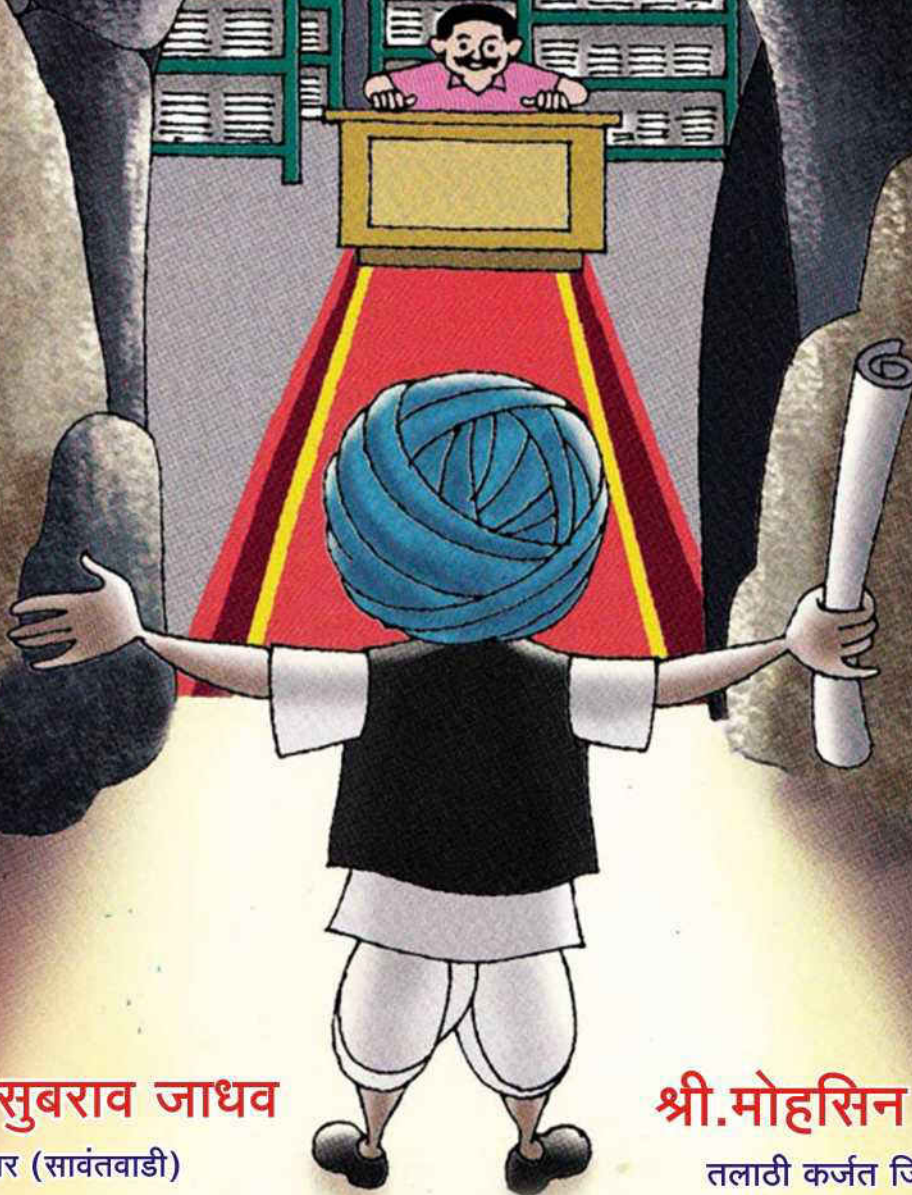




जनमाहिती आधिकारी

माहितीचा अधिकार अधिनियम २००५
मधील महत्वाचे शासन निर्णय

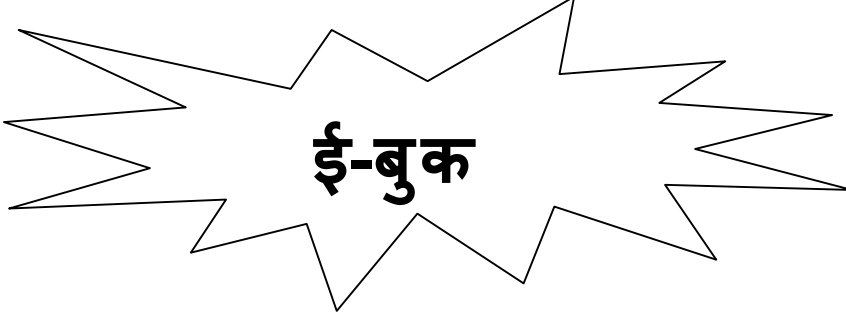


श्री.शशिकांत सुबराव जाधव
नायब तहसिलदार (सावंतवाडी)

श्री.मोहसिन युसूफ शेख
तलाठी कर्जत जि.अहमदनगर

जनमाहिती अधिकारी

जनमाहिती अधिकारी संबंधित माहितीचा अधिकार अधिनियम 2005 मधील महत्वाची कलमे ,शासन निर्णय व न्यायालयीन निर्णय सह संकलित असलेले “महसूल मित्र मोहसिन शेख” ब्लॉग वरील



लेखक :- श्री.शशिकांत सुबराव जाधव

नायब तहसिलदार ,सावंतवाडी

संकलन :- श्री.मोहसिन युसूफ शेख

तलाठी-कर्जत ,जि .अहमदनगर

प्रकाशक:- महसूल मित्र मोहसिन शेख ब्लॉगस्पॉट

Visit :-mohsin7-12.blogspoti.in

संपर्क:- ९७६६३६६३६३

प्रथम आवृत्ती :- २६ जून २०१६

© या पुस्तकातील कोणताही मजकूर पुनप्रकाशित अथवा संग्रहित करणेसाठी

प्रकाशाची पूर्वपरवानगी आवश्यक आहे.

मनोगत

माहिती अधिकार कायदा 2005 साली अंमलात आला. आजपर्यंतच्या झालेल्या सर्व कायद्यांपैकी सर्वात प्रभावशाली आणि जनताभिमुख असा हा कायदा आहे. या कायद्यामुळे अनेक गैरव्यवहार, भ्रष्टाचार व अनियमितता उघडीस आली आहेत. माहिती अधिकार कायदा सर्वात जास्त नागरीकांपर्यंत पोहचलेला आणि मागील 10 वर्षांत सर्वात जास्त वेळा आणि जास्त जणांनी वापरला गेलेला असा कायदा आहे. हा कायदा प्रभावीरित्या वापरल्यास प्रशासन हे अधिकाधिक लोकाभिमुख, पारदर्शक आणि गतीमान होण्यास मदत होणार आहे. आज या कायद्याला 11 वर्षे झाली आहेत, तरीही नागरीकांचे या कायद्याविषयी असणारे आकर्षण आणि जनमाहिती अधिकारी यांना वाटणारी भिती अद्याप कमी झालेली नाही.

