed or overruled by the Right to Information Act, 2005.

28. Under the Banking Regulation Act, 1949, the Reserve Bank of India has a right to obtain information from the banks under Section 27. These information can only be in its discretion published in such consolidated form as RBI deems fit. Likewise under Section 34A production of documents of confidential nature cannot be compelled. Under sub-section (5) of Section 35, the Reserve Bank of India may carry out inspection of any bank but its report can only be disclosed if the Central Government orders the publishing of the report of the Reserve Bank of India when it appears necessary.

29. Under Section 45E of the Reserve Bank of India Act, 1934, disclosure of any information relating to credit information submitted by banking company is confidential and under Section 45E(3) notwithstanding anything contained in any law no court, tribunal or authority can compel the Reserve Bank of India to give information relating to credit information etc.

30. Under Section 17(4) of the Credit Information Companies (Regulation) Act, 2005, credit information received by the credit information company cannot be disclosed to any person. Under Section 20, the credit information company has to adopt privacy principles and under Section 22 there cannot be unauthorized access to credit information.

31. It was further contended that the Credit Information Companies Act, 2005 was brought into force after the Right to Information act, 2005 w.e.f. 14.12.2006. It is significant to note that Section 28 of Banking Regulation Act, 1949 was amended by the Credit Information Companies (Regulation) Act, 2005. This is a clear indication that the Right to

Information Act, 2005 cannot override credit information sought by any person in contradiction to the statutory provisions for confidentiality.

32. This is in addition to other statutory provisions of privacy in Section 44 of State Bank of India Act, 1955, Section 52, State Bank of India (Subsidiary Banks) Act, 1959, Section 13 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970.

33. The Right to Information Act, 2005 is a general provision which cannot override specific provisions relating to confidentiality in earlier legislation in accordance with the principle that where there are general words in a later statute it cannot be held that the earlier statutes are repealed altered or discarded.

34. Learned counsel submitted that Section 22 of the Right to Information Act, 2005 cannot have the effect of nullifying and repealing earlier statutes in relation to confidentiality. This has been well settled by this Court in

a) ***Raghunath vs. state of Karnataka*** 1992(1) SCC 335 at p.348 pages 112 and 114

b) ***ICICI Bank vs. SIDCO Leather etc.***, 2006(10) SCC 452 at p. 466, paras 36 & 37

c) ***Central Bank vs. Kerala***, 2009 (4) SCC 94 at p. 132-133 para 104

d) ***AG Varadharajalu vs. Tamil Nadu***, 1998 (4) SCC 231 at p. 236 para 16.

Hence, the Right to Information Act, 2005 cannot override the provisions for confidentiality conferred on the RBI by the earlier statutes referred to above.

35. The Preamble of the RTI Act, 2005 itself recognizes the fact that since the revealing of certain information is likely to conflict with other public interests like "the preservation of confidentiality of sensitive information", there is a need to harmonise these conflicting interests. It is submitted that certain exemptions were carved out in the RTI Act to harmonise these conflicting interests. This Court in ***Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors,*** (2011)8 SCC 497, has observed as under:-

> "When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the Governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act, that is, Section 8 of the Freedom to Information Act, 2002. The courts and Information Commissions enforcing the provisions of the RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting Section 8 and the other provisions of the Act."

36. Apart from the legal position that the Right to Information Act, 2005 does not override statutory provisions of confidentiality in other Act, it is submitted that in any case Section 8(1)(a) of the Right to Information Act, 2005 states that there is no obligation to give any information which pre-judiciously affects the economic interests of the States. Disclosure of such vital information relating to banking would pre-judiciously affect the economic interests of the State. This was clearly stated by the Full Bench of the Central Information Commission by its Order in the case of Ravin Ranchchodlal Patel (supra). Despite this emphatic ruling individual Commissioners of the Information have disregarded it by

holding that the decision of the Full Bench was *per incurium* and directed disclosure of information.

37. Other exceptions in Section 8, viz 8(1)(a)(d), 8(1)(e) would also apply to disclosure by the RBI and banks. In sum, learned senior counsel submitted that the RBI cannot be directed to disclose information relating to banking under the Right to Information Act, 2005.

38. Mr. Prashant Bhushan, learned counsel appearing for the respondents in Transfer Case Nos.94 & 95 of 2015, began his arguments by referring the Preamble of the Constitution and submitted that through the Constitution it is the people who have created legislatures, executives and the judiciary to exercise such duties and functions as laid down in the constitution itself.

39. The right to information regarding the functioning of public institutions is a fundamental right as enshrined in Article 19 of the Constitution of India. This Hon'ble Court has declared in a plethora of cases that the most important value

for the functioning of a healthy and well informed democracy is transparency. Mr. Bhushan referred Constitution Bench judgment of this Court in the case of ***State of U.P. vs. Raj Narain,*** AIR 1975 SC 865, and submitted that it is a Government's responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of public.

40. In the case of ***S.P. Gupta v. President of India and Ors.***, AIR 1982 SC 149, a seven Judge Bench of this Court made the following observations regarding the right to information:-

> "There is also in every democracy a certain amount of public suspicion and distrust of Government, varying of course from time to time according to its performance,

> which prompts people to insist upon maximum exposure of its functioning. It is axiomatic that every action of the Government must be actuated by public interest but even so we find cases, though not many, where Governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes Governmental action is influenced by political and other motivations and pressures and at times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of Government and the processes of Government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of secrecy without any public accountability. But if there is an open Government with means of information available to the public, there would be greater exposure of the functioning of Government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open Government is clean Government and a powerful safeguard against political and administrative aberration and inefficiency."

41. In the case of the ***Union of India vs. Association for Democratic Reforms***, AIR 2002 SC 2112, while declaring that it is part of the fundamental right of citizens under Article 19(1)(a) to know the assets and liabilities of candidates contesting election to the Parliament or the State Legislatures, a three Judge Bench of this Court held unequivocally that:- "The right to get information in a democracy is recognized all throughout and is a natural right flowing from the concept of democracy (Para 56)." Thereafter, legislation was passed

amending the Representation of People Act, 1951 that candidates need not provide such information. This Court in the case of ***PUCL vs. Union of India***, (2003) 4 SCC 399, struck down that legislation by stating: "It should be properly understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedoms have no fixed contents. From time to time, this Court has filled in the skeleton with soul and blood and made it vibrant. Since the last more than 50 years, this Court has interpreted Articles 14, 19 and 21 and given meaning and colour so that the nation can have a truly republic democratic society."

42. The RTI Act, 2005, as noted in its very preamble, does not create any new right but only provides machinery to effectuate the fundamental right to information. The institution of the CIC and the SICs are part of that machinery. The preamble also inter-alia states "… democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to

hold Governments and their instrumentalities accountable to the governed."

43. The submission of the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of RBI Act and Banking Regulation Act is clearly misconceived. RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail insofar as transparency and access to information is concerned. Moreover, the RTI Act 2005, being a later law, specifically brought in to usher transparency and to transform the way official business is conducted, would have to override all earlier practices and laws in order to achieve its objective. The only exceptions to access to information are contained in RTI Act itself in Section 8.

44. In T.C.No.94 of 2015, the RTI applicant Mr. P.P. Kapoor had asked about the details of the loans taken by the industrialists that have not been repaid, and he had asked about the names of the top defaulters who have not repaid their loans to public sector banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1) (a) and 8(1)(e) of the RTI Act on the ground that disclosure would affect the economic interest of the country, and that the information has been received by the RBI from the banks in fiduciary capacity. The CIC found these arguments made by RBI to be totally misconceived in facts and in law, and held that the disclosure would be in public interest.

45. In T.C.No.95 of 2015, the RTI applicant therein Mr. Subhash Chandra Agrawal had asked about the details of the show cause notices and fines imposed by the RBI on various banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1)(a),(d) and 8(1) (e) of the RTI Act on the ground that disclosure would affect the

economic interest of the country, the competitive position of the banks and that the information has been received by RBI in fiduciary capacity. The CIC, herein also, found these arguments made by RBI to be totally misconceived in facts and in law and held that the disclosure would be in public interest.

46. In reply to the submission of the petitioner about fiduciary relationship, learned counsel submitted that the scope of Section 8(1)(e) of the RTI Act has been decided by this Court in ***Central Board of Secondary Education vs. Aditya Bandopadhyay***, (2011) 8 SCC 497, wherein, while rejecting the argument that CBSE acts in a fiduciary capacity to the students, it was held that:

> "…In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the word 'information available to a person in his fiduciary relationship' are used in Section 8(1) (e) of the RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the action of the fiduciary."

47. We have extensively heard all the counsels appearing for the petitioner Banks and respondents and examined the law and the facts.

48. While introducing the Right to Information Bill, 2004 a serious debate and discussion took place. The then Prime Minister while addressing the House informed that the RTI Bill is to provide for setting out practical regime of right to information for people, to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority. The new legislation would radically alter the ethos and culture of secrecy through ready sharing of information by the State and its agencies with the people. An era of transparency and accountability in governance is on the anvil. Information, and more appropriately access to information would empower and enable people not only to make informed choices but also participate effectively in decision making processes. Tracing the origin of the idea of the then Prime Minister who had stated, “Modern societies are information

societies. Citizens tend to get interested in all fields of life and demand information that is as comprehensive, accurate and fair as possible." In the Bill, reference has also been made to the decision of the Supreme Court to the effect that Right to Information has been held as inherent in Article 19 of our Constitution, thereby, elevating it to a fundamental right of the citizen. The Bill, which sought to create an effective mechanism for easy exercise of this Right, was held to have been properly titled as "Right to Information Act". The Bill further states that a citizen has to merely make a request to the concerned Public Information Officer specifying the particulars of the information sought by him. He is not required to give any reason for seeking information, or any other personal details except those necessary for contacting him. Further, the Bill states:-

> "The categories of information exempted from disclosure are a bare minimum and are contained in clause 8 of the Bill. Even these exemptions are not absolute and access can be allowed to them in public interest if disclosure of the information outweighs the harm to the public authorities. Such disclosure has been permitted even if it is in conflict with the provisions of the Official Secrets Act, 1923. Moreover, barring two categories that relate to information disclosure – which may affect

> sovereignty and integrity of India etc., or information relating to Cabinet papers etc.-all other categories of exempted information would be disclosed after twenty years.
>
> There is another aspect about which information is to be made public. We had a lengthy discussion and it is correctly provided in the amendment under clause 8 of the Bill. The following information shall be exempted from disclosure which would prejudicially affect the sovereignty and integrity of India; which has been expressly forbidden; which may result in a breach of privileges of Parliament or the Legislature; and also information pertaining to defence matters. They are listed in clause 8 (a) to (g). There are exceptions to this clause. Where it is considered necessary that the information will be divulged in the interest of the State, that will be done. There must be transparency in public life. There must be transparency in administration and people must have a right to know what has actually transpired in the secretariat of the State as well as the Union Ministry. A citizen will have a right because it will be safe to prevent corruption. Many things are done behind the curtain. Many shoddy deals take place in the secretariats of the Central and State Governments and the information will always be kept hidden. Such practice should not be allowed in a democratic country like ours. Ours is a republic. The citizenry should have a right to know what transpired in the secretariat. Even Cabinet papers, after a decision has been taken, must be divulged as per the provisions of this amendment. It cannot be hidden from the knowledge of others."

49. Addressing the House, it was pointed out by the then Prime Minister that in our country, Government expenditure both at the Central and at the level of the States and local bodies, account for nearly 33% of our Gross National Product. At the same time, the socio-economic imperatives require our

Government to intervene extensively in economic and social affairs. Therefore, the efficiency and effectiveness of the government processes are critical variables, which will determine how our Government functions and to what extent it is able to discharge the responsibilities entrusted. It was pointed out that there are widespread complaints in our country about wastefulness of expenditure, about corruption, and matter which have relations with the functioning of the Government. Therefore, it was very important to explore new effective mechanism to ensure that the Government will purposefully and effectively discharge the responsibilities entrusted to it.

50. Finally the Right to Information Act was passed by the Parliament called "The Right to Information Act, 2005". The Preamble states:-

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

WHEREAS the Constitution of India has established democratic Republic;

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

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

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

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

51. Section 2 of the Act defines various authorities and the words. Section 2(j) defines right to information as under :-

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

(i) inspection of work, documents, records;

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

(iii) taking certified samples of material;

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

52. Section 3 provides that all citizens shall have the right to information subject to the provisions of this Act. Section 4 makes it obligatory on all public authorities to maintain records in the manner provided therein. According to Section 6, a person who desires to obtain any information under the Act shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made to the competent authority specifying the particulars of information sought by him or her. Sub-section (ii) of Section 6 provides that the applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Section 7 lays down the procedure for disposal of the request so made by the person under Section 6 of the Act. Section 8, however, provides certain exemption from disclosure of information. For better appreciation Section 8 is quoted hereinbelow:-

"8. Exemption from disclosure of information.—
(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—
(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
(f) information received in confidence from foreign government;
(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
(h) information which would impede the process of investigation or apprehension or prosecution of offenders;
(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;
(j) information which relates to personal information the disclosure of which has not relationship to any

public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

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

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

53. The information sought for by the respondents from the petitioner-Bank have been denied mainly on the ground that such information is exempted from disclosure under Section 8(1)(a)(d) and (e) of the RTI Act.

54. Learned counsel appearing for the petitioner-Bank mainly relied upon Section 8(1)(e) of the RTI Act taking the

stand that the Reserve Bank of India having fiduciary relationship with the other banks and that there is no reason to disclose such information as no larger public interest warrants such disclosure. The primary question therefore, is, whether the Reserve Bank of India has rightly refused to disclose information on the ground of its fiduciary relationship with the banks.

55. The Advanced Law Lexicon, 3rd Edition, 2005, defines fiduciary relationship as "a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the fiduciary relationship. Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has

traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer."

56. The scope of the fiduciary relationship consists of the following rules:

> "(i) No Conflict rule- A fiduciary must not place himself in a position where his own interests conflicts with that of his customer or the beneficiary. There must be "real sensible possibility of conflict.
> (ii) No profit rule- a fiduciary must not profit from his position at the expense of his customer, the beneficiary;
> (iii) Undivided loyalty rule- a fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs
> (iv) Duty of confidentiality- a fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person."

57. The term fiduciary relationship has been well discussed by this Court in the case of ***Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors.*** (supra). In the said decision, their Lordships referred various authorities to ascertain the meaning of the term fiduciary relationship and observed thus:-

"20.1) Black's Law Dictionary (7th Edition, Page 640) defines 'fiduciary relationship' thus:

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

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

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

The word 'fiduciary,' as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for

another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust, or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note."

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

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

Generally, the term 'fiduciary' applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations."

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

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

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

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

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

> furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer."

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

59. RBI is a statutory body set up by the RBI Act as India's Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country's banking sector. Under Section 35A of the Banking Regulation Act, RBI has been given powers to issue any direction to the banks in

public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far-reaching statutory powers.

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

61. The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived. In the impugned order, the CIC has given several reasons to state why the disclosure of

the information sought by the respondents would hugely serve public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India. RBI's argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country's economic security would be endangered, is not only absurd but is equally misconceived and baseless.

62. The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case, the Financial institutions have an obligation to provide all the information to the RBI and such an information shared under an obligation/ duty cannot be considered to come under the

purview of being shared in fiduciary relationship. One of the main characteristic of a Fiduciary relationship is "Trust and Confidence". Something that RBI and the Banks lack between them.

63. In the present case, we have to weigh between the public interest and fiduciary relationship (which is being shared between the RBI and the Banks). Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economic interests of the country? To what extent the public should be allowed to get information?

64. In the context of above questions, it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to.

65. And in this case the RBI and the Banks have sidestepped the General public's demand to give the requisite information on the pretext of "Fiduciary relationship" and "Economic Interest". This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their actions.

66. Furthermore, the RTI Act under Section 2(f) clearly provides that the inspection reports, documents etc. fall under the purview of "Information" which is obtained by the public authority (RBI) from a private body. Section 2(f), reads thus:

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

67. From reading of the above section it can be inferred that the Legislature's intent was to make available to the general public such information which had been obtained by the public authorities from the private body. Had it been the case

where only information related to public authorities was to be provided, the Legislature would not have included the word "private body". As in this case, the RBI is liable to provide information regarding inspection report and other documents to the general public.

68. Even if we were to consider that RBI and the Financial Institutions shared a "Fiduciary Relationship", Section 2(f) would still make the information shared between them to be accessible by the public. The facts reveal that Banks are trying to cover up their underhand actions, they are even more liable to be subjected to public scrutiny.

69. We have surmised that many Financial Institutions have resorted to such acts which are neither clean nor transparent. The RBI in association with them has been trying to cover up their acts from public scrutiny. It is the responsibility of the RBI to take rigid action against those Banks which have been practicing disreputable business practices.

70. From the past we have also come across financial institutions which have tried to defraud the public. These acts are neither in the best interests of the Country nor in the interests of citizens. To our surprise, the RBI as a Watch Dog should have been more dedicated towards disclosing information to the general public under the Right to Information Act.

71. We also understand that the RBI cannot be put in a fix, by making it accountable to every action taken by it. However, in the instant case the RBI is accountable and as such it has to provide information to the information seekers under Section 10(1) of the RTI Act, which reads as under:

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

72. It was also contended by learned senior counsel for the RBI that disclosure of information sought for will also go

against the economic interest of the nation. The submission is wholly misconceived.

73. Economic interest of a nation in most common parlance are the goals which a nation wants to attain to fulfil its national objectives. It is the part of our national interest, meaning thereby national interest can't be seen with the spectacles(glasses) devoid of economic interest.

74. It includes in its ambit a wide range of economic transactions or economic activities necessary and beneficial to attain the goals of a nation, which definitely includes as an objective economic empowerment of its citizens. It has been recognized and understood without any doubt now that one of the tool to attain this goal is to make information available to people. Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better which as stated above also includes its

economic interests. Recognizing the significance of this tool it has not only been made one of the fundamental rights under Article 19 of the Constitution but also a Central Act has been brought into effect on 12th October 2005 as the Right to Information Act, 2005.

75. The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy.

76. But neither the Fundamental Rights nor the Right to Information have been provided in absolute terms. The fundamental rights guaranteed under Article 19 Clause 1(a) are restricted under Article 19 clause 2 on the grounds of national and societal interest. Similarly Section 8, clause 1 of Right to Information Act, 2005, contains the exemption provisions where right to information can be denied to public in the name of national security and sovereignty, national

economic interests, relations with foreign states etc. Thus, not all the information that the Government generates will or shall be given out to the public. It is true that gone are the days of closed doors policy making and they are not acceptable also but it is equally true that there are some information which if published or released publicly, they might actually cause more harm than good to our national interest... if not domestically it can make the national interests vulnerable internationally and it is more so possible with the dividing line between national and international boundaries getting blurred in this age of rapid advancement of science and technology and global economy. It has to be understood that rights can be enjoyed without any inhibition only when they are nurtured within protective boundaries. Any excessive use of these rights which may lead to tampering these boundaries will not further the national interest. And when it comes to national economic interest, disclosure of information about currency or exchange rates, interest rates, taxes, the regulation or supervision of banking, insurance and other financial institutions, proposals

for expenditure or borrowing and foreign investment could in some cases harm the national economy, particularly if released prematurely. However, lower level economic and financial information, like contracts and departmental budgets should not be withheld under this exemption. This makes it necessary to think when or at what stage an information is to be provided i.e., the appropriate time of providing the information which will depend on nature of information sought for and the consequences it will lead to after coming in public domain.

77. In one of the case, the respondent S.S. Vohra sought certain information in relation to the Patna Branch of ICICI Bank and advisory issued to the Hong Kong Branch of ICICI Bank. The contention of the respondent was that the Finance Minister had made a written statement on the floor of the House on 24.07.2009 that some banks like SBI, ICICI, Bank of Baroda, Dena Bank etc., were violating FEMA Guidelines for opening of accounts and categorically mentioned that the Patna Branch of ICICI Bank Ltd. had opened some fictitious

accounts which were opened by fraudsters and hence an advisory note was issued to the concerned branch on December 2007 for its irregularities. The Finance Minister even mentioned that in the year 2008 the ICICI Bank Ltd. was also warned for alleged irregular dealings in securities in Hong Kong. Hence, the respondent sought such advisory note as issued by the RBI to ICICI Bank. The Central Information Commissioner in the impugned order considered the RBI Master Circular dated 01.07.2009 to all the commercial banks giving various directions and finally held as under :-

> "It has been contended by the Counsel on behalf of the ICICI Bank Limited that an advisory note is prepared after reliance on documents such as Inspection Reports, Scrutiny reports etc. and hence, will contain the contents of those documents too which are otherwise exempt from disclosure. We have already expressed our view in express terms that whether or not an Advisory Note shall be disclosed under the RTI Act will have to be determined on case by case basis. In some other case, for example, there may be a situation where some contents of the Advisory Note may have to be severed to such an extent that details of Inspection Reports etc. can be separated from the Note and then be provided to the RTI Applicant. Section 10 of the RTI Act leaves it open to decide each case on its merits after having satisfied ourselves whether an Advisory Note needs to be provided as it is or whether some of its contents may be severed since they may be exempted per se under the RTI Act. However, we find no reason, whatsoever, to apply Section 10 of the RTI Act in order to severe the contents of the Advisory Note issued by the RBI to the ICICI Bank Limited as the matter has already been placed on the floor of the Lok Sabha by the Hon'ble Finance Minister.

> This is a matter of concern since it involves the violation of policy Guidelines initiated by the RBI and affects the public at large. Transparency cannot be brought overnight in any system and one can hope to witness accountability in a system only when its end users are well-educated, well-informed and well-aware. If the customers of commercial banks will remain oblivious to the violations of RBI Guidelines and standards which such banks regularly commit, then eventually the whole financial system of the country would be at a monumental loss. This can only be prevented by suo motu disclosure of such information as the penalty orders are already in public domain."

78. Similarly, in another case the respondent Jayantilal N. Mistry sought information from the CPIO, RBI in respect of a Cooperative Bank viz. Saraspur Nagrik Sahkari Bank Limited related to inspection report, which was denied by the CPIO on the ground that the information contained therein were received by RBI in a fiduciary capacity and are exempt under Section 8(1)(e) of RTI Act. The CIC directed the petitioner to furnish that information since the RBI expressed their willingness to disclose a summary of substantive part of the inspection report to the respondent. While disposing of the appeal the CIC observed:-

> "Before parting with this appeal, we would like to record our observations that in a rapidly unfolding economics scenario, there are public institutions, both in the banking and non-banking sector, whose activities have not served public interest. On the

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

79. In another case, where the respondent P.P. Kapoor sought information *inter alia* about the details of default in loans taken from public sector banks by industrialists, out of the list of defaulters, top 100 defaulters, names of the businessmen, firm name, principal amount, interest amount, date of default and date of availing the loan etc. The said information was denied by the CPIO mainly on the basis that it was held in fiduciary capacity and was exempt from disclosure of such information. Allowing the appeal, the CIC directed for the disclosure of such information. The CIC in the impugned order has rightly observed as under:-

"I wish government and its instrumentalities would remember that all information held by them is owned by citizens, who are sovereign. Further, it is often seen that banks and financial institutions continue to provide loans to industrialists despite their default in repayment of an earlier loan." This Court in ***UP Financial Corporation vs. Gem Cap India Pvt. Ltd***., AIR 1993 SC 1435 has noted that :

> "Promoting industrialization at the cost of public funds does not serve the public interest, it merely amounts to transferring public money to private account'. Such practices have led citizens to believe that defaulters can get away and play fraud on public funds. There is no doubt that information regarding top industrialists who have defaulted in repayment of loans must be brought to citizens' knowledge; there is certainly a larger public interest that could be served on ….disclosure of the same. In fact, information about industrialists who are loan defaulters of the country may put pressure on such persons to pay their dues. This would have the impact of alerting Citizens about those who are defaulting in payments and could also have some impact in shaming them.

RBI had by its Circular DBOD No. BC/CIS/47/20.16.002/94 dated April 23, 1994 directed all banks to send a report on their defaulters, which it would share with all banks and financial institutions, with the following objectives:

1) To alert banks and financial institutions (FIs) and to put them on guard against borrowers who have defaulted in their dues to lending institutions;

2) To make public the names of the borrowers who have defaulted and against whom suits have been filed by banks/ FIs."

80. At this juncture, we may refer the decision of this Court in ***Mardia Chemicals Limited vs. Union of India***, (2004) 4 SCC 311, wherein this court while considering the validity of SARFAESI Act and recovery of non-performing assets by banks and financial institutions in India, held :-

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

81. In rest of the cases the CIC has considered elaborately the information sought for and passed orders which in our opinion do not suffer from any error of law, irrationality or arbitrariness.

82. We have, therefore, given our anxious consideration to the matter and came to the conclusion that the Central Information Commissioner has passed the impugned orders giving valid reasons and the said orders, therefore, need no interference by this Court.

83. There is no merit in all these cases and hence they are dismissed.

.....J.
(M.Y. Eqbal)

.....J.
(C. Nagappan)

New Delhi
December 16, 2015

\224Ú REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFERRED CASE (CIVIL) NO. 91 OF 2015
(Arising out of Transfer Petition (Civil) No. 707 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
Jayantilal N. Mistry .....Respondent(s)
With

TRANSFERRED CASE (CIVIL) NO. 92 OF 2015
(Arising out of Transfer Petition (Civil) No. 708 of 2012)

I.C.I.C.I Bank Limited ..... Petitioner(s)
versus
S.S. Vohra and others .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 93 OF 2015
(Arising out of Transfer Petition (Civil) No. 711 of 2012)

National Bank for Agriculture
and Rural Development .....Petitioner(s)
versus
Kishan Lal Mittal .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 94 OF 2015
(Arising out of Transfer Petition (Civil) No. 712 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
P.P. Kapoor .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 95 OF 2015
(Arising out of Transfer Petition (Civil) No. 713 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
Subhas Chandra Agrawal .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 96 OF 2015
(Arising out of Transfer Petition (Civil) No. 715 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
Raja M. Shanmugam .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 97 OF 2015
(Arising out of Transfer Petition (Civil) No. 716 of 2012)

National Bank for Agriculture
and Rural Development .....Petitioner(s)
versus
Sanjay Sitaram Kurhade .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 98 OF 2015

(Arising out of Transfer Petition (Civil) No. 717 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
K.P. Muralidharan Nair .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 99 OF 2015
(Arising out of Transfer Petition (Civil) No. 718 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
Ashwini Dixit .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 100 OF 2015
(Arising out of Transfer Petition (Civil) No. 709 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
A.Venugopal and another .....Respondent(s)

TRANSFERRED CASE (CIVIL) NO. 101 OF 2015
(Arising out of Transfer Petition (Civil) No. 714 of 2012)

Reserve Bank of India .....Petitioner(s)
versus
Dr. Mohan K. Patil and others .....Respondent(s)

JUDGMENT

M.Y. EQBAL, J.

The main issue that arises for our consideration in these transferred cases is as to whether all the information sought for under the Right to Information Act, 2005 can be denied by the Reserve Bank of India and other Banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other. If the answer to above question is in negative, then upto what extent the information can be provided under the 2005 Act.

2. It has been contended by the RBI that it carries out inspections of banks and financial institutions on regular basis and the inspection reports prepared by it contain a wide range of information that is collected in a fiduciary capacity. The facts in brief of the Transfer Case No.91 of 2015 are that during May-June, 2010 the statutory inspection of Makarpura

Industrial Estate Cooperative Bank Ltd. was conducted by RBI under the Banking Regulation Act, 1949. Thereafter, in October 2010, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sr. No.	Information sought	Reply
1.	Procedure Rules and Regulations of Inspection being carried out on Co-operative Banks	RBI is conducting inspections under Section 35 of the B.R. Act 1949 (AACS) at prescribed intervals.
2.	Last RBI investigation and audit report carried out by Shri Santosh Kumar during 23rd April, 2010 to 6th May, 2010 sent to Registrar of the Cooperative of the Gujarat State, Gandhinagar on Makarpura Industrial Estate Co-op Bank Ltd Reg. No.2808	The Information sought is maintained by the bank in a fiduciary capacity and was obtained by Reserve Bank during the course of inspection of the bank and hence cannot be given to the outsiders. Moreover, disclosure of such information may harm the interest of the bank & banking system. Such information is also exempt from disclosure under Section 8(1) (a) & (e) of the RTI Act,

2005.

3.	Last 20 years inspection (carried out with name of inspector) report on above bank and action taken report.	Same as at (2) above
4.	(i) Reports on all co-operative banks gone on liquidation (ii) action taken against all Directors and Managers for recovery of public funds and powers utilized by RBI and analysis and procedure adopted.	(i) Same as at (2) above (ii) This information is not available with the Department
5.	Name of remaining co-operative banks under your observations against irregularities and action taken reports	No specific information has been sought
6.	Period required to take action and implementations	No specific information has been sought

3. On 30.3.2011, the First Appellate Authority disposed of the appeal of the respondent agreeing with the reply given by CPIO in query No.2, 3 & first part of 4, relying on the decision

of the Full Bench of CIC passed in the case of Ravin Ranchochodlal Patel and another vs. Reserve Bank of India. Thereafter, in the second appeal preferred by the aggrieved respondent, the Central Information Commission by the impugned order dated 01.11.2011, directed RBI to provide

information as per records to the Respondent in relation to queries Nos.2 to 6 before 30.11.2011. Aggrieved by the decision of the Central Information Commission (CIC), petitioner RBI moved the Delhi High Court by way of a Writ Petition inter alia praying for quashing of the aforesaid order of the CIC. The High Court, while issuing notice, stayed the operation of the aforesaid order.