यातूनच असे निदर्शनास आले की, नागरीकांना मार्गदर्शन करण्यासाठी या कायद्याविषयी मोठ्या प्रमाणात साहित्य उपलब्ध आहे, पण एखादा जनमाहिती अधिकारी प्रामाणीकपणे काम करुनही काही क्षुल्लक कारणामुळे या कायद्यामुळे अडचणीत येत असेल तर त्यास कोणते उपाय या कायद्याखाली उपलब्ध आहेत, हे सांगणारे आज बाजारात एकही पुस्तक उपलब्ध नाहीत आणि याबाबत अनेक न्यायनिर्णय, शासन निर्णय जरी असले तरी ते संकलीतरित्या उपलब्ध असल्याचे आढळून येत नाहीत. आज कोणत्याही कार्यालयात येणारे अर्जापैकी 10% अर्ज हे वारंवार येणारे, त्रास देण्याच्या उद्देशाने, कार्यालयाचा वेळ व पैसा वाया घालवणारे असतात. अशा अर्जांना व अर्जदारांना कसा पायबंद घालता येईल, याबाबत या ई बुक मध्ये प्रामुख्याने नमुद केले आहे. अशा प्रकारचा म्हणजे “ Pro Public Information Officer ” पुस्तक आज घडीला उपलब्ध नाही. या पुस्तकामध्ये जनमाहिती अधिकारी यांना उपयोगी ठरणारे दोन शासन निर्णय, कायद्यातील दोन कलमे आणि 24 न्यायनिर्णय संकलीत करुन एकत्रीतरित्या उपलब्ध करुन दिले आहेत. प्रथमदर्शनी हे पुस्तक नकारात्मक जरी वाटत असले तरी या पुस्तकामुळे ज्या लोकांकडून या कायद्याचा गैरवापर केला जात आहे आणि या कायद्याच्या उद्देशाला हरताळ फासला जात आहे, त्याच्यावर प्रभावीपणे वापरता येईल, म्हणजेच हे ई बुक याअर्थाने सकारात्मकच आहे. अंततः तमाम जनमाहिती अधिकारी हे दैनंदिन कामकाजात या ई बुकचा प्रभावीरित्या वापर करतील आणि या कायद्याला मा. सर्वोच्च न्यायालयाने “Sunshine Law” अशी जी उपमा दिली आहे, ती सार्थ ठरविण्यास सदर ई बुक उपयुक्त ठरेल अशी आशा बाळगतो. आमचे मित्र श्री. मोहसीन शेख यांनी घेतलेल्या प्रयत्नासाठी आणि सहकार्यासाठी मी त्यांचा शतशः आभारी आहे.

शशिकांत सु. जाधव
नायब तहसीलदार, सावंतवाडी.
9923593063

माहिती अधिकार कायद्यातील जनमाहिती अधिकाऱ्याच्या दृष्टीने महत्वाचे कलम व न्यायनिर्णय

क्र	न्यायनिर्णय/ कलम	न्यायनिर्णय कशाबाबत आहे.	कोर्टाचा निष्कर्ष	पान नं
1	CIC/AT/A/2006/00185; DATE 18/9/2006	कायदे, नियम, शासन निर्णय, परिपत्रके हे स्वतः माहिती या व्याख्येत बसतात आणि सार्वजनीक ठिकाणी उपलब्ध आहेत आणि ते सर्व नागरीकांसाठी खुले आहेत.	"The Law, Rules and circulars are themselves 'Information' & being in public domain are accessible to all citizens of the country."	1 to 5
2	CIC/AT/A/2006/20; DATE 23/3/2006	अस्तित्वात नसलेली माहिती पुरविता येणार नाही.	"There is no liabilities under the RTI act on a public authority to supply non – existent information."	6 to 7
3	69/IC (A)/2006 of 20.06.2006	माहिती अधिकाराखाली कोणतेही वैयक्तिक मत, खुलासा मागविता येणार नाही.	"The PIO is required to provide information which is available in any form with her office rather than giving her personal opinion."	8 to 9
4	CIC/WB/C/2006/00018; DATE 28/9/2006	माहिती अधिकाराखाली एखाद्या कर्मचाऱ्याची मदत मागितल्यास तोही दंडास पात्र असेल (Deemed PIO)	"If their assistance had been sought under section 5(4) of the act, they would be liable to penalty under section 5(5)."	10 to 12
5	श्री. एच. ई. राजसरकरप्पा वि राज्य माहिती अधिकारी (जनहित याचिका क्र १०६६३/२००६).....	लोकहिताच्या दृष्टीने व्यापक जनहित साध्य न करणारी आणि त्रयस्थ पक्षाबरोबरच्या वैयक्तिक वादाशी संबंधित माहिती देऊ नये.	*	13 to 18
6	सामान्य प्रशासन शासन निर्णय संकीर्ण २०१२/९८९/प्रक्र ४७९/सहा, दि. १७/१०/२०१४	कर्मचार्यांची वैयक्तिक माहिती देऊ नये.	*	19 to 21
7	Supreme Court Special Leave Petition(Civil) 34868/2009	एखादा निर्णय का व कसा दिला हे माहिती अधिकाराखाली मागता येणार नाही.	"Applicant Cannot ask any information that why such order have been passed."	22 to 24
8	आदित्य बंडोपाध्याय वि सी. बी. एस. ई बोर्ड. (सर्वोच्च न्यायालय)	या दाव्यामध्ये सर्वोच्च न्यायालयाने कोणती माहिती देता येईल, माहिती म्हणजे काय, मागितलेली माहिती ही Public Authority कडील असावी. Fiduciary Relationship म्हणजे काय, नष्ट केलेली माहिती देणे अपेक्षित नाही, मुदतीपेक्षा जास्त काळ माहिती जतन करून ठेवण्याचा आदेश देता येणार नाही. अशा अनेक विषयांबाबत निर्णय दिला आहे.	*	25 to 78

9	CIC/SA/A/2014/000543 & CIC/SA/A/2014/000652	वारंवार व त्रास देण्याच्या उद्देशाने माहिती मागत असल्यास त्यास अपात्र करणे आणि त्यानंतरही तशीच कृती चालु ठेवल्यास त्याविरुद्ध फौजदारी कारवाई करणे.	*	79 to 83
10	माहिती अधिकार अधिनियम 2005 चे कलम 7(9)	मोठ्या प्रमाणात माहिती मागवल्यास अथवा सदर माहिती काढण्यासाठी प्रमाणापेक्षा जास्त मनुष्यबळ त्यासाठी वळवावे लागत असेल आणि त्यामुळे कार्यालयातील दैनंदिन कामकाजावर परिणाम होणार असेल तर अशी माहिती नाकारता येते.	*	माहिती अधिकार कायदा 2005 चे कलम 7(9)
11	माहिती अधिकार अधिनियम 2005 चे कलम 8(1)	तिरायीत पक्षाची माहिती देता येत नाही अथवा त्यासाठी त्या व्यक्तीची पुर्वपरवानगी घेणे आवश्यक आहे. अशी माहिती सार्वजनीक हित असेल तरच देता येईल. यासाठी पक्षकारांनी सार्वजनीक हित असल्याचे सिध्द करणे आवश्यक आहे.	*	माहिती अधिकार कायदा 2005 चे कलम 8(1)
12	CIC - Order/Decision_27062006_2.pdf	एखाद्या कंपनीने किंवा मॅनेजरने माहिती मागितल्यास कलम 3 नुसार नाकारता येईल.	*	84 to 87
13	CIC/BS/A/2014/00023195 A. Mr. K. Bansal Vs Ministry Of Communication	निवृत्त अथवा शासकीय कर्मचारी हे वारंवार माहिती अधिकार अर्ज करून त्रास देत असल्यास सक्षम प्राधिकरण त्या कर्मचाऱ्याविरुद्ध खात्यांतर्गत अथवा दंडात्मक कारवाई करू शकतात.....	*	88 to 105
14	सर्वोच्च न्यायालयातील खटला ICAI Vs Shaunak H. Satya(2011) 8 SCC 781	कोणीही व्यक्ती माहिती अधिकार कायद्याचा दुरुपयोग करीत असेल तर त्याचे असे वर्तन कायद्यानुसार नियंत्रणात आणावे	"A Beneficent statute, when made a Tool for mischief and abuse must be checked in accordance with Law."	106 to 134
15	CIC/AT/A2008/00097 दि. 12/6/2008..... Shri Gopal Soni Vs The New India Assurance Company Ltd.	यामध्ये केंद्रीय मुख्य माहिती आयुक्त यांनी असे स्पष्ट केले आहे की, विश्लेषणात्मक, विस्तृत, अचूक हवी असणारी माहिती माहिती अधिकार अधिनियम कलम 7(9) नुसार देता येणार नाही.	" Answering the elaborate & detailed quires, which have to be both accurate & authentic, impose heavy cost on the public authority & tends to divert its resources; which brings it within the scope of section 7(9) of the RTI Act."	135 to 136
16	CIC/AT/A/2007/2012. Shri K. Lal Vs Shri M. K. Bargi, Asst Registrar of Companies & CPIO	एखादी माहिती Public Domain वर उपलब्ध असेल तर ती सर्वासाठी उपलब्ध असते..... सबब पुन्हा तिच माहिती माहिती अधिकाराखाली मागता येणार नाही.	"..... It would mean that once certain information is placed in public domain accessible to the citizens either freely or on payment of a predetermined price, that information can not be said to be ' held' or ' under the control' of the public authority & thus would cease to be an 'information' accessible under the RTI Act "	137 to 141