4. Similarly, in Transfer Case No. 92 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sr. No.	Information sought	Reply
1.	The Hon'ble FM made a written statement on the Floor of the House which inter alia must have been made after verifying the records from RBI and the Bank must have the copy of the facts as reported by FM. Please supply copy of the note sent to FM	In the absence of the specific details, we are not able to provide any information.
2.	The Hon'ble FM made a statement that some of the banks like SBI, ICICI Bank Ltd, Bank of Baroda, Dena Bank, HSBC Bank etc. were issued letter of displeasure for violating FEMA guidelines for opening of accounts where as some other banks were even fined Rupees one crore for such violations. Please give me the names of the banks with details of violations committed by them.	We do not have this information.
3.	'Advisory Note' issued to ICICI Bank for account opened by some fraudsters at its Patna Branch Information sought about "exact nature of irregularities committed by the bank under "FEMA". Also give	An Advisory Letter had been issued to the bank in December, 2007 for the bank's Patna branch having failed to (a) comply with the RBI guidelines on customer identification, opening/operating customer accounts, (b) the bank

	list of other illegalities committed by IBL and other details of offences committed by IBL through various branches in India and abroad along with action taken by the Regulator including the names and designations of his officials branch name, type of offence committed etc. The exact nature of offences committed by Patna Branch of the bank and other branches of the bank and names of his officials involved, type of offence committed by them and punishment awarded by concerned authority, names and designation of the designated authority, who investigated the above case and his findings and punishment awarded."	not having followed the normal banker's prudence while opening an account in question. As regards the list of supervisory action taken by us, it may be stated that the query is too general and not specific. Further, we may state that Supervisory actions taken were based on the scrutiny conducted under Section 35 of the Banking Regulation (BR) Act. The information in the scrutiny report is held in fiduciary capacity and the disclosure of which can affect the economic interest of the country and also affect the commercial confidence of the bank. And such information is also exempt from disclosure under Section 8(1)(a)(d) & (e) of the RTI Act (extracts enclosed). We, therefore, are unable to accede to your request.
4.	Exact nature of irregularities committed by ICICI Bank in Hong Kong	In this regard, self explicit print out taken from the website of Securities and Futures Commission, Hong Kong is enclosed.
5.	ICICI Bank's Moscow Branch involved in money laundering act.	We do not have the information.
6.	Imposition of fine on ICICI Bank under Section 13 of the PMLA for loss of documents in floods .	We do not have any information to furnish in this regard.
7.	Copy of the Warning or 'Advisory Note' issued twice issued to the bank in the last two years and reasons recorded therein. Name and designation of the authority who conducted this check and his decision to issue an advisory note only instead of penalties to be imposed under the Act.	As regards your request for copies/details of advisory letters to ICICI Bank, we may state that such information is exempt from disclosure under Section 8(1)(a)(d) and (e) of the RTI Act. The scrutiny of records of the ICICI Bank is conducted by our Department of Banking Supervision (DBS). The Chief General Manager-in charge of the DBS, Centre Office Reserve Bank of India is Shri S. Karuppasamy.

5. In this matter, it has been alleged by the petitioner RBI that the respondent is aggrieved on account of his application form for three-in-one account with the Bank and ICICI Securities Limited (ISEC) lost in the floods in July, 2005 and

because of non-submission of required documents, the Trading account with ISEC was suspended, for which respondent approached the District Consumer Forum, which rejected the respondent's allegations of tempering of records and dismissed the complaint of the respondent. His appeal was also dismissed by the State Commission. Respondent then moved an application under the Act of 2005 pertaining to

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the suspension of operation of his said trading account. As the consumer complaint as well as the abovementioned application did not yield any result for the respondent, he made an application under the Act before the CPIO, SEBI, appeal to which went up to the CIC, the Division Bench of which disposed of his appeal upholding the decision of the CPIO and the Appellate Authority of SEBI. Thereafter, in August 2009, respondent once again made the present application under the Act seeking aforesaid information. Being aggrieved by the order of the appellate authority, respondent moved second appeal before the CIC, who by the impugned order directed the CPIO of RBI to furnish information pertaining to Advisory Notes as requested by the respondent within 15 working days. Hence, RBI approached Bombay High Court by way of writ petition.

6. In Transfer Case No. 93 of 2015, the Respondent sought following information from the CPIO of National Bank for Agriculture and Rural Development under the Act of 2005, reply to which is tabulated hereunder:-

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Sl. No.	Information Sought	Reply
1.	Copies of inspection reports of Apex Co-operative Banks of various States/Mumbai DCCB from 2005 till date	Furnishing of information is exempt under Section 8(1)(a) of the RTI Act.
2.	Copies of all correspondences with Maharashtra State Govt./RBI/any other agency of State/Central Co-operative Bank from January, 2010 till date.	Different Departments in NABARD deal with various issues related to MSCB. The query is general in nature. Applicant may please be specific in query/information

sought.

3.	Provide confirmed/draft minutes of meetings of Governing Board/Board Directors/Committee of Directors of NABARD from April, 2007 till date	Furnishing of information is exempt under Sec. 8(1)(d) of the of RTI Act.
4.	Provide information on compliance of Section 4 of RTI Act, 2005 by NABARD	Compliance available on website of NABARD www.nabard.org
5.	Information may be provided on a - CD	

7. The First Appellate Authority concurred with the CPIO and held that inspection report cannot be supplied in terms of Section 8(1)(a) of the RTI Act. The Respondent filed Second Appeal before the Central Information Commission, which was allowed. The RBI filed writ petition before the High Court challenging the order of the CIC dated 14.11.2011 on identical

issue and the High Court stayed the operation of the order of the CIC.

8. In Transfer Case No. 94 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:

Sl. No.	Information Sought	Reply
1.	As mentioned at 2(a) what is RBI doing about uploading the entire list of Bank defaulters on the bank's website? When will it be done? Why is it not done?	Pursuant to the then Finance Minister's Budget Speech made in Parliament on 28th February, 1994, in order to alert the banks and FIs and put them on guard against the defaulters to other lending institutions. RBI has put in place scheme to collect details about borrowers of banks and FIs with outstanding aggregating Rs. 1 crore and above which are classified as 'Doubtful' or 'Loss or where suits are filed, as on 31st March and 30th September each year. In February 1999, Reserve Bank of India had also introduced a scheme for collection and dissemination of information on cases of willful default of borrowers with outstanding balance of Rs. 25 lakh

and above. At present, RBI disseminates list of above said non suit filed 'doubtful' and 'loss' borrowed accounts of Rs.1 crore and above on half-yearly basis (i.e. as on March 31 and September 30) to banks and FIs. for their confidential use. The list of non-suit filed accounts of willful defaulters of Rs. 25 lakh and above is also disseminated on quarterly

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basis to banks and FIs for their confidential use. Section 45 E of the Reserve Bank of India Act 1934 prohibits the Reserve Bank from disclosing 'credit information' except in the manner provided therein.

(iii) However, Banks and FIs were advised on October 1, 2002 to furnish information in respect of suit-filed accounts between Rs. 1 lakh and Rs. 1 crore from the period ended March, 2002 in a phased manner to CIBIL only. CIBIL is placing the list of defaulters (suit filed accounts) of Rs. 1 crore and above and list of willful defaulters (suit filed accounts) of Rs. 25 lakh and above as on March 31, 2003 and onwards on its website (www.cibil.com)

9. The Central Information Commission heard the parties through video conferencing. The CIC directed the CPIO of the petitioner to provide information as per the records to the Respondent in relation to query Nos. 2(b) and 2(c) before 10.12.2011. The Commission has also directed the Governor RBI to display this information on its website before 31.12.2011, in fulfillment of its obligations under Section 4(1) (b) (xvii) of the Right to Information Act, 2005 and to update it each year.

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10. In Transfer Case No.95 of 2015, following information was sought and reply to it is tabulated hereunder:

Sl. No.	Information Sought	Reply
1.	Complete and detailed information including related	As the violations of which the banks were issued

	documents/correspondence/file noting etc of RBI on imposing fines on some banks for violating rules like also referred in enclosed news clipping	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	
2.	Complete list of banks which were issued show cause notices before fine was imposed as also referred in enclosed news clippings mentioning also default for which show cause notice was issued to each of such banks.	-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 provided in query No.5
7.	Any other information	The query is not specific.
8.	File notings on movement of this RTI petition and on every aspect of this RTI Petition	Copy of the note is enclosed.

11. In the Second Appeal, the CIC heard the respondent via telephone and the petitioner through video conferencing. As

directed by CIC, the petitioner filed written submission. The CIC directed the CPIO of the Petitioner to provide complete information in relation to queries 1 2 and 3 of the original application of the Respondent before 15.12.2011.

12. In Transfer Case No. 96 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	Before the Orissa High Court RBI has filed an affidavit stating that the total mark to market losses on account of currency derivatives is to the tune of more than Rs. 32,000 crores Please give bank wise breakup of the MTM Losses	The Information sought by you is exempted under Section 8(1)(a) & (e) of RTI Act, which state as under; 8(1) notwithstanding anything contained in this Act, there shall be no obligation to give any citizen (a) information disclosure of which would prejudicially affect the sovereignty and integrity of India the security strategic scientific or economic interests of the state, relation with foreign State or lead to incitement of an offence. (e) Information available to a person in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.
2.	What is the latest figure available with RBI of the amount of losses suffered by Indian Business	Please refer to our response to 1 above.

	houses? Please furnish the latest figures bank wise and customer wise.	
3.	Whether the issue of derivative losses to Indian exporters was discussed in any of the meetings of Governor/Deputy Governor or senior official of the Reserve Bank of India? If so please furnish the minutes of the meeting where the said issue was discussed	We have no information in this matter.
4.	Any other Action Taken Reports by RBI in this regard.	We have no information in this matter.

13. The CIC allowed the second appeal and directed the CPIO FED of the Petitioner to provide complete information in queries 1, 2, 9 and 10 of the original application of the Respondent before 05.01.2012. The CPIO, FED complied with the order of the CIC in so far queries 2, 9 and 10 are concerned. The RBI filed writ petition for quashing the order of CIC so far as it directs to provide complete information as per record on query No.1.

14. In Transfer Case No. 97 of 2015, the Respondent sought following information from the CPIO of National Bank for

Agriculture and Rural Development under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	The report made by NABARD regarding 86 N.P.A. Accounts for Rs. 3806.95 crore of Maharashtra State Co-operative Bank Ltd. (if any information of my application is not available in your Office/Department/ Division/Branch, transfer this application to the concerned Office/Department/ Division/Branch and convey me accordingly as per the provision of Section 6 (3) of Right to Information Act, 2005.	Please refer to your application dated 19 April, 2011 seeking information under the RTI Act, 2005 which was received by us on 06th May, 2011. In this connection, we advise that the questions put forth by you relate to the observations made in the Inspection Report of NABARD pertaining to MSCB which are confidential in nature. Since furnishing the

		information would impede the process of investigation or apprehension or prosecution of offenders, disclosure of the same is exempted under Section 8(1)(h) of the Act.

15. In Transfer Case No. 98 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	What contraventions and violations were made by SCB in respect of RBI instructions on derivatives for which RBI has imposed penalty of INR 10 lakhs on SCB in exercise of its powers vested under Section 47(1)(b) of Banking Regulation Act, 1949 and as stated in the RBI press release dated April 26, 2011 issued by Department of Communications RBI	The bank was penalized along with 18 other banks for contravention of various instructions issued by the Reserve Bank of India in respect of derivatives, such as, failure to carry out due diligence in regard to suitability of products, selling derivative products to users not having risk management policies and not verifying the underlying/adequacy of underlying and eligible limits under past performance route. The information is also available on our website under press releases.
2.	Please provide us the copies/details of all the complaints filed with RBI against SCB, accusing SCB of mis-selling derivative products, failure to carry out due diligence in regard to suitability of products, not verifying the underlying/adequacy of underlying and eligible limits under past performance and various other non-compliance of RBI instruction on derivatives. Also, please provide the above information in the following format . Date of the complaint Name of the complaint Subject matter of the complaint	Complaints are received by Reserve Bank of India and as they constitute the third party information, the information requested by you cannot be disclosed in terms of Section 8(1)(d) of the RTI Act, 2005.

Brief description of the facts and accusations made by the complaint.

Any other information available with RBI with respect to violation/contraventions by SCB of RBI instructions on derivatives.

3.	Please provide us the copies of all the written replies/correspondences made by SCB with RBI and the recordings of all the oral submissions made by SCB to defend and explain the violations/contraventions made by SCB	The action has been taken against the bank based on the findings of the Annual Financial Inspection (AFI) of the bank which is conducted under the provisions of Sec.35 of the BR Act, 1949. The findings of the inspection are confidential in nature intended specifically for the supervised entities and for corrective action by them. The information is received by us in fiduciary capacity disclosure of which may prejudicially affect the economic interest of the state. As such the information cannot be disclosed in terms of Section 8(1) (a) and (e) of the RTI Act, 2005
4.	Please provide us the details/copies of the findings recordings, enquiry reports, directive orders file notings and/or any information on the investigations conducted by RBI against SCB in respect of non-compliance by SCB thereby establishing violations by SCBV in respect of non compliances of RBI instructions on derivatives. Please also provide the above information in the following format. . Brief violations/contraventions made by SCB . In brief SCB replies/defense/explanation	-do-

against each violations/contraventions made by it under the show cause notice.

. RBI investigations/notes/on the SCB

Replies/defense/explanations for each of the violation/contravention made by SCB.

. RBI remarks/findings with regard to the violations/contraventions made by SCB.

16. In Transfer Case No. 99 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl. No.	Information Sought	Reply
1.	That, what action has the department taken against scams/financial irregularities of United Mercantile Cooperative Bank Ltd as mentioned in the enclosed published news. Provide day to day progress report of the action taken.	1. Enquiry was carried out against scams/financial irregularities of United Mercantile Cooperative Bank Ltd. as mentioned in the enclosed published news. 2. Note/explanation has been called for from the bank vide our letter dated 8th July, 2011 regarding errors mentioned in enquiry report. 3. The other information asked here is based on the conclusions of Inspection Report. We would like to state that conclusions found during inspections are confidential and the reports are finalized on the basis of information received from banks. We received the information from banks in a confident capacity. Moreover, disclosure of such information may cause damage to the banking system and financial interests of the state. Disclosure of such type of information is exempted under Section 8(1)(a) and (e) of RTI Act, 2005.
2.	That permission for opening how many extension counters was obtained by United Mercantile Cooperative Bank Ltd from RBI. Provide details of expenditure incurred for constructing the extension counters. Had the bank followed tender system for these constructions, if yes, provide details of concerned tenders.	United Mercantile Cooperative Bank Ltd. was permitted to open 5, extension counters. The information regarding expenditure incurred on construction of these extension counters and tenders are not available

		with Reserve Bank of India.

17. In Transfer Case No. 100 of 2015, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

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Sl. No.	Information Sought	Reply
1.	Under which Grade The George Town Co-operative Bank Ltd., Chennai, has been categorised as on 31.12.2006?	The classification of banks into various grades are done on the basis of inspection findings which is based on information/ documents obtained in a fiduciary capacity and cannot be disclosed to outsiders. It is also exempted under Section 8(1)(e) of right to Information Act, 2005.

18. The Appellate Authority observed that the CPIO, UBD has replied that the classification of banks into various grades is done on the basis of findings recorded in inspection which are based on information/documents obtained in a fiduciary capacity and cannot be disclosed to outsiders. The CPIO, UBD has stated that the same is exempted under Section 8(1)(e) of RTI Act. Apart from the fact that information sought by the appellant is sensitive and cannot be disclosed, it could also harm the competitive position of the co-operative bank. Therefore, exemption from disclosure of the Information is available under Section 8(1)(d) of the RTI Act.

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19. In Transfer Case No. 101 of 2015, with regard to Deendayal Nagri Shakari Bank Ltd, District Beed, the Respondent sought following information from the CPIO of RBI under the Act of 2005, reply to which is tabulated hereunder:-

Sl.	Information Sought	Reply

No.		
1.	Copies of complaints received by RBI against illegal working of the said bank, including violations of the Standing Orders of RBI as well as the provisions under Section 295 of the Companies Act, 1956.	Disclosure of information regarding complaints received from third parties would harm the competitive position of a third party. Further such information is maintained in a fiduciary capacity and is exempted from disclosure under Sections 8(1)(d) and (e) of the RTI Act.
2.	Action initiated by RBI against the said bank, including all correspondence between RBI and the said bank officials.	(a) A penalty of Rs. 1 lakh was imposed on Deendayal Nagri Sahakari Bank Ltd. for violation of directives on loans to directors/their relatives/concerns in which they are interested. The bank paid the penalty on 08.10.2010. (b) As regards correspondence between RBI and the, co-operative bank, it is advised that such information is maintained by RBI in fiduciary capacity and

		hence cannot be given to outsiders. Moreover disclosure of such information may harm the interest of the bank and banking system. Such information is exempt from disclosure under Section 8(1)(a) and (e) of the RTI Act.
3.	Finding of the enquiry made by RBI, actions proposed and taken against the bank and its officials-official notings, decisions, and final orders passed and issued.	Such information is maintained by the bank in a fiduciary capacity and is obtained by RBI during the course of inspection of the bank and hence cannot be given to outsiders. The disclosure of such information would harm the competitive position of a third party. Such information is, therefore, exempted from disclosure under Section 8(1)(d) and (e) of the RTI Act.

		As regards action taken against the bank, are reply at S. No.2 (a) above.
4.	Confidential letters received by RBI from the Executive Director of Vaishnavi Hatcheries Pvt. Ltd. complaining about the illegal working and pressure policies of the bank and its chairman for misusing the authority of digital signature for sanction of the backdated resignations of the chairman of the bank and few other directors of the companies details of action taken by RBI on that.	See reply at S. NO.2 (a) above.

20. The First Appellate Authority observed that the CPIO had furnished the information available on queries 2 and 4. Further information sought in queries 1 and 3 was exempted under Section 8(1)(a)(d) and (e) of the RTI Act.

21. Various transfer petitions were, therefore, filed seeking transfer of the writ petitions pending before different High Courts. On 30.5.2015, while allowing the transfer petitions filed by Reserve Bank of India seeking transfer of various writ petitions filed by it in the High Courts of Delhi and Bombay, this Court passed the following orders:

> "Notice is served upon the substantial number of respondents. Learned counsel for the respondents have no objection if Writ Petition Nos. 8400 of 2011, 8605 of 2011, 8693 of 2011, 8583 of 2011, 32 of 2012, 685 of 2012, 263 of 2012 and 1976 of 2012 pending in the High Court of Delhi at New Delhi and Writ Petition (L) Nos. 2556 of 2011, 2798 of 2011 and 4897 of 2011 pending in the High Court of Bombay are transferred to this Court and be heard together. In the meanwhile, the steps may be taken to serve upon the unserved respondents.
>
> Accordingly, the transfer petitions are allowed and the above mentioned writ petitions are withdrawn to this Court. The High Court of Delhi and the High Court of Bombay are directed to remit the entire record of the said writ petitions to this Court within four weeks."

22. Mr. T.R. Andhyarujina, learned senior counsel appearing for the petitioner-Reserve Bank of India, assailed the impugned orders passed by the Central Information

Commissioner as illegal and without jurisdiction. Learned Counsel referred various provisions of The Reserve Bank of India Act, 1934; The Banking Regulation Act, 1949 and The Credit Information Companies (Regulation) Act, 2005 and made the following submissions:-

I) The Reserve Bank of India being the statutory authority has been constituted under the Reserve Bank of India Act, 1934 for the purpose of regulating and controlling the money supply in the country. It also acts as statutory banker with the Government of India and State Governments and manages their public debts. In addition, it regulates and supervises Commercial Banks and Cooperative Banks in the country. The RBI exercises control over the volume of credit, the rate of interest chargeable on loan and advances and deposits in order to ensure the economic stability. The RBI is also vested with the powers to determine "Banking Policy" in the interest of banking system, monetary stability and sound economic growth.

The RBI in exercise of powers of powers conferred under Section 35 of the Banking Regulation Act, 1949 conducts inspection of the banks in the country.

II) The RBI in its capacity as the regulator and supervisor of the banking system of the country access to various information collected and kept by the banks. The inspecting team and the officers carry out inspections of different banks and much of the information accessed by the inspecting officers of RBI would be confidential. Referring Section 28 of the Banking Regulation Act, it was submitted that the RBI in the public interest may publish

the information obtained by it, in a consolidated form but not otherwise.

III) The role of RBI is to safeguard the economic and financial stability of the country and it has large contingent of expert advisors relating to matters deciding the economy of the entire country and nobody can doubt the bona fide of the bank. In this connection, learned counsel referred the decision of this Court in the case of Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, 1992 Vol. 2 SCC 343.

IV) Referring the decision in the case of B. Suryanarayana Vs. N. 1453 The Kolluru Parvathi Co-Op. Bank Ltd., 1986 AIR (AP) 244, learned counsel submitted that the Court will be highly chary to enter into and interfere with the decision of Reserve Bank of India. Learned Counsel also referred to the decision in the case of Peerless General Finance and Investment Co. Limited and Another Vs. Reserve Bank of India, 1992 Vol. 2 SCC 343 and contended that Courts are not to interfere with the economic policy which is a function of the experts.

V) That the RBI is vested with the responsibility of regulation and supervision of the banking system. As part of its supervisory role, RBI supervises and monitors the banks under its jurisdiction through on-site inspection conducted on annual basis under the statutory powers derived by it under section 35 of the Banking Regulation Act 1949, off-site returns on key financial parameters and engaging banks in dialogue through periodical meetings. RBI may take supervisory actions where warranted for

violations of its guidelines/directives. The supervisory actions would depend on the seriousness of the offence, systemic implications and may range from imposition of penalty, to issue of strictures or letters of warning. While RBI recognizes and promotes enhanced transparency in banks disclosures to the public, as transparency strengthens market discipline, a bank may not be able to disclose all data that may be relevant to assess its risk profile, due to the inherent need to preserve confidentially in relation to its customers. In this light, while mandatory disclosures include certain prudential parameters such as capital adequacy, level of Non Performing Assets etc., the supervisors themselves may not disclose all or some information obtained on-site or off-site. In some countries, wherever there are supervisory concerns, "prompt corrective action" programmes are normally put in place, which may or may not be publicly disclosed. Circumspection in disclosures by the supervisors arises from the potential market reaction that such disclosure might trigger, which

may not be desirable. Thus, in any policy of transparency, there is a need to build processes which ensure that the benefits of supervisory disclosure are appropriately weighed against the risk to stakeholders, such as depositors.

VI) As per the RBI policy, the reports of the annual financial inspection, scrutiny of all banks/ financial institutions are confidential document cannot be disclosed. As a matter of fact, the annual financial inspection/ scrutiny report reflect the supervisor’s critical assessment of banks and financial institutions and their functions. Disclosure of these scrutiny and information would create misunderstanding/ misinterpretation in the minds of the public. That apart, this may prove significantly counter productive. Learned counsel submitted that the disclosure of information sought for by the applicant would not serve the public interest as it will give adverse impact in public confidence on the bank. This has serious implication for financial stability which rests on public confidence. This will also adversely affect the economic interest of the State and would not serve the larger public interest.

23. The specific stand of petitioner Reserve Bank of India is that the information sought for is exempted under Section 8(1) (a), (d) and (e) of the Right to Information Act, 2005. As the regulator and supervisor of the banking system, the RBI has discretion in the disclosure of such information in public interest.

24. Mr. Andhyarujina, learned senior counsel, referred various decisions to the High Court and submitted that the disclosure of information would prejudicially affect the economic interest of the State. Further, if the information

sought for is sensitive from the point of adverse market

reaction leading to systematic crisis for financial stability.

25. Learned senior counsel put heavy reliance on the Full Bench decision of the Central Information Commissioner and submitted that while passing the impugned order, the Central Information Commissioner completely overlooked the Full Bench decision and ignored the same. According to the learned counsel, the Bench, which passed the impugned order, is bound to follow the Full Bench decision. The Commission also erred in holding that the Full Bench decision is per incuriam as the Full Bench has not considered the statutory provisions of Section 8 (2) of the Right to Information Act, 2005.

26. Learned senior counsel also submitted that the Commission erred in holding that even if the information sought for is exempted under Section 8(1) (a), (d) or (e) of the Right to Information Act, Section 8(2) of the RTI Act would mandate the disclosure of the information.

27. Learned senior counsel further submitted that the basic question of law is whether the Right to Information Act, 2005 overrides various provisions of special statutes which confer confidentiality in the information obtained by the RBI.; If the Respondents are right in their contention, these statutory provisions of confidentiality in the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934 and the Credit Information Companies (Regulation) Act, 2005 would be repealed or overruled by the Right to Information Act, 2005.

28. Under the Banking Regulation Act, 1949, the Reserve Bank of India has a right to obtain information from the banks under Section 27. These information can only be in its discretion published in such consolidated form as RBI deems fit. Likewise under Section 34A production of documents of confidential nature cannot be compelled. Under sub-section

(5) of Section 35, the Reserve Bank of India may carry out inspection of any bank but its report can only be disclosed if the Central Government orders the publishing of the report of the Reserve Bank of India when it appears necessary.

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29. Under Section 45E of the Reserve Bank of India Act, 1934, disclosure of any information relating to credit information submitted by banking company is confidential and under Section 45E(3) notwithstanding anything contained in any law no court, tribunal or authority can compel the Reserve Bank of India to give information relating to credit information etc.

30. Under Section 17(4) of the Credit Information Companies (Regulation) Act, 2005, credit information received by the credit information company cannot be disclosed to any person. Under Section 20, the credit information company has to adopt privacy principles and under Section 22 there cannot be unauthorized access to credit information.

31. It was further contended that the Credit Information Companies Act, 2005 was brought into force after the Right to Information act, 2005 w.e.f. 14.12.2006. It is significant to note that Section 28 of Banking Regulation Act, 1949 was amended by the Credit Information Companies (Regulation) Act, 2005. This is a clear indication that the Right to

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Information Act, 2005 cannot override credit information sought by any person in contradiction to the statutory provisions for confidentiality.

32. This is in addition to other statutory provisions of privacy in Section 44 of State Bank of India Act, 1955, Section 52, State Bank of India (Subsidiary Banks) Act, 1959, Section 13 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970.

33. The Right to Information Act, 2005 is a general provision which cannot override specific provisions relating to confidentiality in earlier legislation in accordance with the principle that where there are general words in a later statute it cannot be held that the earlier statutes are repealed altered or discarded.

34. Learned counsel submitted that Section 22 of the Right to Information Act, 2005 cannot have the effect of nullifying and repealing earlier statutes in relation to confidentiality. This has been well settled by this Court in

a) Raghunath vs. state of Karnataka 1992(1) SCC 335 at p.348 pages 112 and 114

b) ICICI Bank vs. SIDCO Leather etc., 2006(10) SCC 452 at p. 466, paras 36 & 37

c) Central Bank vs. Kerala, 2009 (4) SCC 94 at p. 132-133 para 104

d) AG Varadharajalu vs. Tamil Nadu, 1998 (4) SCC 231 at p. 236 para 16.

Hence, the Right to Information Act, 2005 cannot override the provisions for confidentiality conferred on the RBI by the earlier statutes referred to above.

35. The Preamble of the RTI Act, 2005 itself recognizes the fact that since the revealing of certain information is likely to conflict with other public interests like "the preservation of confidentiality of sensitive information", there is a need to harmonise these conflicting interests. It is submitted that certain exemptions were carved out in the RTI Act to harmonise these conflicting interests. This Court in Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors, (2011)8 SCC 497, has observed as under:-

"When trying to ensure that the right to information does not conflict with several other public interests (which

> includes efficient operations of the Governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act, that is, Section 8 of the Freedom to Information Act, 2002. The courts and Information Commissions enforcing the provisions of the RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting Section 8 and the other provisions of the Act."

36. Apart from the legal position that the Right to Information Act, 2005 does not override statutory provisions of confidentiality in other Act, it is submitted that in any case Section 8(1)(a) of the Right to Information Act, 2005 states that there is no obligation to give any information which pre-judiciously affects the economic interests of the States. Disclosure of such vital information relating to banking would pre-judiciously affect the economic interests of the State. This was clearly stated by the Full Bench of the Central Information Commission by its Order in the case of Ravin Ranchchodlal Patel (supra). Despite this emphatic ruling individual Commissioners of the Information have disregarded it by

holding that the decision of the Full Bench was per incurium and directed disclosure of information.

37. Other exceptions in Section 8, viz 8(1)(a)(d), 8(1)(e) would also apply to disclosure by the RBI and banks. In sum, learned senior counsel submitted that the RBI cannot be directed to disclose information relating to banking under the Right to Information Act, 2005.

38. Mr. Prashant Bhushan, learned counsel appearing for the respondents in Transfer Case Nos.94 & 95 of 2015, began his arguments by referring the Preamble of the Constitution and submitted that through the Constitution it is the people who have created legislatures, executives and the judiciary to

exercise such duties and functions as laid down in the constitution itself.

39. The right to information regarding the functioning of public institutions is a fundamental right as enshrined in Article 19 of the Constitution of India. This Hon'ble Court has declared in a plethora of cases that the most important value

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for the functioning of a healthy and well informed democracy is transparency. Mr. Bhushan referred Constitution Bench judgment of this Court in the case of State of U.P. vs. Raj Narain, AIR 1975 SC 865, and submitted that it is a Government's responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their functionaries. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of public.

40. In the case of S.P. Gupta v. President of India and Ors., AIR 1982 SC 149, a seven Judge Bench of this Court made the following observations regarding the right to information:-

> "There is also in every democracy a certain amount of public suspicion and distrust of Government, varying of course from time to time according to its performance,

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> which prompts people to insist upon maximum exposure of its functioning. It is axiomatic that every action of the Government must be actuated by public interest but even so we find cases, though not many, where Governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometimes Governmental action is influenced by political and other motivations and pressures and at times, there are also instances of misuse or abuse of authority on the part of the executive. Now, if secrecy were to be observed in the functioning of Government and the processes of Government were to be kept hidden from public scrutiny, it would tend to promote and encourage oppression, corruption and misuse or abuse of authority, for it would all be shrouded in the veil of

> secrecy without any public accountability. But if there is an open Government with means of information available to the public, there would be greater exposure of the functioning of Government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. It has been truly said that an open Government is clean Government and a powerful safeguard against political and administrative aberration and inefficiency."