17	Mr. Nitish Kumar Tripathi Vs CPIO of Minisrty Health & Family. दि. 4/7/2014	वारंवार एकाच विषयाबाबत माहिती अधिकाराखाली अर्ज करत असल्यास असा माहिती अधिकार अर्ज नाकारता येईल	" Every Repetition of RTI application which was earlier responded will be an obstruction to flow of information & defeats the purpose of the RTI Act. No scope for repeating under RTI Act"	
18	Mr. Nitish Kumar Tripathi Vs CPIO of Minisrty Health & Family. दि. 4/7/2014	माहिती अधिकार हा वारंवार वापरण्याचा अधिकार नाही.	" RTI Act that right of citizen to information is limited to one time & does not extend to repetition of request for that directly or indirectly . In short citizen has No Right To Repeat"	142 to 149
19	राज्य माहिती आयोग यांचा सुर्यकांत नाईक वि जनमाहिती अधिकारी, सावंतवाडी	माहिती अधिकार अर्जास Res Judicata तत्वाची बाधा येते.	*	150 to 152
20	Writ Petition 10974/2010. Karnataka High Court.	विना अट माफीनामा सादर केल्यामुळे दंडाचा आदेश कायम करण्यात येऊन विभागीय चौकशीचा आदेश रद्द केला.	*	153 to 158
21	The Gujrat Highcourt Special Civil Application 15887/2010	माहिती आयोग हे न्यायालय नाही. त्यामुळे त्याच्या आदेशाचे पालन न केल्यास न्यायालयाचा अवमान या सदराखाली मोडत नाही.	*	159 to 163
22	The Gujrat Highcourt Special Civil Application 4150/2012	1991 पुर्वीची माहितीची मागणी करणे म्हणजे माहिती अधिकार कायद्याचा गैरवापर होय.	*	164 to 168
23	The Bombay High Court at Goa Writ Petition 449/2007	माहिती अधिकार अर्ज जर वेळेत दुरुस्तीचा कायदाबाबत द्यावे वर आणि ते जनमाहिती अधिकारी मुदतीत माहिती न दिल्यास प्रथम जनमाहिती अधिकारी यांना दंड करता येणार नाही.	*	169 to 173
24	CIC/RM/A/2014/000210/BS/8301 Date 10/8/2015	माहिती अधिकार अर्जामध्ये Larger Public Interest आहे का हे सिध्द करण्यास जनमाहिती अधिकारी सांगु शकतो आणि ते सिध्द न झाल्यास माहिती न पुरविणे योग्य ठरेल	*	174 to 177
25	Ministry of Personnel चे OM दि. 24/9/2010	माहिती आपल्या सार्वजनीक प्राधिकरणाकडे नसेल आणि ती माहिती इतर अनेक सार्वजनीक प्राधिकरणाकडे असेल तर अर्जदारांना वेगवेगळे अर्ज करण्यास कळवावे.	*	178
26	CIC/SM/A/2011/001207/SG/15488 दि. 4/11/2011	अन्य व्यक्ती माहिती विलंबाबे देण्यास जबाबदार असेल तर त्या व्यक्तीस आयोगासमोर हजर राहण्यासाठी जनमाहिती अधिकारी यांनी कळवावे.	*	179 to 181

27	सामान्य प्रशासन शासन परिपत्रक क्र संकीर्ण/2014/प्रक्र((265/15) सहा. दि. 1/12/2015	कारागृहातील न्यायाधीन किंवा शिक्षाधीन बंद्यांना माहिती अधिकार कायद्याखाली BPL समजु नये	*	182 to 184
28	महाराष्ट्र माहिती अधिकार सुधारणा नियम 2012	माहिती अधिकार अर्जात एक पेक्षा जास्त विषय असेल आणि त्यात 150 पेक्षा जास्त शब्द असतील तर पहिल्या विषयाची माहिती द्यावी आणि अन्य विषयाबाबत स्वतंत्र अर्ज करणेस कळवावे....	*	185 to 186

SHASHIKANT JADHAV. Naib Tahsildar

CENTRAL INFORMATION COMMISSION

F.No. CIC/AT/A/2006/00185
Dated, the 18th September, 2006.

Appellant: Shri Rakesh Kumar Gupta, 38 SFS Flats DDA, Mukherjee Nagar, Delhi-110 009.

Respondents: Shri R.V. Easwar, Vice-President, PIO, Income Tax Appellate Tribunal (ITAT), 10th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.

Shri Vimal Gandhi, President, Appellate Authority, Income Tax Appellate Tribunal (ITAT), 10th and 11th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110 003.

Shri Rakesh Kumar Gupta has come up in an appeal before the Commission against the order dated 31.1.2006 of the Appellate Authority, Shri Vimal Gandhi, President, Income Tax Appellate Tribunal (ITAT) and the orders dated 14.12.2005 of the PIO, Shri R.P. Ishwar in response to the appellant's two RTI requests both dated 20.10.2005 made to the PIO.

The parties were called for hearing on 18.9.2006. The appellant was present in person and the respondents were represented by Shri Vimal Dutt, Asst. Registrar and Shri P.D. Kanunjna, ACIT, ITAT.

First RTI request dated 20.10.2005

The appellant had asked for 12 information from the PIO which are listed below:

- “ 1. What is inspection fee by a party to the case of decided case?
2. What is inspection fee by a party to the case of pending case?
3. What is inspection fee by other than the party to the case of decided case?
4. What are the circumstances, when party other the litigant can inspect the records of other persons?
5. What is inspection fee by other than the party to the case of pending case?
6. As per rule 4 A sub-rule (XI), it is the duty and power of the Registrar (ITAT) to allow inspection of records of the Tribunal.
 - a. Is above statement correct?
 - b. In what circumstances Bench Member / President of ITAT interfere in the inspection process.
7. Is Registrar Office received the inspection request (Letter No.Win/INVESTIGATION OF INCOME /EHIRC /ITAT/ REGISTRAR /7 Date:01 July 2005 written by) from Mr Rakesh Kumar Gupta IN

APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO. 567/DEL/05-BENCH G ?

8. Has Registrar Office allowed the inspection? If not why ?
9. Why Bench Staff did not allow inspection in spite of permission by Registrar Office?
10. Why Bench Member interferes (inspection work) in the working of Registrar office working?
11. Is registrar office received the reason from G Bench for withholding the inspection to Mr Rakesh K Gupta? What is the reason?
12. Is you had communicated the reason of your decision to Mr Rakesh K Gupta? If yes kindly provide the copy. If not, why?"

Information requested at item 1 to 5 above, is in respect of the fees and the entitlement for inspection of records in pending and decided appeals before the Income Tax Appellate Tribunal. It has been pointed out by the PIO that Rules 50(1) and 50(3) of the Appellate Tribunal Rules, 1963 laid down the fee, procedures and entitlement of parties for access to documents/information.

It is not incumbent on the PIO or the public authority to interpret the rules for the appellant. The appellant should feel free to apply for the entitled documents under Rule 50 of the Appellate Tribunal Rules.

As regards item 6 above, the appellant has sought two information, (a) whether the Registrar, ITAT has the power under Rule 4A (XI) to allow inspection of records by authorized parties, and (b) in what circumstances the Bench or the President of the ITAT can interfere in the inspection process.

It is strange that in the presence of a clear-cut and straight-forward Rule, the appellant still wants the public authority to interpret it for him. There is no such responsibility cast on the public authority. The rule itself contains the information requested by the appellant.

As regards item 6(b) above, it needs to be stated that the ITAT is a quasi-judicial body, and the directions of the Bench or the President of the ITAT are in the nature of quasi-judicial orders. It is inappropriate for the PIO to anticipate as to what the ITAT would do in a given circumstance. In fact, the information as sought here by the appellant doesn't even qualify to be 'information' as defined under section 2(f) of the RTI Act. The PIO has given a reply as best as he could. But the plain fact is that this request of the appellant doesn't merit response.

His request for information at item 10 above is also a hypothetical one and merits no response as it is not 'information' as per the Act.

Through items 7, 8 and 9 the appellant has queried the PIO about a certain inspection-request in which the Bench staff allegedly prevented the inspection in spite of

the Registrar allowing it. The PIO has stated in reply that no request for any such inspection is available in the ITAT office. As such, he was not in a position to answer queries 7, 8 and 9.

Items 11 and 12 of the RTI request of the appellant again deal with the actions of ITAT Bench in what the appellant describes as “withholding the inspection to Rakesh K. Gupta?” He also asks, “What is the reason?”

The reply given by the PIO makes it clear that there were orders of the ITAT Bench in this matter, which were implemented by the Registrar Office.

Since this was a decision of a quasi-judicial Tribunal, it could be challenged only in a superior forum. The order of the ITAT Bench itself contains the information and the reasons for that order. Mr. Gupta may obtain copies of this order by following the procedure laid down for the same.

There is no obligation on the PIO to supply this information.

It is noticed that the purpose of Shri Gupta filing this appeal before the Commission is essentially to obtain an interpretation of Appellate Tribunal Rules 50(1) and 50(3) as well as other Rules in order to access information of a third party. The ITAT, through its order had apparently barred that information from disclosure and Shri Gupta was attempting the RTI-route in order to circumvent the Tribunal’s orders.

In any case, Shri Gupta is free to file his RTI request for specific document or information he wishes to have. And if he so does, the PIO will consider that request under the provisions of the RTI Act and examine its validity.

The appeal is rejected.

Second RTI request dated 20.10.2005

The appellant has filed a second RTI request, again largely, focused on the powers and the actions of the ITA Tribunal. The detailed request for information sought by him is as follows:

- “ 1. Is there any reasonable time limit to deliver the decision after the last date of hearing? If yes, what are they?
2. IN APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO.567/DEL/05-BENCH G
 - a. What is the last date of hearing?
 - b. Is Honourable Bench delivered the decision? [sic]
 - c. If yes, when it was delivered?
 - d. If not, what are reasons for the delay?

- e. If there is such long delay, is it effect the quality of decision made by the Honourable Bench?
 - f. If yes, what are the reasons effecting quality of decisions?
3. IN APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO.567/DEL/05-BENCH G. Mr. Rakesh Kumar Gupta vide Letter No.Win/INVESTIGATION OF INCOME / EHIRC/ITAT/member / 5 Dated 3 May 2005 inform Honourable Bench about Escorts (Tax Evader) Consul had lied to Honourable Members over their specific query
 - a. Is Honourable Bench received the above letter? If yes when? [sic]
 - b. If not why?
 - c. Is Honourable Bench taking into consideration above facts while delivering the decision in the case?
 - d. If not why?
 - 4 As per rule 4 A sub-rule (XI), it is the duty and power of the Registrar (ITAT) to allow inspection of records of the Tribunal.
 - a. Is above statement correct ?
 - b. In what circumstances Bench Member / President of the ITAT interfere in the inspection process.
 - 5 What are the circumstances, Honourable Bench interfere (which is the duty of Registrar office) in the inspection request of Mr Rakesh Kumar Gupta IN APPEAL ESCORTS LIMITED A Y 2001-2002 APPEAL ITA NO. 567/DEL/05 – BENCH G?
 - 6 Is Honourable Bench delivered the decision in the inspection request? If yes, What is the decision? Whether it is communicated to applicant? If not, why?”

The PIO has painstakingly responded to the queries and apprised the appellant of the legal position, wherever it was necessary.

The appellant’s query at item 1 is about the “reasonable” time-limit for delivery of decisions by the ITAT which the PIO has put down as 60 days from the date of last hearing of the appeal. The replies to item 2 (a) and 2(b) are factual and should be taken as valid. As regards items 2(c), 2(d), 2(e) and 2(f), the PIO is quite right in holding that it was not open to the appellant to assume that there was delay and put words in the mouth of the PIO for an answer. Besides, the ITAT, being a quasi-judicial body, it decides the cases in its own discretion. Reply to item 3(a) is factual and correct. Item 3(b), 3(c) and 3(d) are again about the powers of the Bench of the ITAT. Besides being hypothetical, the information sought doesn’t even qualify to be ‘information’ under the RTI Act.

Item 4 again deals with, as in the preceding RTI request, with the powers of the ITAT. While item 4(a) being factual has been replied to, item 4(b) relates to the discretionary power of a quasi-judicial body, the PIO is not expected to give his version

of how the ITAT would exercise that power. There is no obligation to transmit any such information. As regards item 5, this is again about the power of a quasi-judicial Bench. It is a hypothetical question about the circumstances in which such a body will exercise its powers.

There is no need to respond to this query.

As regards item 6, the reply given by the PIO is factually correct and hence complete.

Before parting with this appeal, it must be pointed out that this is the first time a party has come up to the Commission asking for interpretation of a given law / rules as well as the interpretation of the powers of a quasi-judicial body. As I stated in the first appeal, the proper Forum to test the order of a Tribunal is as laid down under the appropriate Act or as provided in the Constitution. It would be wholly inappropriate to invoke the provisions of the RTI Act for the interpretation of laws and rules. It should be made clear that the laws and rules are themselves 'information' and being in public domain are accessible to all citizens of the country.

The request of the appellant, therefore, needs to be turned-down as the RTI Act cannot be invoked for such purposes.

The appeal is rejected.

Sd/-
SHASHIKANT JADHAV, Naib Tahsildar (A.N. TIWARI)
INFORMATION COMMISSIONER

Authenticated by –

Sd/-
(L.C. SINGHI)
ADDL. REGISTRAR

Address of parties:

1. Shri Rakesh Kumar Gupta, 38 SFS Flats DDA, Mukherjee Nagar, Delhi-110 009.
2. Shri R.V. Easwar, Vice-President, PIO, Income Tax Appellate Tribunal (ITAT), 10th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110003.
3. Shri Vimal Gandhi, President, Appellate Authority, Income Tax Appellate Tribunal (ITAT), 10th and 11th Floor, Lok Nayak Bhawan, Khan Market, New Delhi-110 003.
4. In-charge, NIC.
5. Press 'E' Group.