41. In the case of the Union of India vs. Association for Democratic Reforms, AIR 2002 SC 2112, while declaring that it is part of the fundamental right of citizens under Article 19(1)(a) to know the assets and liabilities of candidates contesting election to the Parliament or the State Legislatures, a three Judge Bench of this Court held unequivocally that:- "The right to get information in a democracy is recognized all throughout and is a natural right flowing from the concept of democracy (Para 56)." Thereafter, legislation was passed

amending the Representation of People Act, 1951 that candidates need not provide such information. This Court in the case of PUCL vs. Union of India, (2003) 4 SCC 399, struck down that legislation by stating: "It should be properly understood that the fundamental rights enshrined in the Constitution such as, right to equality and freedoms have no fixed contents. From time to time, this Court has filled in the skeleton with soul and blood and made it vibrant. Since the last more than 50 years, this Court has interpreted Articles 14, 19 and 21 and given meaning and colour so that the nation can have a truly republic democratic society."

42. The RTI Act, 2005, as noted in its very preamble, does not create any new right but only provides machinery to effectuate the fundamental right to information. The institution of the CIC and the SICs are part of that machinery. The preamble also inter-alia states "... democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to

hold Governments and their instrumentalities accountable to the governed."

43. The submission of the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of RBI Act and Banking Regulation Act is clearly misconceived. RTI Act, 2005 contains a clear provision (Section 22) by virtue of which it overrides all other Acts including Official Secrets Act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail insofar as transparency and access to information is concerned. Moreover, the RTI Act 2005, being a later law, specifically brought in to usher transparency and to transform the way official business is conducted, would have to override all earlier practices and laws in order to achieve its objective. The only exceptions to access to information are contained in RTI Act itself in Section 8.

44. In T.C.No.94 of 2015, the RTI applicant Mr. P.P. Kapoor had asked about the details of the loans taken by the industrialists that have not been repaid, and he had asked about the names of the top defaulters who have not repaid their loans to public sector banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1) (a) and 8(1)(e) of the RTI Act on the ground that disclosure would affect the economic interest of the country, and that the information has been received by the RBI from the banks in fiduciary capacity. The CIC found these arguments made by RBI to be totally misconceived in facts and in law, and held that the disclosure would be in public interest.

45. In T.C.No.95 of 2015, the RTI applicant therein Mr.

Subhash Chandra Agrawal had asked about the details of the show cause notices and fines imposed by the RBI on various banks. The RBI resisted the disclosure of the information claiming exemption under Section 8(1)(a),(d) and 8(1) (e) of the RTI Act on the ground that disclosure would affect the

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economic interest of the country, the competitive position of the banks and that the information has been received by RBI in fiduciary capacity. The CIC, herein also, found these arguments made by RBI to be totally misconceived in facts and in law and held that the disclosure would be in public interest.

46. In reply to the submission of the petitioner about fiduciary relationship, learned counsel submitted that the scope of Section 8(1)(e) of the RTI Act has been decided by this Court in Central Board of Secondary Education vs. Aditya Bandopadhyay, (2011) 8 SCC 497, wherein, while rejecting the argument that CBSE acts in a fiduciary capacity to the students, it was held that:

> "...In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the word 'information available to a person in his fiduciary relationship' are used in Section 8(1) (e) of the RTI Act in its normal and well recognized sense, that is to refer to persons who act in a fiduciary capacity, with reference to specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the action of the fiduciary."

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47. We have extensively heard all the counsels appearing for the petitioner Banks and respondents and examined the law and the facts.

48. While introducing the Right to Information Bill, 2004 a serious debate and discussion took place. The then Prime Minister while addressing the House informed that the RTI Bill is to provide for setting out practical regime of right to information for people, to secure access to information under

the control of public authorities in order to promote transparency and accountability in the working of every public authority. The new legislation would radically alter the ethos and culture of secrecy through ready sharing of information by the State and its agencies with the people. An era of transparency and accountability in governance is on the anvil. Information, and more appropriately access to information would empower and enable people not only to make informed choices but also participate effectively in decision making processes. Tracing the origin of the idea of the then Prime Minister who had stated, "Modern societies are information

societies. Citizens tend to get interested in all fields of life and demand information that is as comprehensive, accurate and fair as possible." In the Bill, reference has also been made to the decision of the Supreme Court to the effect that Right to Information has been held as inherent in Article 19 of our Constitution, thereby, elevating it to a fundamental right of the citizen. The Bill, which sought to create an effective mechanism for easy exercise of this Right, was held to have been properly titled as "Right to Information Act". The Bill further states that a citizen has to merely make a request to the concerned Public Information Officer specifying the particulars of the information sought by him. He is not required to give any reason for seeking information, or any other personal details except those necessary for contacting him. Further, the Bill states:-

> "The categories of information exempted from disclosure are a bare minimum and are contained in clause 8 of the Bill. Even these exemptions are not absolute and access can be allowed to them in public interest if disclosure of the information outweighs the harm to the public authorities. Such disclosure has been permitted even if it is in conflict with the provisions of the Official Secrets Act, 1923. Moreover, barring two categories that relate to information disclosure - which may affect

> sovereignty and integrity of India etc., or information relating to Cabinet papers etc.-all other categories of exempted information would be disclosed after

twenty years.

> There is another aspect about which information is to be made public. We had a lengthy discussion and it is correctly provided in the amendment under clause 8 of the Bill. The following information shall be exempted from disclosure which would prejudicially affect the sovereignty and integrity of India; which has been expressly forbidden; which may result in a breach of privileges of Parliament or the Legislature; and also information pertaining to defence matters. They are listed in clause 8 (a) to (g). There are exceptions to this clause. Where it is considered necessary that the information will be divulged in the interest of the State, that will be done. There must be transparency in public life. There must be transparency in administration and people must have a right to know what has actually transpired in the secretariat of the State as well as the Union Ministry. A citizen will have a right because it will be safe to prevent corruption. Many things are done behind the curtain. Many shoddy deals take place in the secretariats of the Central and State Governments and the information will always be kept hidden. Such practice should not be allowed in a democratic country like ours. Ours is a republic. The citizenry should have a right to know what transpired in the secretariat. Even Cabinet papers, after a decision has been taken, must be divulged as per the provisions of this amendment. It cannot be hidden from the knowledge of others."

49. Addressing the House, it was pointed out by the then Prime Minister that in our country, Government expenditure both at the Central and at the level of the States and local bodies, account for nearly 33% of our Gross National Product. At the same time, the socio-economic imperatives require our

Government to intervene extensively in economic and social affairs. Therefore, the efficiency and effectiveness of the government processes are critical variables, which will determine how our Government functions and to what extent it is able to discharge the responsibilities entrusted. It was pointed out that there are widespread complaints in our country about wastefulness of expenditure, about corruption, and matter which have relations with the functioning of the Government. Therefore, it was very important to explore new effective mechanism to ensure that the Government will purposefully and effectively discharge the responsibilities entrusted to it.

50. Finally the Right to Information Act was passed by the Parliament called "The Right to Information Act, 2005". The Preamble states:-

> "An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.
>
> WHEREAS the Constitution of India has established democratic Republic;
>
> AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;
>
> AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;
>
> AND WHEREAS it is necessary to harmonise these conflicting interest while preserving the paramountcy of the democratic ideal;
>
> NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

51. Section 2 of the Act defines various authorities and the words. Section 2(j) defines right to information as under :-

> "2(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-
>
> (i) inspection of work, documents, records;
>
> (ii) taking notes, extracts, or certified copies of documents or records;
>
> (iii) taking certified samples of material;
>
> (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;"

52. Section 3 provides that all citizens shall have the right to information subject to the provisions of this Act. Section 4 makes it obligatory on all public authorities to maintain records in the manner provided therein. According to Section 6, a person who desires to obtain any information under the Act shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made to the competent authority specifying the particulars of information sought by him or her. Sub-section (ii) of Section 6 provides that the applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Section 7 lays down the procedure for disposal of the request so made by the person under Section 6 of the Act. Section 8, however, provides certain exemption from disclosure of information. For better appreciation Section 8 is quoted hereinbelow:-

"8. Exemption from disclosure of information.--
(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,--
(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
(f) information received in confidence from foreign government;
(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given

in confidence for law enforcement or security purposes;
(h) information which would impede the process of investigation or apprehension or prosecution of offenders;
(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;
(j) information which relates to personal information the disclosure of which has not relationship to any

public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

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

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act."

53. The information sought for by the respondents from the petitioner-Bank have been denied mainly on the ground that such information is exempted from disclosure under Section 8(1)(a)(d) and (e) of the RTI Act.

54. Learned counsel appearing for the petitioner-Bank mainly relied upon Section 8(1)(e) of the RTI Act taking the

stand that the Reserve Bank of India having fiduciary relationship with the other banks and that there is no reason to disclose such information as no larger public interest

warrants such disclosure. The primary question therefore, is, whether the Reserve Bank of India has rightly refused to disclose information on the ground of its fiduciary relationship with the banks.

55. The Advanced Law Lexicon, 3rd Edition, 2005, defines fiduciary relationship as "a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the fiduciary relationship. Fiduciary relationship usually arise in one of the four situations (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has

traditionally be recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer."

56. The scope of the fiduciary relationship consists of the following rules:

> "(i) No Conflict rule- A fiduciary must not place himself in a position where his own interests conflicts with that of his customer or the beneficiary. There must be "real sensible possibility of conflict.
> (ii) No profit rule- a fiduciary must not profit from his position at the expense of his customer, the beneficiary;
> (iii) Undivided loyalty rule- a fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs
> (iv) Duty of confidentiality- a fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person."

57. The term fiduciary relationship has been well discussed by this Court in the case of Central Board of Secondary Education and Anr. vs. Aditya Bandopadhyay and Ors.

(supra). In the said decision, their Lordships referred various

authorities to ascertain the meaning of the term fiduciary

relationship and observed thus:-

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"20.1) Black's Law Dictionary (7th Edition, Page 640) defines 'fiduciary relationship' thus:

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

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

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

The word 'fiduciary,' as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee, with respect to the trust and confidence involved in it and the scrupulous good faith and candor which it requires; a person having the duty, created by his undertaking, to act primarily for

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another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust, or estate. Some examples of what, in particular connections, the term has been held to include and not to include are set out in the note."

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

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

Generally, the term ‘fiduciary’ applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations."

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

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

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

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

21. The term ‘fiduciary’ refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term ‘fiduciary relationship’ is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has

to act in confidence and expected not to disclose the thing or information to any third party. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are : a partner vis-‘-vis another partner and an employer vis-‘-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee

furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee’s conduct or acts are found to be prejudicial to the employer."

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

59. RBI is a statutory body set up by the RBI Act as India’s Central Bank. It is a statutory regulatory authority to oversee the functioning of the banks and the country’s banking sector. Under Section 35A of the Banking Regulation Act, RBI has been given powers to issue any direction to the banks in

public interest, in the interest of banking policy and to secure proper management of a banking company. It has several other far-reaching statutory powers.

60. RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector

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

61. The baseless and unsubstantiated argument of the RBI that the disclosure would hurt the economic interest of the country is totally misconceived. In the impugned order, the CIC has given several reasons to state why the disclosure of

the information sought by the respondents would hugely serve public interest, and non-disclosure would be significantly detrimental to public interest and not in the economic interest of India. RBI's argument that if people, who are sovereign, are made aware of the irregularities being committed by the banks then the country's economic security would be endangered, is not only absurd but is equally misconceived and baseless.

62. The exemption contained in Section 8(1)(e) applies to exceptional cases and only with regard to certain pieces of information, for which disclosure is unwarranted or undesirable. If information is available with a regulatory agency not in fiduciary relationship, there is no reason to withhold the disclosure of the same. However, where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship. As in the instant case, the Financial institutions have an obligation to provide all the information to the RBI and such an information shared under an obligation/ duty cannot be considered to come under the

purview of being shared in fiduciary relationship. One of the

main characteristic of a Fiduciary relationship is "Trust and Confidence". Something that RBI and the Banks lack between them.

63. In the present case, we have to weigh between the public interest and fiduciary relationship (which is being shared between the RBI and the Banks). Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economic interests of the country? To what extent the public should be allowed to get information?

64. In the context of above questions, it had long since come to our attention that the Public Information Officers (PIO) under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to.

65. And in this case the RBI and the Banks have sidestepped the General public’s demand to give the requisite information on the pretext of "Fiduciary relationship" and "Economic Interest". This attitude of the RBI will only attract more suspicion and disbelief in them. RBI as a regulatory authority should work to make the Banks accountable to their actions.

66. Furthermore, the RTI Act under Section 2(f) clearly provides that the inspection reports, documents etc. fall under the purview of "Information" which is obtained by the public authority (RBI) from a private body. Section 2(f), reads thus:

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

67. From reading of the above section it can be inferred that the Legislature's intent was to make available to the general public such information which had been obtained by the public authorities from the private body. Had it been the case

where only information related to public authorities was to be provided, the Legislature would not have included the word "private body". As in this case, the RBI is liable to provide information regarding inspection report and other documents to the general public.

68. Even if we were to consider that RBI and the Financial Institutions shared a "Fiduciary Relationship", Section 2(f) would still make the information shared between them to be accessible by the public. The facts reveal that Banks are trying to cover up their underhand actions, they are even more liable to be subjected to public scrutiny.

69. We have surmised that many Financial Institutions have resorted to such acts which are neither clean nor transparent. The RBI in association with them has been trying to cover up their acts from public scrutiny. It is the responsibility of the RBI to take rigid action against those Banks which have been practicing disreputable business practices.

70. From the past we have also come across financial institutions which have tried to defraud the public. These acts are neither in the best interests of the Country nor in the interests of citizens. To our surprise, the RBI as a Watch Dog should have been more dedicated towards disclosing information to the general public under the Right to Information Act.

71. We also understand that the RBI cannot be put in a fix, by making it accountable to every action taken by it. However,

in the instant case the RBI is accountable and as such it has to provide information to the information seekers under Section 10(1) of the RTI Act, which reads as under:

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

72. It was also contended by learned senior counsel for the RBI that disclosure of information sought for will also go

against the economic interest of the nation. The submission is wholly misconceived.

73. Economic interest of a nation in most common parlance are the goals which a nation wants to attain to fulfil its national objectives. It is the part of our national interest, meaning thereby national interest can’t be seen with the spectacles(glasses) devoid of economic interest.

74. It includes in its ambit a wide range of economic transactions or economic activities necessary and beneficial to attain the goals of a nation, which definitely includes as an objective economic empowerment of its citizens. It has been recognized and understood without any doubt now that one of the tool to attain this goal is to make information available to people. Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation’s interest better which as stated above also includes its

economic interests. Recognizing the significance of this tool it has not only been made one of the fundamental rights under Article 19 of the Constitution but also a Central Act has been

brought into effect on 12th October 2005 as the Right to Information Act, 2005.