Central Information Commission

Appeal CIC/AT/A/2006/20
Dated the 23rd March, 2006

Name of Appellant : **Ex – Nb/Sub. Gurbachan Singh (JC-32487)**
525, Nana Peth, Pune-411 002

Name of the Public Authority : **Lt Gen M. G. Girish,**
DG, DC 7 W, Army Headquarters,
New Delhi

This appeal was filed by Ex Nb Sub Gurbachan Singh against the order of the first Appellate authority viz. Lt. Gen. M.G. Girish, Director General, DC&W Army HQs, New Delhi given on 16.1.2006.

2. Notices were issued both to the Appellant and the officer viz. Lt. Gen. M.G. Girish, who heard the first appeal on 16.1.06. Reply was received from Lt. Gen. M.G. Girish through his communication No. A/810027/RTI/03/M/P1, dated the 7th March, 06.

3. Hearing for the second appeal was held on 10.3.2006 at 11.00 A.M. in the Conference Room of the Central Information Commission. The appellant was called. Was absent. Lt. Gen. Girish was represented by Brig. S.C. Nair and Col. N.K. Kohli.

4. In the absence of the appellant, submissions of Brig. S.C. Nair and Col. N.K. Kohli, were heard.

5. The grounds of appeal are as follows:-

i) Ex Nb Sub Gurbachan Singh, the appellant in this case, was subjected to a Court martial proceedings in the year 1971. Appellant has asked for a copy of the order in respect the appointment Maj. Vinay Khanna, Signals (IC 10144) was holding when posted/transferred to 5(1) Support Signal Company Pune, between 8-25 February, 1971. The PIO Maj. Gen. A.B. Sayyad, ADGPI, rejected the request for information under Section 8(3) of the RTI Act as the information sought by the petitioner pertained to records/occurrence which were more than 20 years old. The appellant's first appeal was rejected on the ground that as per provision of the **Army Rule 146**, the records of the court martial trial were destroyed after a retention period of 10 years. As such, there were no details available in regard to that court martial at this distance of time. The second ground was that the information sought by Ex Nb Sub Gurbachan Singh served no public interest and hence need not be supplied to him. Thirdly, it was further pointed out in the order on the first appeal that the information sought by the appellant in regard to Maj. Vinay Khanna was in the nature of personal information, disclosure of

: 2 :

which have had no relation to any public activity and hence could not to be disclosed as per provisions contained in Section 8 of the Right to Information Act.

6. We have carefully examined the matter and heard the submission on behalf of Lt. Gen. M.G. Girish. It is quite clear that all records in the present case stand destroyed after a specified period of retention under **Army Rules – 146**. Since the information did not even exist, it was physically impossible to provide it to the Appellant. There is no liability under RTI Act of a public authority to supply non-existent information.

7. The PIO was not right in rejecting the request for an information on ground that it was over 20 years old. The stipulation in Section 8(3) "...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". does not imply that information older than 20 years need not be disclosed by a public authority. In fact the contrary is true. It is a provision that favours the information seeker. In the present case, however, this is a moot point in so far as the information has been authorisedly destroyed after following the appropriate rules. Such information need not be supplied because it cannot be.

8. In as much as the information cannot be supplied on account of the destruction of the records, we do not consider it necessary to go into the other two grounds of rejection of the first appeal.

9. The appeal is rejected.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Sd/-
(PROF. M.M. ANSARI)
INFORMATION COMMISSIONER

Authenticated true copy:

(Prem K. Gera)
REGISTRAR

Address of parties:

1. Lt. Gen. M.G. Girish, DG, DC 7 W, Army Headquarters, New Delhi-110011.
2. Ex. Nb/Sub. Gurbachan Singh (JC-32487), 525, Nana Peth, Pune-411002.

Central Information Commission

**Appeal No. 69 /IC(A)/2006
F.No.CIC/MA/A/2006/00146 & 165**

Dated, the 20th June, 2006

Name of the Appellant : Shri Rakesh Kumar Gupta, 38, SFS Flats DDA,
Mukherjee Nagar, Delhi-110009.

Name of the Public Authority : (1) Office of the Commissioner of Income Tax,
Delhi-IV, Department of Income Tax, C.R.
Building, I.P. Estate, New Delhi.

(2) Department of Personnel & Training, North
Block, New Delhi.

DECISION

1. The appellant was heard on 15.6.2006 along with the CPIOs and other representatives of the above public authorities against whom he has filed appeals separately.

2. In his appeal against the decision of the appellate authority of Income Tax Department, he has alleged that income tax officials had taken bribe from tax evaders and therefore did not take the correct action on the tax evasion petition (TEP) filed by him.

3. During the hearing the appellant furnished a long list of companies, which have allegedly evaded taxes to the tune of Rs. 500/- Crore. The appellant has sought information with respect to the TEP filed by him.

4. The CPIO and appellate authority have responded but the reply was considered by the appellant as unsatisfactory. The Commission was informed that the appellants allegation of tax evasion against certain companies was investigated but it was not proved. The status of investigation was this communicated to the appellant.

5. In another appeal filed against the order of appellate authority of Department of Personnel & Training (DOPT), the appellant contended that he has not been given complete information with respect to the constitution of Central Information Commission and the resources provided to the Commission for its functioning.

6. The CPIO and appellate authority contended that point-wise reply has been given and information available on record has been provided.

7. The appellant has however sought 'opinion' of the CPIO on different issues, which has been denied.

8. All the concerned parties were heard and it was noted that there was no question of denial of information. The appellant was however not satisfied because he sought 'opinion' of the CPIO through a long list of queries, which is not covered under the definition of information. However, the information, which was clearly specified, was provided to him.

9. The appeals are accordingly disposed of.

Sd/-
(A.N. Tiwari)
Information Commissioner

Sd/-
(Prof. M.M. Ansari)
Information Commissioner

Authenticated true copy

SHASHIKANT JADHAV, Naib Tahsildar

(L.C. Singhi)
Joint Registrar

Cc:

1. Shri Rakesh Kumar Gupta, 38, SFS Flats DDA, Mukherjee Nagar, Delhi-110009.
2. Shri S.C. Gangwar, Commissioner of Income Tax (Delhi-IV) & CPIO, Department of Income Tax, C.R. Building, I.P. Estate, New Delhi.
3. Shri C.A. Subramanian, Director (E-II) & CPIO, Department of Personnel & Training, North Block, New Delhi.

CENTRAL INFORMATION COMMISSION
Adjunct to Complaint No.CIC/WB/C/2006/00018 dated 18.1.2006
Right to Information Act 2005 – Section 18

Complainant: Shri Neeraj Kumar

Respondents: Department of Food & Supplies
Govt. of NCT of Delhi.

ORDER

Vide a Decision Notice of 4.9.2006, we had ruled as follows:

‘This is a clear case in which an application for information stands refused. The cause for doing so pleaded by the representatives of the PIO Shri Pradeep and Shri Sharma was that it was not established whether the application was APL or BPL and, therefore, it was not clear whether the fees should be accepted or not. However, the original application to the PIO has not sought any waiver of fees on grounds of BPL. We cannot, therefore, take this to be a reasonable cause for refusal to accept the application.’

A show-cause notice as to why penalty should not be imposed upon them was issued to S/Shri Sharma and Pradeep directing them to respond either in writing or by personal appearance before this Commission on 26.9.2006.