75. The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy.

76. But neither the Fundamental Rights nor the Right to Information have been provided in absolute terms. The fundamental rights guaranteed under Article 19 Clause 1(a) are restricted under Article 19 clause 2 on the grounds of national and societal interest. Similarly Section 8, clause 1 of Right to Information Act, 2005, contains the exemption provisions where right to information can be denied to public in the name of national security and sovereignty, national

economic interests, relations with foreign states etc. Thus, not all the information that the Government generates will or shall be given out to the public. It is true that gone are the days of closed doors policy making and they are not acceptable also but it is equally true that there are some information which if published or released publicly, they might actually cause more harm than good to our national interest... if not domestically it can make the national interests vulnerable internationally and it is more so possible with the dividing line between national and international boundaries getting blurred in this age of rapid advancement of science and technology and global economy. It has to be understood that rights can be enjoyed without any inhibition only when they are nurtured within protective boundaries. Any excessive use of these rights which may lead to tampering these boundaries will not further the national interest. And when it comes to national economic interest, disclosure of information about currency or exchange

rates, interest rates, taxes, the regulation or supervision of banking, insurance and other financial institutions, proposals

for expenditure or borrowing and foreign investment could in some cases harm the national economy, particularly if released prematurely. However, lower level economic and financial information, like contracts and departmental budgets should not be withheld under this exemption. This makes it necessary to think when or at what stage an information is to be provided i.e., the appropriate time of providing the information which will depend on nature of information sought for and the consequences it will lead to after coming in public domain.

77. In one of the case, the respondent S.S. Vohra sought certain information in relation to the Patna Branch of ICICI Bank and advisory issued to the Hong Kong Branch of ICICI Bank. The contention of the respondent was that the Finance Minister had made a written statement on the floor of the House on 24.07.2009 that some banks like SBI, ICICI, Bank of Baroda, Dena Bank etc., were violating FEMA Guidelines for opening of accounts and categorically mentioned that the Patna Branch of ICICI Bank Ltd. had opened some fictitious

accounts which were opened by fraudsters and hence an advisory note was issued to the concerned branch on December 2007 for its irregularities. The Finance Minister even mentioned that in the year 2008 the ICICI Bank Ltd. was also warned for alleged irregular dealings in securities in Hong Kong. Hence, the respondent sought such advisory note as issued by the RBI to ICICI Bank. The Central Information Commissioner in the impugned order considered the RBI Master Circular dated 01.07.2009 to all the commercial banks giving various directions and finally held as under :-

> "It has been contended by the Counsel on behalf of the ICICI Bank Limited that an advisory note is prepared after reliance on documents such as Inspection Reports,

Scrutiny reports etc. and hence, will contain the contents of those documents too which are otherwise exempt from disclosure. We have already expressed our view in express terms that whether or not an Advisory Note shall be disclosed under the RTI Act will have to be determined on case by case basis. In some other case, for example, there may be a situation where some contents of the Advisory Note may have to be severed to such an extent that details of Inspection Reports etc. can be separated from the Note and then be provided to the RTI Applicant. Section 10 of the RTI Act leaves it open to decide each case on its merits after having satisfied ourselves whether an Advisory Note needs to be provided as it is or whether some of its contents may be severed since they may be exempted per se under the RTI Act. However, we find no reason, whatsoever, to apply Section 10 of the RTI Act in order to severe the contents of the Advisory Note issued by the RBI to the ICICI Bank Limited as the matter has already been placed on the floor of the Lok Sabha by the Hon'ble Finance Minister.

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This is a matter of concern since it involves the violation of policy Guidelines initiated by the RBI and affects the public at large. Transparency cannot be brought overnight in any system and one can hope to witness accountability in a system only when its end users are well-educated, well-informed and well-aware. If the customers of commercial banks will remain oblivious to the violations of RBI Guidelines and standards which such banks regularly commit, then eventually the whole financial system of the country would be at a monumental loss. This can only be prevented by suo motu disclosure of such information as the penalty orders are already in public domain."

78. Similarly, in another case the respondent Jayantilal N. Mistry sought information from the CPIO, RBI in respect of a Cooperative Bank viz. Saraspur Nagrik Sahkari Bank Limited related to inspection report, which was denied by the CPIO on the ground that the information contained therein were received by RBI in a fiduciary capacity and are exempt under Section 8(1)(e) of RTI Act. The CIC directed the petitioner to furnish that information since the RBI expressed their willingness to disclose a summary of substantive part of the inspection report to the respondent. While disposing of the appeal the CIC observed:-

"Before parting with this appeal, we would like to record our observations that in a rapidly unfolding economics scenario, there are public institutions, both in the banking and non-banking sector, whose activities have not served public interest. On the

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contrary, some such institutions may have attempted to defraud the public of their moneys kept with such

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

79. In another case, where the respondent P.P. Kapoor sought information inter alia about the details of default in loans taken from public sector banks by industrialists, out of the list of defaulters, top 100 defaulters, names of the businessmen, firm name, principal amount, interest amount, date of default and date of availing the loan etc. The said information was denied by the CPIO mainly on the basis that it was held in fiduciary capacity and was exempt from disclosure of such information. Allowing the appeal, the CIC directed for the disclosure of such information. The CIC in the impugned order has rightly observed as under:-

"I wish government and its instrumentalities would remember that all information held by them is owned by citizens, who are sovereign. Further, it is often seen that banks and financial institutions continue to provide loans to industrialists despite their default in repayment of an earlier loan." This Court in UP Financial Corporation vs. Gem Cap India Pvt. Ltd., AIR 1993 SC 1435 has noted that :

"Promoting industrialization at the cost of public funds does not serve the public interest, it merely amounts to transferring public money to private account'. Such practices have led citizens to believe that defaulters can get away and play fraud on public funds. There is no doubt that information regarding top industrialists who have defaulted in repayment of loans must be brought to citizens' knowledge; there is certainly a larger public interest that could be served on ....disclosure of the same. In fact, information about industrialists who are loan defaulters of the country may put pressure on such persons to pay their dues. This would have the impact of alerting Citizens about those who are defaulting in payments and

could also have some impact in shaming them.

RBI had by its Circular DBOD No. BC/CIS/47/20.16.002/94 dated April 23, 1994 directed all banks to send a report on their defaulters, which it would share with all banks and financial institutions, with the following objectives:

1) To alert banks and financial institutions (FIs) and to put them on guard against borrowers who have defaulted in their dues to lending institutions;

2) To make public the names of the borrowers who have defaulted and against whom suits have been filed by banks/ FIs."

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80. At this juncture, we may refer the decision of this Court in Mardia Chemicals Limited vs. Union of India, (2004) 4 SCC 311, wherein this court while considering the validity of SARFAESI Act and recovery of non-performing assets by banks and financial institutions in India, held :-

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

81. In rest of the cases the CIC has considered elaborately the information sought for and passed orders which in our opinion do not suffer from any error of law, irrationality or arbitrariness.

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82. We have, therefore, given our anxious consideration to the matter and came to the conclusion that the Central Information Commissioner has passed the impugned orders

giving valid reasons and the said orders, therefore, need no interference by this Court.

83. There is no merit in all these cases and hence they are dismissed.

.....J.
(M.Y. Eqbal)

.....J.
(C. Nagappan)

New Delhi
December 16, 2015

ITEM NO.1A COURT NO.9 SECTION XVIA
(For Judgment)

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

Transfer Case (Civil) No.91/2015 @ T.P.(C) No.707/2012

RESERVE BANK OF INDIA Petitioner(s)

VERSUS

JAYANTILAL N. MISTRY Respondent(s)

WITH T.C.(C) No.92/2015 @ T.P.(C) No.708/2012
T.C.(C) No. 93/2015 @ T.P.(C) No.711/2012
T.C.(C) No. 94/2015 @ T.P.(C) No.712/2012
T.C.(C) No. 95/2015 @ T.P.(C) No.713/2012
T.C.(C) No. 96/2015 @ T.P.(C) No.715/2012
T.C.(C) No. 97/2015 @ T.P.(C) No.716/2012
T.C.(C) No. 98/2015 @ T.P.(C) No.717/2012
T.C.(C) No. 99/2015 @ T.P.(C) No.718/2012
T.C.(C) No. 100/2015 @ T.P.(C) No.709/2012
T.C.(C) No. 101/2015 @ T.P.(C) No.714/2012

Date : 16/12/2015 These Cases were called on for pronouncement of Judgment today.

For Petitioner(s) Mr. T. R. Andhyarujina, Sr. Adv.
Mr. Kuldeep S. Parihar, Adv.
Mr. H. S. Parihar,Adv.
Mr. Soumik Gitosal, Adv.
Mr. Siddharth Sijoria, Adv.

Mr. P. Narasimhan,Adv.

Mr. Bharat Sangal,Adv.

For Respondent(s) Dr. Lalit Bhasin, Adv.
Ms. Nina Gupta, Adv.
Mr. Mudit Sharma,Adv.

Mr. Prashant Bhushan,Adv.

Mr. H. S. Parihar,Adv.

Ms. Jyoti Mendiratta,Adv.

Mr. K.R. Anand, Adv.
Mr. Vivek Gupta,Adv.

Ms. Manisha T. Karia,Adv.
Ms. Srishti Rani, Adv.

Mr. Rakesh K. Sharma,Adv.

Mr. Amol B. Karande, Adv.

Hon'ble Mr. Justice M. Y. Eqbal pronounced the reportable Judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice C. Nagappan.

These transferred Cases are dismissed in terms of the signed reportable judgment.

(Sanjay Kumar-II)
Court Master

(Indu Pokhriyal)
Court Master

(Signed Order is placed on the file)

'REPORTABLE'

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.823-854 OF 2016
(Arising out of SLP (C) Nos. 15919- 15950 of 2011)

Kerala Public Service Commission & Ors. .....Appellants

Versus

The State Information Commission & Anr. ....Respondents

With
CIVIL APPEAL NO.855 OF 2016
(Arising out of SLP (Civil) No.5433 of 2014)

Public Service Commission U.P. .....Appellant

Versus

Raghvendra Singh .. Respondent

J U D G M E N T

M.Y. EQBAL, J.

Leave granted.

2. In these two appeals the short question which needs consideration is as to whether the Division Bench of the Kerala High Court by impugned judgment has rightly held that the respondents are entitled not only to get information with regard to the scan copies of their answer sheet,

tabulation-sheet containing interview marks but also entitled to know the names of the examiners who have evaluated the answer sheet.

3. The information sought for by the respondents were denied by the State Public Information Officer and the Appellate Authority. However, the State Information Commission allowed the second appeal and held that there is no fiduciary relationship in case of answer scripts. Further, the interview marks cannot be considered as personal information, since the public authority had already decided to publish them.

4. Both the High Courts of Kerala and Allahabad have taken the view, following the earlier decisions of this Court that no fiduciary relationship exists between the appellants and the respondents and, therefore, the information sought for have to be supplied to them.

5. We have heard learned counsel for the parties and have gone through the impugned judgments passed by the

Division Bench of the High Court of Kerala at Ernakulam and Allahabad.

6. So far as the information sought for by the respondents with regard to the supply of scanned copies of his answer-sheet of the written test, copy of the tabulation sheet and other information, we are of the opinion that the view taken in the impugned judgment with regard to the disclosure of these information, do not suffer from error of law and the same is fully justified. However, the view of the Kerala High Court is that the information seekers are also entitled to get the disclosure of names of examiners who have evaluated the answer-sheet.

7. The view taken by the Kerala High Court holding that no fiduciary relationship exists between the University and the Commission and the examiners appointed by them cannot be sustained in law. The Kerala High Court while observing held:-

> "16.What, if any , is the fiduciary relationship of the PSC qua the examinees? Performance audit of constitutional institutions would only

strengthen the confidence of the citizenry in such institutions. The PSC is a constitutional institution. To stand above board, is one of its own prime requirements. There is nothing that should deter disclosure of the contents of the materials that the examinees provide as part of their performance in the competition for being selected to public service. The confidence that may be reposed by the examinees in the institution of the PSC does not inspire the acceptability of a fiduciary relationship that should kindle the exclusion of information in relation to the evalution or other details relating to the examination. Once the evaluation is over and results are declared, no more secrecy is called for. Dissemination of such information would only add to the credibility of the PSC, in the constitutional conspectus in which it is placed. A particular examinee would therefore be entitled to access to information in relation to that person's answer scripts. As regards others, information in relation to answer scripts may fall within the pale of "third party information" in terms of section 11 of the RTI Act. This only means that such information cannot be accessed except in conformity with the provisions contained in section 11. It does not, in any manner, provide for any immunity from access.

17. We shall now examine the next contention of PSC that there is a fiduciary relationship between it and the examiners and as a consequence, it is eligible to claim protection from disclosure, except with the sanction of the competent authority, as regards the identity of the examiners as also the materials that were subjected to the examination. We have already approved TREESA and the different precedents and commentaries relied on therein as regards the concept of fiduciary relationship. We are in full agreement with the law laid by the Division Bench of this Court in Centre of Earth Science

> Studies (supra), that S.8 (1)(e) deals with information available with the person in his fiduciary relationship with another; that information under this head is nothing but information in trust, which, but for the relationship would not have been conveyed or known to the person concerned. What is it that the PSC holds in trust for the examiners? Nothing. At the best, it could be pointed out that the identity of the examiners has to be insulated from public gaze, having regard to issues relatable to vulnerability and exposure to corruption if the identities of the examiners are disclosed in advance. But, at any rate, such issues would go to oblivion after the conclusion of the evaluation of the answer scripts and the publication of the results. Therefore, it would not be in public interest to hold that there could be a continued secrecy even as regards the identity of the examiners. Access to such information, including as to the identity of the examiners, after the examination and evaluation process are over, cannot be shied off under any law or avowed principle of privacy."

8. We do not find any substance in the reasoning given by the Kerala High Court on the question of disclosure of names of the examiners.

9. In the present case, the PSC has taken upon itself in appointing the examiners to evaluate the answer papers and as such, the PSC and examiners stand in a principal-agent relationship. Here the PSC in the shoes of a Principal

has entrusted the task of evaluating the answer papers to the Examiners. Consequently, Examiners in the position of agents are bound to evaluate the answer papers as per the instructions given by the PSC. As a result, a fiduciary relationship is established between the PSC and the Examiners. Therefore, any information shared between them is not liable to be disclosed. Furthermore, the information seeker has no role to play in this and we don't see any logical reason as to how this will benefit him or the public at large. We would like to point out that the disclosure of the identity of Examiners is in the least interest of the general public and also any attempt to reveal the examiner's identity will give rise to dire consequences. Therefore, in our considered opinion revealing examiner's identity will only lead to confusion and public unrest. Hence, we are not inclined to agree with the decision of the Kerala High Court with respect to the second question.

10. In the present case the request of the information seeker about the information of his answer sheets and details of the interview marks can be and should be provided to him. It is not something which a public authority keeps it under a fiduciary capacity. Even disclosing the marks and the answer sheets to the candidates will ensure that the candidates have been given marks according to their performance in the exam. This practice will ensure a fair play in this competitive environment, where candidate puts his time in preparing for the competitive exams, but, the request of the information seeker about the details of the person who had examined/checked the paper cannot and shall not be provided to the information seeker as the relationship between the public authority i.e. Service Commission and the Examiners is totally within fiduciary relationship. The Commission has reposed trust on the examiners that they will check the exam papers with utmost care, honesty and impartially and, similarly, the Examiners have faith that

they will not be facing any unfortunate consequences for doing their job properly. If we allow disclosing name of the examiners in every exam, the unsuccessful candidates may try to take revenge from the examiners for doing their job properly. This may, further, create a situation where the potential candidates in the next similar exam, especially in the same state or in the same level will try to contact the disclosed examiners for any potential gain by illegal means in the potential exam.