The PIO, Shri G.L. Meena together with S/Shri Sharma and Pradeep are present on 26.9.2006. Statement of Shri Sharma and Shri Pradeep was recorded and is placed on file. They have stated as follows:

“After going through the application, there was some deficiency relating to the enclosure (Receipt of deposit of ration card application), which was brought immediately into notice of Shri G.L. Meena, AC (SW) on telephone as he was away from the office. Further the fact that whether the application made by Sh. Mahavir belonged to APL or BPL category was also brought into the notice of Shri Neeraj Kumar but he could not say anything about the nature of application. By then the complainant Shri Neeraj Kumar must have realized and left the office. Further it is

submitted that no powers of PIO/APIO have been delegated to us by the department.”

They have further argued that they acted in this case faithfully and with due diligence. It is clear from the above that the errant officials are functioning at the clerical level in the office of the PIO, Shri Meena. Whereas under Section 5(5), an officer does not himself have to be designated as a PIO/APIO to be liable for penalty for contravention of the provisions of this Act, officials functioning even at the clerical level and above category of Class-IV will be deemed to be “officers” in the application of this Act. In the normal course, therefore, they would be liable to penalty under Section 5(5) if their assistance had been sought under Section 5(4) of the Act. In this case, therefore, as already held, they cannot plead exemption from application of this provision.

However, from the hearing, it is clear that the administrative structure for receipt of application under the RTI Act has not been clearly defined in the office of the Department of Food and Supplies. Although we have held that Shri Meena was authorized to seek the assistance of Shri Sharma and Shri Pradeep in the discharge of his duties, which should include acceptance of applications, the manner in which this assistance is sought must necessarily be clearly enunciated. In the present case, respondents, in their statement as quoted above, were uncertain about ‘a perceived deficiency in the application’, regarding which they had reported both to Shri G.L. Meena and to the complainant, Shri Neeraj Kumar, but have stated that Shri Neeraj Kumar left the premises without a satisfactory conclusion. As indicated by the complainant, PIO Sh Meena had also insisted over the telephone that the application could not be accepted. Because of this lacuna in the function of the office of the Food and Supplies Department with regard to receipt of applications, the following directions are given:

1. Concerned officials are directed to accept all applications for information under the Right to Information Act with the fee

prescribed, unless BPL Card is produced to indicate that no fee is required.

2. In light of the circumstances described above, the action of both the clerical staff, with the immediate reference made to the PIO which has been acknowledged by the complianant, can be deemed to have been taken in good faith, and thus liable to relief under Section 21 of the RTI Act. Although the PIO has been held not to have been directly liable for the deemed refusal, Shri Meena, PIO is, in fact, responsible for the malfunction of his office in this regard. Whereas, therefore, no financial penalty is imposed under Section 20(1), he may be issued with a written warning by the Director (Food & Supplies) under Section 20(2) of the RTI Act, which will be recorded in his Annual Performance Report.

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

SHASHIKANT JADHAV, Naib Tahsildar

(Wajahat Habibullah)
Chief Information Commissioner
28.9.2006

Authenticated true copy. Additional copies of orders shall be supplied against application and payment of the charges prescribed under the Act to the CPIO of this Commission

(L.C. Singhi)
Addl. Registrar
28.9.2006

R

(R)

1

W.P.No.10663/2006

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1ST DAY OF JULY 2008

BEFORE

THE HON'BLE Dr. JUSTICE K. BHAKTHAVATSALA

WRIT PETITION No.10663/2006 (GM-RES)

BETWEEN:

H.E.Rajashekarappa,
Aged about 53 years,
S/o.H.Eshwarappa,
Joint Director (Statistics),
On Deputation Animal Husbandry
& Veterinary Services Dept.,
Podium Block, Ambedkar Veedhi,
Bangalore-560 001.

...PETITIONER

(By Sri.M.S.Prathima, Adv.
for Sri.S.V.Narasimhan, Adv.)

AND:

1. State Public Information Officer
& Under Secretary to Government,
Planning & Statistics Dept.,
M.S.Building,
Bangalore-560 001.
2. Joint Secretary to Government,
Planning & Statistics Dept.,
& Appellate Authority under the
Right to Information Act, 2005,
IV Floor, M.S.Building
Bangalore-560 001.

3. Sri.O.Narasimha Murthy,
Major,
Retired Statistical Inspector,
R/o.Matadha Kurubarahatty,
Chitradurga Taluk & Dist.

...RESPONDENTS

(By Sri.M.T.Jagan Mohan, Adv. for R-3,
Sri.R.B.Sathyanarayana Singh, HCGP for R-1 & 2)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the order dt.30.6.2006 in the appeal under Section 19(5) of the Right to Information Act, 2005 of the 2nd Respondent-Annexure-G; & affirm the order passed by the 1st Respondent dated 22.4.2006-Annexure 'E' and etc.

This Writ Petition coming on for preliminary hearing in 'B' Group, this day, the Court made the following:-

SHASHIKANT JAD ORDER Naib Tahsildar

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

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

The Respondent No.3 who is a retired Statistical Inspector, made an application dated 17.03.2006 (Annexure-B) to the 1st Respondent to furnish copy of Assets and Liabilities statement of the petitioner for the period 2002-03, 2003-04 and 2004-05. The

W.P.No.10663/2006

petitioner filed his objections to the application. The Respondent No.1, considering the statement of objections filed by the petitioner, rejected the application by an order at Annexure 'E'. Feeling aggrieved by the order of the Respondent No.1, the Respondent No.3 filed an appeal under Section 19(8) of the Right to Information Act, 2005 before the Respondent No.2/Appellate Authority. The Respondent No.2/Appellate Authority allowed the appeal and set aside the order of the Respondent No.1 and directed the petitioner to furnish the details sought for by the Respondent No.3. Therefore, the petitioner is before this Court praying for quashing the impugned order at Annexure 'E' on the file of Respondent No.2.

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



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

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

(g)...

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

(a) by or under the Constitution;

(b) by any other law made by Parliament;

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

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

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or

↳

indirectly by funds provided by the appropriate Government;

(i)

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

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of 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."

5. The object of the Act is to provide right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. In view of the above provisions excerpted, it cannot be said that Section 2(f) of the Act encompasses the personal information of the officials of the public authority. The intention of the legislation is to provide right to information to a citizen pertaining to public affairs of the public authority. Therefore,

L

W.P.No.10663/2006

the respondent No.3 had no right under the Act to seek personal information of the petitioner. The respondent No.2/appellate authority has erred in directing the petitioner to furnish the information as sought for by the respondent No.3. As the respondent's application is vexatious and it is an attempt made to settle scores with the petitioner, it is a fit case to impose heavy costs in favour of the petitioner and against the respondent No.3

6. For the foregoing reasons, the Writ Petition is allowed with costs of ~~Rs.16,600/-~~ ^{*Rs.5,000/-} in favour of the petitioner and against respondent No.3. The impugned order dated 30.5.2006 at Annexure-G is quashed. The respondent No. 3 is directed to deposit costs of Rs.5,000/- in this Court within three months from today.