11. We, therefore, allow these appeals in part and modify the judgment only to the extent that the respondents-applicants are not entitled to the disclosure of names of the examiners as sought for by them.

.....J.
(M.Y. Eqbal)

.....J.
(Arun Mishra)

New Delhi
February 4, 2016

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4913 OF 2016
(Arising out of S.L.P. (Civil) NO.1257 OF 2010)

Nisha Priya Bhatia .....Appellant

versus

Ajit Seth & Ors. .....Respondents

J U D G M E N T

Madan B. Lokur, J.

1. Leave granted.

2. The appellant is aggrieved by the judgment and order dated 12th November, 2009 passed by the Delhi High Court in Contempt Case (C) No.449 of 2009. By the impugned judgment and order, the High Court held that the respondents had not committed any violation of the order dated 12th November, 2008 passed in W.P. (C) No.7971 of 2008.

3. In W.P. (C) No.7971 of 2008 the appellant had made several prayers but during the course of hearing in the High Court, five of the prayers were not pressed with liberty to take appropriate proceedings in accordance with law. The sixth prayer which was pressed related to respondent No.2 (Ashok Chaturvedi). It was prayed that he should be asked to proceed on leave pending the independent

enquiry into the appellant's complaint of sexual harassment so that this respondent could not use his power and authority to influence any independent enquiry. As will be evident from the prayer, the enquiry relating to the allegation of sexual harassment made by the appellant was already pending. In the order dated 12th November, 2008 a direction was given by the High Court to expeditiously conclude the enquiry.

4. A few brief facts are necessary for a proper appreciation of the controversy before us.

5. The appellant had complained of sexual harassment by her senior Sunil Uke, Joint Secretary in the department and Ashok Chaturvedi. The allegation of sexual harassment by Sunil Uke was looked into by a Committee constituted for this purpose. The Committee gave its Report on 19th May, 2008.

6. A separate enquiry was held by a separate Committee into the allegation of sexual harassment by Ashok Chaturvedi. This Committee gave its Report on 23rd January, 2009.

7. In the Contempt Petition filed by the appellant in the Delhi High Court, it was brought out that the Committee inquiring into the allegation against Ashok Chaturvedi had since given its Report. It appears that pursuant to the Report an order dated 22nd September, 2009 was passed against the appellant but she disputed that this order was based on the Report. In any event, we are not concerned with

the order dated 22nd September, 2009 except to say that it noted that the appellant's disciplinary authority had considered both Reports and had approved the conclusion that there was not enough evidence to take action against Sunil Uke or Ashok Chaturvedi.

8. Be that as it may, the controversy that arose during the pendency of the proceedings in the High Court and in this Court related to the entitlement of the appellant to a copy of the Report dated 23rd January, 2009. The High Court did not pass any substantive order relating to furnishing that Report to the appellant.

9. At this stage, it may be noted that on 7th July, 2014 this Court recorded that Ashok Chaturvedi had since passed away.

10. With respect to furnishing the Report dated 23rd January, 2009 an affidavit has been filed on behalf of the Union of India claiming privilege under Sections 123 and 124 of the Evidence Act. We have been taken through the affidavit dated 22nd July, 2010 and all that the affidavit says is that disclosure of the contents of the Report would be against national interest and would compromise national security. Apparently, this is only because the appellant happens to belong to the highly sensitive organization which is entrusted with the delicate job of collecting and analyzing intelligence inputs necessary to maintain the unity, integrity and sovereignty of the country.

11. Both the Reports and the accompanying documents have been filed by the

Union of India in a sealed cover in this Court.

12. We have gone through both the Reports and the accompanying documents and find absolutely nothing therein which could suggest that there is any threat to the integrity of the country or anything contained therein would be detrimental to the interests of the country. We had also specifically asked the learned Additional Solicitor General to tell us exactly what portion of the Reports and the documents would be detrimental to the interests of the country but nothing could be pointed out during the hearing.

13. We find it very odd that in a matter of an enquiry in respect of an allegation of sexual harassment, the Union of India should claim privilege under Sections 123 and 124 of the Evidence Act. The contents of Reports alleging sexual harassment can hardly relate to affairs of State or anything concerning national security. In any event, absolutely nothing has been shown to us to warrant withholding the Reports and the documents from the appellant in relation to the enquiry of allegations of sexual harassment made by the appellant against Sunil Uke and Ashok Chaturvedi.

14. The Report relating to allegations of sexual harassment made by the appellant against Sunil Uke is not the subject matter of any dispute of controversy before us. However, since that Report has also been filed in this Court in a sealed cover, we did go through it and find nothing in the Report that would require it to

be withheld from the appellant on any ground whatsoever.

15. We accordingly dispose of this appeal by holding that the appellant is entitled to the Reports in respect of the allegations made by her of sexual harassment by Sunil Uke and Ashok Chaturvedi and that none of the respondents have committed any contempt of court. In any case Ashok Chaturvedi has since passed away.

16. While going through the Report dated 19th May, 2008 we found that by mistake one or two pages of the deposition marked as Annexure Q-2 and Annexure Q-5 of the witnesses were not photocopied. Similarly, the CD containing the deposition of 6 officers/staff on 22nd April, 2008 has not been filed nor has the CD containing the deposition of Sunil Uke been filed in the sealed cover, perhaps to prevent damage to the CD.

17. We direct the Court Master to handover to the appellant the Report and documents pertaining to the enquiry in relation to the allegations made by the appellant against Sunil Uke and against Ashok Chaturvedi and which have been filed in this Court in a sealed cover.

18. We direct the Union of India to supply to the appellant the missing pages of the deposition marked as Annexure Q-2 and Annexure Q-5 of the witnesses as well as the CD containing the deposition of six officers/staff recorded on 22nd April, 2008 and the CD containing the deposition of Sunil Uke. The needful be done

within one week from today.

19. With the above directions the appeal is disposed of.

……..J
(Madan B. Lokur)

New Delhi; ……J
May 6, 2016 **(N.V. Ramana)**

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.22 OF 2009

Canara Bank Rep. by
its Deputy Gen. Manager ....Appellant(s)

VERSUS

C.S. Shyam & Anr. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is filed against the final judgment and order dated 20.09.2007 passed by the High Court of Kerala at Ernakulam in Writ Appeal No. 2100 of 2007 whereby the High Court disposed of the writ appeal filed by the appellant herein and upheld the judgment passed by the Single Judge dismissing the writ petition filed by the appellant

herein challenging the order of the Central Information Commission holding that the appellant must provide the information sought by respondent No.1 herein under the Right to Information Act, 2005 (hereinafter referred to as "the Act").

2) Few relevant facts need mention to appreciate the controversy involved in appeal.

3) The appellant herein is a nationalized Bank. It has a branch in District Malappuram in the State of Kerala. Respondent No. 1, at the relevant time, was working in the said Branch as a clerical staff.

4) On 01.08.2006, respondent No.1 submitted an application to the Public Information Officer of the appellant-Bank under Section 6 of the Act and sought information regarding transfer and posting of the entire clerical staff from 01.01.2002 to 31.07.2006 in all the branches of the appellant-Bank.

5) The information was sought on 15 parameters with regard to various aspects of transfers of clerical staff and staff of the Bank with regard to individual employees. This information was in relation to the personal details of individual employee such as the date of his/her joining, designation, details of promotion earned, date of his/her joining to the Branch where he/she is posted, the authorities who issued the transfer orders etc. etc.

6) On 29.08.2006, the Public Information Officer of the Bank expressed his inability to furnish the details sought by respondent No. 1 as, in his view, firstly, the information sought was protected from being disclosed under Section 8(1)(j) of the Act and secondly, it had no nexus with any public interest or activity.

7) Respondent No.1, felt aggrieved, filed appeal before the Chief Public Information Officer. By

order dated 30.09.2006, the Chief Public Information Officer agreeing with the view taken by the Public Information Officer dismissed the appeal and affirmed the order of the Public Information Officer.

8) Felt aggrieved, respondent No.1 carried the matter in further appeal before the Central Information Commission. By order dated 26.02.2007, the appeal was allowed and accordingly directions were issued to the Bank to furnish the information sought by respondent No.1 in his application.

9) Against the said order, the appellant-Bank filed writ petition before the High Court. The Single Judge of the High Court dismissed the writ petition filed by the appellant-Bank. Challenging the said order, the appellant-Bank filed writ appeal before the High Court.

10) By impugned order, the Division Bench of the High Court dismissed the appellant's writ appeal and affirmed the order of the Central Information Commission, which has given rise to filing of this appeal.

11) Having heard the learned counsel for the appellant and on perusal of the record of the case, we are inclined to allow the appeal, set aside the impugned order and dismiss the application submitted by the 1st respondent under Section 6 of the Act.

12) In our considered opinion, the issue involved herein remains no more *res integra* and stands settled by two decisions of this Court in **Girish Ramchandra Deshpande** vs. **Central Information Commissioner & Ors.,** (2013) 1 SCC 212 and **R.K. Jain** vs. **Union of India & Anr.,** (2013) 14 SCC 794,

it may not be necessary to re-examine any legal issue urged in this appeal.

13) In **Girish Ramchandra Deshpande's case** (supra), the petitioner therein (Girish) had sought some personal information of one employee working in Sub Regional Office (provident fund) Akola. All the authorities, exercising their respective powers under the Act, declined the prayer for furnishing the information sought by the petitioner. The High Court in writ petition filed by the petitioner upheld the orders. Aggrieved by all the order, he filed special leave to appeal in this Court. Their Lordships dismissed the appeal and upholding the orders passed by the High Court held as under:-

> **"12. We are in agreement with the CIC and the courts below that the details called for by the petitioner i.e. copies of all memos issued to the third respondent, show-cause notices and orders of censure/punishment, etc. are qualified to be personal information as defined in clause (j) of Section 8(1) of the RTI Act. The performance of an employee/officer in an organisation is primarily a matter**

between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression "personal information", the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.

13. The details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information."

14) In our considered opinion, the aforementioned principle of law applies to the facts of this case on all force. It is for the reasons that, firstly, the information sought by respondent No.1 of individual employees working in the Bank was personal in nature; secondly, it was exempted from being

disclosed under Section 8(j) of the Act and lastly, neither respondent No.1 disclosed any public interest much less larger public interest involved in seeking such information of the individual employee and nor any finding was recorded by the Central Information Commission and the High Court as to the involvement of any larger public interest in supplying such information to respondent No.1.

15) It is for these reasons, we are of the considered view that the application made by respondent No.1 under Section 6 of the Act was wholly misconceived and was, therefore, rightly rejected by the Public Information Officer and Chief Public Information Officer whereas wrongly allowed by the Central Information Commission and the High Court.

16) In this view of the matter, we allow the appeal, set aside the order of the High Court and Central Information Commission and restore the orders

passed by the Public Information Officer and the Chief Public Information Officer. As a result, the application submitted by respondent No.1 to the appellant-Bank dated 01.08.2006 (Annexure-P-1) stands rejected.

.....J.
[R.K. AGRAWAL]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
August 31, 2017

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.(s).6159-6162 OF 2013

UNION PUBLIC SERVICE COMMISSION ETC. Appellant(s)

VERSUS

ANGESH KUMAR & ORS. ETC. Respondent(s)

WITH
C.A. No. 5924/2013

JOINT DIRECTORS AND CENTRAL PUBLIC INFORMATION OFFICER AND ANR. Appellant(s)

VERSUS

T.R. RAJESH Respondent(s)

AND

SLP(C) No. 28817/2014
SLP(C) No. 28801/2014
SLP(C) No. 28811/2014
SLP(C) No. 28816/2014
SLP(C) No. 28805/2014
SLP(C)No..... of 2018 (@Diary No(s). 15951/2017)

O R D E R

Civil Appeal No(s).6159-6162 of 2013 :

(1) We have heard learned counsel for the parties and perused the record.

(2) These appeals have been preferred against judgment and Order dated 13.7.2012 in LPA NO.229 of

2011 in W.P.(C)NO.3316 of 2011, 28.08.2012 in Review Petition NO.486 of 2012 in LPA NO.229/2011 and Review Petition NO.484 of 2012 in W.P.(C) NO.3316/2011 of the High Court of Delhi at New Delhi.

(3) The respondents-writ petitioners were unsuccessful candidates in the Civil Services (Preliminary) Examination, 2010. They approached the High Court for a direction to the Union Public Service Commission (UPSC) to disclose the details of marks (raw and scaled) awarded to them in the Civil Services (Prelims) Examination 2010. The information in the form of cut-off marks for every subject, scaling methodology, model answers and complete result of all candidates were also sought. Learned Single Judge directed that the information sought be provided within fifteen days. The said view of the Single Judge has been affirmed by the Division Bench of the High Court.

(4) The main contention in support of these appeals is that the High Court has not correctly appreciated the scheme of the Right to Information Act, 2005 (the Act) and the binding decisions of this Court.

(5) It is submitted that though Sections 3 and 6 of the Act confer right to information (apart from statutory obligation to provide specified information under Section 4), Sections 8, 9 and 11 provide for exemption from giving of information as stipulated therein. The exclusion by Sections 8, 9 and 11 is not exhaustive and parameters under third recital of the preamble of the Act can also be taken into account. Where information is likely to conflict with other public interest, including efficient operation of the Government, optimum use of fiscal resources and preservation of confidentiality of some sensitive information, exclusion of right or information can be applied in a given fact situation.

(6) In support of this submission, reliance has been placed on judgment of this Court in Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay and Ors., (2011) 8 SCC 497 wherein this Court observed :

> "**61.** Some High Courts have held that Section 8 of the RTI Act is in the nature of an exception to Section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that, therefore, Section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The

Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the Governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The Preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore, when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfilment and preservation of democratic ideals.

62. When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the Governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act, that is, Section 8 of the Freedom to Information Act, 2002. The courts and Information Commissions enforcing the provisions of the RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonises the two objects of the Act, while interpreting Section 8 and the other provisions of the Act.

66. The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of the RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (*b*) of Section 4(1) of the Act which relates to securing

> transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information [that is, information other than those enumerated in Sections 4(1)(*b*) and (*c*) of the Act], equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of Governments, etc.).
>
> **67. Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising "information furnishing", at the cost of their normal and regular duties."**
>
> **(emphasis added)**

(7) Thus, it is clear that in interpreting the scheme of the Act, this Court has, while adopting purposive interpretation, read inherent limitation in Sections 3 and 6 based on the Third Recital in the Preamble to the Act. While balancing the right to information, public interest including efficient

working of the Government, optimum use of fiscal resources and preservation of confidentiality of sensitive information has to be balanced and can be a guiding factor to deal with a given situation *de hors* Sections 8,9 and 11. The High Court has not applied the said parameters.