Sd/-
Judge

bny
bjs

* Corrected vide Court Order dated 12.9.2008

माहितीचा अधिकार अधिनियम, २००५ मधील
तरतूदीनुसार व्यापक जनहिताशी संबंध नसलेली
वैयक्तिक स्वरूपाची माहिती न पुरविण्याबाबत

महाराष्ट्र शासन

सामान्य प्रशासन विभाग

शासन परिपत्रक क्रमांक: संकीर्ण २०१२/९८९/प्र.क्र.४७९/सहा,

मंत्रालय, मुंबई - ४०० ०३२

तारीख: १७ ऑक्टोबर, २०१४

परिपत्रक :-

माहितीचा अधिकार अधिनियम २००५ च्या कलम ८ मध्ये जी माहिती पुरविण्याचे आबंधन माहिती अधिकाऱ्यावर असणार नाही त्या बाबी नमूद करण्यात आल्या आहेत. याच कलमाच्या पोटकलम (अ) मधील तरतूदीनुसार जी माहिती प्रकट करणे हे व्यापक लोकहिताच्या दृष्टीने आवश्यक आहे अशी, यथास्थिती केंद्रिय जन माहिती अधिका-याची, राज्य जन माहिती अधिका-याची किंवा अपील प्राधिका-याची खात्री पटली असेल, ती खेरीजकरून, जी माहिती प्रकट करण्याचा कोणत्याही सार्वजनिक कामकाजाशी किंवा हितसंबंधाशी काहीही संबंध नाही किंवा जी व्यक्तीच्या खाजगी बाबीत आंगतुक हस्तक्षेप करील, अशी वैयक्तिक तपशीलासंबंधातील माहिती देण्याचे बंधनही माहिती अधिका-यांवर नसल्याबाबत स्पष्टता करण्यात आलेली आहे. त्याचबरोबर शासकीय कर्मचारी/अधिकाऱ्यास त्याच्या सेवाकालावधीत मिळालेली ज्ञापने, कारणे दाखवा नोटीस, शिक्षादेश, त्याच्या सेवा नियमांतर्गत कामगिरीबाबतचा अहवाल, त्याच्या चल/अचल संपत्तीबाबतची माहिती. त्याने केलेली आर्थिक गुंतवणूक वा बँक किंवा अन्य वित्तीय संस्थांकडून घेतलेली कर्जे, त्याच्या मुलांच्या विवाहात मिळालेल्या भेटी, आयकर विवरणपत्र यासारखी वैयक्तिक तपशीलासंबंधातील माहिती देण्याचे बंधन माहिती अधिका-यांवर नसल्याचा निर्णय स्पेशल लीव्ह पिटीशन क्र.२७७३४/२०१२ गिरिश रामचंद्र देशपांडे विरुद्ध केंद्रीय माहिती आयोग या प्रकरणात दि.३.१०.२०१२ रोजी मा.सर्वोच्च न्यायालयाने दिलेला आहे. या संदर्भात निर्णय देताना मा.सर्वोच्च न्यायालयाने निर्णयपत्राच्या परिच्छेद १३ मध्ये पुढील प्रमाणे निरीक्षण नोंदले आहे.

१३. We are in the 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 ८(१) of RTI Act. The performance of an employee/officer in an organization is primarily a matter between the employee and employer and normally those aspects are governed by the service rules which fall under the expression “personal information”, the disclosure of which would cause unwarranted invasion of privacy of that individual.

२. श्री.एच.ई.राजसरकरप्पा विरुद्ध राज्य जन माहिती अधिकारी (याचिका क्र.१०६६३/२००६) मध्ये उच्च न्यायालय कर्नाटक यांनी दिलेल्या निर्णयाच्या आधारे विधि व न्याय विभागाने अनौ.संदर्भ

क्र.यु.ओ.आर. ४१०/१२६२/सिव्हील/कॉन्फिडेंस/अे ब्रॅच/दि.३१.८.२०१२ अन्वये अभिप्राय देताना पुढील प्रमाणे निरीक्षण नोंदले आहे.

“ ३. the information which does not constitute any public interest and which would warrant overriding the provisions of Section ८(१)(g)(j) of RTI Act, २००५ are not expected to be provided to the applicant under this Act, especially when it is intended to score the personal dispute with third party does not constitute public interest.

In view of above judgment of Karnataka High Court and the legal provision discussed above the State government can issue guidelines for the purpose of this Act as provided under Section २६(३)(a) of the RTI Act, २००५.”

३. उपरोक्त पार्श्वभूमी लक्षात घेता सर्व मंत्रालयीन विभाग व त्यांच्या अधिपत्याखालील जन माहिती अधिकारी व प्रथम अपीलीय अधिकारी यांना सूचित करण्यात येते की, वरिलप्रमाणे तसेच माहितीचा अधिकार अधिनियम २००५ च्या कलम ८ पोटकलम (ज) मधील तरतूदी नुसार जी माहिती देण्याचे बंधन माहिती अधिका-यांवर नाही अशी आणि लोकहिताच्या दृष्टीने व्यापक जनहित साध्य न करणारी किंवा विशेषतः जी त्रयस्थ पक्षाबरोबर उद्धवलेल्या वैयक्तिक वादांच्या अनुषंगाने मागविलेली माहिती, माहितीच्या अधिकारात अर्जदारास देण्यात येऊ नये.

३. सर्व मंत्रालयीन विभागांनी त्यांच्या अधिपत्याखालील सर्व सार्वजनिक प्राधिकरणे व त्यांच्या अधिपत्याखालील जन माहिती अधिकारी व प्रथम अपीलीय अधिकारी यांना वरिलप्रमाणे सूचित करावे.

४. सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा संकेतांक २०१४१०१७१५२५४९२६०७ असा आहे. हा आदेश डिजिटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने.

**Gosavi
Pradeep P**

Digitally signed by Gosavi Pradeep P
DN: c=IN, o=Government Of Maharashtra,
ou=GAD, postalCode=400032,
st=Maharashtra, cn=Gosavi Pradeep P
Date: 2014.10.17 15:41:05 +05'30'

(प्र.प्र.गोसावी)
शासनाचे उपसचिव

प्रति,

- १) मा.राज्यपाल यांचे सचिव,
- २) मा.मुख्यमंत्री / मा.उपमुख्यमंत्री यांचे प्रधान सचिव/सचिव
- ३) उप सचिव, मुख्य सचिवांचे कार्यालय, महाराष्ट्र राज्य, मुंबई

- ४) राज्य मुख्य माहिती आयुक्त, राज्य माहिती आयोग, महाराष्ट्र राज्य मुंबई
- ५) सर्व राज्य माहिती आयुक्त, राज्य माहिती आयोग
- ६) *प्रबंधक, मूळ न्याय शाखा, उच्च न्यायालय, मुंबई
- ७) *प्रबंधक, उच्च न्यायालय, अपील शाखा, मुंबई
- ८) *सचिव, महाराष्ट्र लोकसेवा आयोग, मुंबई
- ९) *सचिव, महाराष्ट्र विधानमंडळ सचिवालय, मुंबई
- १०) प्रबंधक, लोकआयुक्त व उपलोकआयुक्त यांचे कार्यालय, मुंबई
- ११) मंत्रालयीन विभागाचे सर्व अपर मुख्य सचिव/प्रधान सचिव/सचिव
- १२) महासंचालक, माहिती व जनसंपर्क संचालनालय, मुंबई
- १३) सर्व मंत्रालयीन विभाग (प्रशासकीय अधिपत्याखालील सर्व विभाग प्रमुख/कार्यालय प्रमुख यांच्या निदर्शनास आणण्याच्या विनंतीसह)
- १४) सर्व विभागीय आयुक्त
- १५) महासंचालक, यशदा, पुणे
- १६) सर्व जिल्हाधिकारी
- १७) निवडनस्ती, सा.प्र.वि. कार्यासन सहा.

*पत्राने

SHASHIKANT JADHAV. Naib Tahsildar

KHANAPURAM GANDIAH

v.

ADMINISTRATIVE OFFICER & ORS.