(8) The problems in showing evaluated answer sheets in the UPSC Civil Services Examination are recorded in *Prashant Ramesh Chakkarwar* v. *UPSC*[1] . From the counter affidavit in the said case, following extract was referred to :

> "(B) *Problems in showing evaluated answer books to candidates*.—(i) Final awards subsume earlier stages of evaluation. Disclosing answer books would reveal intermediate stages too, including the so-called 'raw marks' which would have negative implications for the integrity of the examination system, as detailed in Section (C) below.
>
> (*ii*) The evaluation process involves several stages. Awards assigned initially by an examiner can be struck out and revised due to (*a*) totalling mistakes, portions unevaluated, extra attempts (beyond prescribed number) being later corrected as a result of clerical scrutiny, (*b*) The examiner changing his own awards during the course of evaluation either because he/she marked it differently initially due to an inadvertent error or because he/she corrected himself/herself to be more in conformity with the accepted standards, after discussion with Head Examiner/colleague examiners, (*c*) Initial awards of the Additional Examiner being revised by the Head Examiner during the latter's check of the former's work, (*d*) the Additional Examiner's work having been found erratic by the Head Examiner, been rechecked entirely by another examiner, with or without the Head

1 (2013) 12 SCC 489

Examiner again rechecking this work.

(*iii*) The corrections made in the answer book would likely arouse doubt and perhaps even suspicion in the candidate's mind. Where such corrections lead to a lowering of earlier awards, this would not only breed representations/grievances, but would likely lead to litigation. In the only evaluated answer book that has so far been shown to a candidate (Shri Gaurav Gupta in WP No. 3683 of 2012 in Gaurav Gupta v. UPSC dated 6.7.2012(Del.)) on the orders of the High Court, Delhi and that too, with the marks assigned masked; the candidate has nevertheless filed a fresh WP alleging improper evaluation.

(*iv*) As relative merit and not absolute merit is the criterion here (unlike academic examinations), a feeling of the initial marks/revision made being considered harsh when looking at the particular answer script in isolation could arise without appreciating that similar standards have been applied to all others in the field. Non-appreciation of this would lead to erosion of faith and credibility in the system and challenges to the integrity of the system, including through litigation.

(*v*) With the disclosure of evaluated answer books, the danger of coaching institutes collecting copies of these from candidates (after perhaps encouraging/inducing them to apply for copies of their answer books under the RTI Act) is real, with all its attendant implications.

(*vi*) With disclosure of answer books to candidates, it is likely that at least some of the relevant examiners also get access to these. Their possible resentment at their initial awards (that they would probably recognise from the fictitious code numbers and/or their markings, especially for low-candidature subjects) having been superseded (either due to inter-examiner or inter-subject moderation) would lead to bad blood between Additional Examiners and the Head Examiner on the one hand, and between examiners and the Commission, on the other hand. The free and frank manner in which Head Examiners, for instance, review the work of their colleague Additional Examiners, would likely be impacted. Quality of assessment standards would suffer.

(*vii*) Some of the optional papers have very low candidature (sometimes only one), especially the

literature papers. Even if all examiners' initials are masked (which too is difficult logistically, as each answer book has several pages, and examiners often record their initials and comments on several pages with revisions/corrections, where done, adding to the size of the problem), the way marks are awarded could itself be a give away in revealing the examiner's identity. If the masking falters at any stage, then the examiner's identity is pitilessly exposed. The 'catchment area' of candidates and examiners in some of these low-candidature papers is known to be limited. Any such possibility of the examiner's identity getting revealed in such a high-stakes examination would have serious implications, both for the integrity and fairness of the examination system and for the security and safety of the examiner. The matter is compounded by the fact that we have publicly stated in different contexts earlier that the paper-setter is also generally the Head Examiner.

(*viii*) UPSC is now able to get some of the best teachers and scholars in the country to be associated in its evaluation work. An important reason for this is no doubt the assurance of their anonymity, for which the Commission goes to great lengths. Once disclosure of answer books starts and the inevitable challenges (including litigation) from disappointed candidates starts, it is only a matter of time before these examiners who would be called upon to explain their assessment/award, decline to accept further assignments from the Commission. A resultant corollary would be that examiners who then accept this assignment would be sorely tempted to play safe in their marking, neither awarding outstanding marks nor very low marks, even where these are deserved. Mediocrity would reign supreme and not only the prestige, but the very integrity of the system would be compromised markedly."

(9) This Court thereafter approved the method of moderation adopted by the UPSC relying upon earlier judgment in Sanjay Singh v. U.P. Public Service Commission, (2007) 3 SCC 720 and U.P. Public Service Commission v. Subhash Chandra Dixit, (2003) 12 SCC 701.

(10) Weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, we are of the view that information sought with regard to marks in Civil Services Exam cannot be directed to be furnished mechanically. Situation of exams of other academic bodies may stand on different footing. Furnishing raw marks will cause problems as pleaded by the UPSC as quoted above which will not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation. If rules or practice so require, certainly such rule or practice can be enforced. In the present case, direction has been issued without considering these parameters.

(11) In view of the above, the impugned order(s) is set aside and the writ petitions filed by the writ petitioners are dismissed. This order will not debar the respondents from making out a case on above

parameters and approach the appropriate forum, if so advised.

(12) The appeals are accordingly disposed of.

Civil Appeal No. 5924 of 2013:

(1) In view of judgment rendered today in Civil Appeal No(s).6159-6162 of 2013, the impugned order is set aside. The appeal stands disposed of in the same terms.

SLP(C) No. 28817/2014, SLP(C) No. 28801/2014, SLP(C) No. 28811/2014 SLP(C) No. 28816/2014, SLP(C) No. 28805/2014, SLP(C) NO..... of 2018 (arising out of Diary No(s). 15951/2017) :

(1) Delay condoned.

(2) In view of judgment rendered in Civil Appeal Nos.6159-6162 of 2013, these special leave petitions are disposed of in the same terms.

.....J.
(ADARSH KUMAR GOEL)

.....J.
(UDAY UMESH LALIT)

New Delhi,
February 20, 2018.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.194 OF 2012

COMMON CAUSE **PETITIONER(S)**

VERSUS

HIGH COURT OF ALLAHABAD & ANR. **RESPONDENT(S)**

WITH
T.C.(C) No. 129 of 2013

W.P.(C) No. 238 of 2014

T.C.(C) No. 32 of 2014

W.P.(C) No. 40 of 2016

W.P.(C) No. 205 of 2016

SLP(C) No. 30659 of 2017

O R D E R

W.P.(C) No.194 of 2012, W.P.(C) No. 238 of 2014, W.P.(C) No. 40 of 2016 & W.P.(C) No. 205 of 2016 :

Heard learned counsel for the parties. Challenge in these set of writ petitions is to the Rules framed under Section 28 of the Right to Information Act, 2005 (in short "the Act").

First objection of the petitioners is that the charges for the application fee and per page charges for the information supplied should be reasonable.

We are of the view that, as a normal Rule, the charge for the application should not be more than

Rs.50/- and for per page information should not be more than Rs.5/-. However, exceptional situations may be dealt with differently. This will not debar revision in future, if situation so demands.

Second objection is against requiring of disclosure of motive for seeking the information. No motive needs to be disclosed in view of the scheme of the Act.

Third objection is to the requirement, in the Allahabad High Court Rules, for permission of the Chief Justice or the Judge concerned to the disclosure of information. We make it clear that the said requirement will be only in respect of information which is exempted under the scheme of the Act.

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

As regards Rules 25 to 27 of the Allahabad High Court Rules which debar giving of information with regard to the matters pending adjudication, it is clarified that the same may be read consistent with Section 8 of the Act, more particularly sub-section (1)

in Clause (J) thereof.

Wherever rules do not comply with the above observations, the same be revisited as our observations are based on mandate of the Act which must be complied with.

The writ petitions are disposed of in above terms.

SLP(C) No. 30659/2017 :

In view of order passed in W.P.(C) No.194 of 2012, the special leave petition is disposed of.

The award of cost imposed by the High Court is set aside.

T.C.(C) No. 129/2013 & T.C.(C) No. 32/2014

In view of order passed in W.P.(C) No.194 of 2012, the transfer cases are disposed of.

.....J.
[ADARSH KUMAR GOEL]

.....J.
[UDAY UMESH LALIT]

NEW DELHI
20th March, 2018

R E V I S E D

ITEM NO.15 COURT NO.11 SECTION PIL-W

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

Writ Petition(s)(Civil) No(s). 194/2012

COMMON CAUSE Petitioner(s)

VERSUS

HIGH COURT OF ALLAHABAD & ANR. Respondent(s)

WITH
T.C.(C) No. 129/2013 (XVI-A)

W.P.(C) No. 238/2014 (X)

T.C.(C) No. 32/2014 (XVI-A)

W.P.(C) No. 40/2016 (X)

W.P.(C) No. 205/2016 (X)

SLP(C) No. 30659/2017 (IV-A)
(IA No.107165/2017-CONDONATION OF DELAY IN FILING and IA No.107169/2017-EXEMPTION FROM FILING O.T.)

Date : 20-03-2018 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) **Mr. Prashant Bhushan, AOR**
Ms. Neha Rathi, Adv.
Mr. Paranal, Adv.

Mr. Sunil Kishore Ahya,
Petitioner-in-person

Mr. E. C. Agrawala, AOR

Mr. M. Yogesh Kanna, AOR

For Respondent(s) **Mr. Raghavendra S. Srivatsa, AOR**
Mr. Venkita Subramoniam T.R., Adv.
Mr. Rahat Bansal, Adv.
Mr. Amit A. Pai, Adv.
Mr. Goutham Shivshankar, Adv.

Mr. Abhinav Mukerji, AOR
Mrs. Bihu Sharma, Adv.
Ms. Purnima Krishna, Adv.

Mrs. D. Bharathi Reddy, AOR
Ms. Rachna Gandhi, Adv.

Mr. Raja Chatterjee, Adv.
Ms. Runa Bhuyan, Adv.
Mr. Adeel Ahmed, Adv.
Mr. Piyush Sachdev, Adv.
Mr. Satish Kumar, AOR

Mr. Aniruddha P. Mayee, AOR
Mr. Avnish M. Oza, Adv.
Mr. Chirag Jain, Adv.

Mr. Rahul Gupta, AOR

Mr. Annam D. N. Rao, AOR
Mr. Annam Venkatesh, Adv.
Mr. Sudipto Sircar, Adv.
Ms. Tulika Chikker, Adv.
Mr. Rahul Mishra, Adv.

Mr. P.H. Parekh, Sr. Adv.
Mr. Kshatrashal Raj, Adv.
Ms. Ritika Sethi, Adv.
Mr. Vishal Prasad, Adv.
Ms. Tanya Choudhary, Adv.
Ms. Aishwarya Dash, Adv.
Ms. Pratyusha Priyardshini, Adv.
Ms. Ravleen Sabharwal, Adv.
Mr. Utkarsh Dixit, Adv.
Mr. Anwesha Padhi, Adv.
M/S. Parekh & Co., AOR

Mr. Ashok K. Srivastava, AOR

Mr. Sibo Sankar Mishra, AOR

Mr. Ashok Mathur, AOR

Mr. T. G. Narayanan Nair, AOR
Mr. C.N. Sreekumar, Adv.
Mr. Amit Sharma, Adv.

Ms. Aruna Mathur, Adv.
Mr. Avneesh Arputham, Adv.
Ms. Anuradha Arputham, Adv.
Ms. Simran Jeet, Adv.
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Mr. Vijay Hansaria, Sr. Adv.
Mr. Shashank Mishra, Adv.
Mr. P.S. Chandralekha, Adv.
Mr. P. I. Jose, AOR

Mr. P.N. Mishra, Sr. Adv.
Ms. Alka Sinha, Adv.
Mr. Anuvrat Sharma, AOR

Ms. K. R. Chitra, AOR

UPON hearing the counsel the Court made the following

O R D E R

W.P.(C) No.194 of 2012, W.P.(C) No. 238 of 2014, W.P.(C) No. 40 of 2016 & W.P.(C) No. 205 of 2016 :

The writ petitions are disposed of in terms of the signed order.

Pending applications, if any, are also stand disposed of.

SLP(C) No. 30659/2017 :

Delay condoned.

The special leave petition is disposed of in terms of the signed order.

Pending applications, if any, are also stand disposed of.

T.C.(C) No. 129/2013 & T.C.(C) No. 32/2014

The transfer cases are disposed of in terms of the signed order.

Pending applications, if any, are also stand disposed of.

(SWETA DHYANI) **(SUMAN JAIN)**
SENIOR PERSONAL ASSISTANT **BRANCH OFFICER**

(Signed order is placed on the file)

ITEM NO.15 COURT NO.11 SECTION PIL-W

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

Writ Petition(s)(Civil) No(s). 194/2012

COMMON CAUSE Petitioner(s)

VERSUS

HIGH COURT OF ALLAHABAD & ANR. Respondent(s)

WITH
T.C.(C) No. 129/2013 (XVI-A)

W.P.(C) No. 238/2014 (X)

T.C.(C) No. 32/2014 (XVI-A)

W.P.(C) No. 40/2016 (X)

W.P.(C) No. 205/2016 (X)

SLP(C) No. 30659/2017 (IV-A)
(IA No.107165/2017-CONDONATION OF DELAY IN FILING and IA No.107169/2017-EXEMPTION FROM FILING O.T.)

Date : 20-03-2018 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) **Mr. Prashant Bhushan, AOR**
Ms. Neha Rathi, Adv.
Mr. Paranal, Adv.

Petitioner-in-person

Mr. E. C. Agrawala, AOR

Mr. M. Yogesh Kanna, AOR

For Respondent(s) **Mr. Raghavendra S. Srivatsa, AOR**
Mr. Venkita Subramoniam T.R., Adv.
Mr. Rahat Bansal, Adv.
Mr. Amit A. Pai, Adv.
Mr. Goutham Shivshankar, Adv.

Mr. Abhinav Mukerji, AOR

Mrs. Bihu Sharma, Adv.
Ms. Purnima Krishna, Adv.

Mrs. D. Bharathi Reddy, AOR
Ms. Rachna Gandhi, Adv.

Mr. Raja Chatterjee, Adv.
Ms. Runa Bhuyan, Adv.
Mr. Adeel Ahmed, Adv.
Mr. Piyush Sachdev, Adv.
Mr. Satish Kumar, AOR

Mr. Aniruddha P. Mayee, AOR
Mr. Avnish M. Oza, Adv.
Mr. Chirag Jain, Adv.

Mr. Rahul Gupta, AOR

Mr. Annam D. N. Rao, AOR
Mr. Annam Venkatesh, Adv.
Mr. Sudipto Sircar, Adv.
Ms. Tulika Chikker, Adv.
Mr. Rahul Mishra, Adv.

Mr. P.H. Parekh, Sr. Adv.
Mr. Kshatrashal Raj, Adv.
Ms. Ritika Sethi, Adv.
Mr. Vishal Prasad, Adv.
Ms. Tanya Choudhary, Adv.
Ms. Aishwarya Dash, Adv.
Ms. Pratyusha Priyardshini, Adv.
Ms. Ravleen Sabharwal, Adv.
Mr. Utkarsh Dixit, Adv.
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(SWETA DHYANI) **(SUMAN JAIN)**
SENIOR PERSONAL ASSISTANT **BRANCH OFFICER**

(Signed order is placed on the file)