(Special Leave Petition (Civil) No. 34868 of 2009)

JANUARY 4, 2010

[K.G. BALAKRISHNAN, CJI. AND
DR. B.S. CHAUHAN, J.]*Right to Information Act, 2005:*

ss. 2(f) and 6 – ‘Information’ – Application u/s 6 before Administrative Officer-cum-Assistant State Public Information Officer, asking as for what reasons a Judicial Officer had dismissed a miscellaneous appeal – HELD: Under s.6, 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 petitioner in the application could not have been with the public authority nor could he have access to the information – A judge speaks through his judgments and orders passed by him – He is not bound to explain later on for what reasons he had come to such a conclusion – If any party feels aggrieved, the remedy available is to challenge the decision by way of appeal, revision or any other legally permissible mode – No litigant can be allowed to seek information as to why and for what reason the judge had come to a particular conclusion – Application filed by the petitioner before the public authority is per se illegal and unwarranted – A Judicial Officer is entitled to protection and the object of the same is to protect public from the dangers to which the administration of justice would be exposed if judicial officers were exposed to inquiry as to malice or to litigation with those whom their decision might offend – If any thing is done contrary to this, it would certainly affect the Independence of the judiciary – A judge should be free to make decisions – As the petitioner has misused the

1

A

B

C

D

E

F

G

H

A *provisions of the RTI Act, High Court rightly dismissed his writ petition – Judicial Officers’ Protection Act, 1850 – Independence of judiciary.*

B CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 34868 of 2009.

From the Judgment & Order dated 24.4.2009 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Writ Petition No. 28810 of 2008.

C V. Kanagraj, Parmanand Gaur for the Petitioner.

The following Order of the Court was delivered

ORDER

D 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.

G 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

A 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 B 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.

C 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 D 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 E 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:

F "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 G which can be accessed by a public authority under any other law for the time being in force."

H 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.

A
B
C
D
E
F
G
H

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

A 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.

B 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.

R.P. Special Leave Petition dismissed.

T JADHAV. Naib Tahsildar

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE 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.

SHASHIKANT JADHAV. Naib Tahsildar

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 uniformly 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 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.”

(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 the 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.

SHASHIKANT JADHAV. Naib Tahsildar

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 is 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, within 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 reevaluation 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 reevaluation.... “

This Court concluded that if inspection and verification in the presence of the candidates, or reevaluation, 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.

SHASHIKANT JADHAV, Naib Tahsildar

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 avilment 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 avilment 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 his 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 covered 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 :

SHASHIKANT JADHAV, Naib Tahsildar

“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.

SHASHIKANT JADHAV. Naib Tahsildar

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

CIC/SA/A/2014/000543

CIC/SA/A/2014/000652

Appellant : **Sh. Narayan Singh**

Respondent : **DTC, GNCTD**

Date of hearing : **18-12-2014,31.12.2014***

Date of decision : **06-05-2015**

Information Commissioner : **Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)**

Referred Sections : **Sections 19(3) of the RTI Act**

Result : **Appeal allowed/disposed of**

Observation : **Misuse of RTI Act**

[*and several other dates. To be read with other five appeals. Consolidated Decision 5.5.2015]

1. The appellant is not present. The Public Authority is represented by Dr.R.S.Minhas, PIO(HQ), Mr. Toppo along with two other officers from DTC.

FACTS:

CIC/SA/A/2014/000543

2. The appellant through his RTI application dt 28.1.2014 is seeking information with respect to the letter dt 22.10.2013 through 10 points , Viz. name and designation of the officer with whom file was pending and for how many days; time limitation for concluding inquiry over any complaint etc. CPIO on 11.2.2014 replied that information pertains to vigilance department. Unsatisfied with the CPIO response, the appellant made first appeal on 15.2.2014. FAA on 14.3.2014 directed the CPIO to provide the information on point no 2,9 & 10. On non-compliance of FAA order, the appellant made second appeal before the commission.

CIC/SA/A/2014/000652

3. The appellant through his RTI application dt 14.3.2014 sought information with respect to his complainant dt 17.9.2009, namely which officer has given the noting on the complaint , whether complaint has been investigated or not, date on which it was completed. On not receiving any information from the CPIO within a prescribed time the appellant made first appeal.FAA vide his order dated 8.5.2014 stated that required information was handed over during the hearing and the appellant was satisfied with the same. Claiming non-furnishing of noting with respect to the complaints, the appellant has approach the Commission in second appeal.

DECISION

4. The appellant is absent. The respondent authority made their submissions. The Commission has gone through the record available in the file. The respondent authority have submitted that there are number of RTI applications filed by the appellant against his brother Mr. Hoshiar Singh who is working in DTC. The appellant also approaches with

different kinds of RTI applications without mentioning the name of Mr. Hoshiar Singh but will be asking some thing or the other about him, like action taken report on some complaints filed by him, all the details of the officers who dealt with the complaints against him, etc.

5. The Commission observed him in dozens of the cases and found him misrepresenting the matters very cleverly, hiding information, contradicting himself etc. He takes every matter to first and second appeal, deliberately so that such attendance it self would harass the officers. He drafts such RTI questions that at least half-a-dozen officers to attend the first and second appeals. It appears he has a property dispute with his brother Hoshiar Singh or some other private vengence. The Commission has seen many cases of misuse of RTI but, this appelland is the worst among all and his vengence against his brother has no bounds at all. It is surprising that the DTC has not taken any steps to stop his blatant misuse of RTI. His multiple, repetitive and vexatious questions about trivial things of his brother resulting in the choking the system in DTC is the most serious misuse of RTI Act. Because of this, the Public Authority is being engaged continuously to answer his meaningless questions. Dozens of RTI applications and hundreds of questions were filed against Mr. Hoshiar Singh are either his personal information or third party information. Appelland relentlessly pursues as if he does not have any other work, causing criminal waste of time of PIOs, FAAs and the Commission.

6. In P. Jayasankar Vs. Chief Secretary to Government of Tamilnadu and Gunaseelan, I.P.S. [Alongwith W.P. Nos. 3777 of 2013] C. Selvaraj Vs. Chief Secretary to Government of Tamilnadu, K.V. Muralidaran and Chief Postmaster General Decided On: 18.02.2013 MANU/TN/0130/2013 the Madras High Court held: When specific power was vested on Commissioner and Commission had proceeded against information seeker it would be

open to said authority to disqualify particular information seeker by passing speaking order. **Though the Commission, finds this a fit case to prohibit this reckless abuser of RTI, it chooses this occasion to admonish the appellant Mr. Narayan Singh and wants him to desist from this kind of harassment. The Commission recommends the DTC to prepare a brief on his misuse of RTI giving statistics etc about his applications and appeals besides giving the number of complaints filed by him and attach this order that note which shall be displayed at prominent place in the office and put on official website under the heading of 'misuse of RTI'. Commission also directs to take all steps to protect Mr. Hoshiar Singh and recommends the Public Authority to see that he is not further harassed by his inimical brother.** Even if he files a single RTI application about his brother after this order to harass the Public Authority, the Commission recommends to institute appropriate proceedings against him as per law. The order of this Commission in appeal no. **CIC/SA/A/2014/000603, CIC/SA/A/2014/001200, CIC/SA/A/2014/001384, CIC/SA/A/2014/001399 and CIC/SA/A/2014/001439** shall be read as part of this. The appeal is **disposed** of.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar

Address of the parties:

1. The CPIO under RTI, Government of NCT of Delhi
DELHI TRANSPORT CORPORATION, BBM Complex, O/o Public
Information Officer, New Delhi

2. Shri Narayan Singh
335, Mangolpur Kalan,
New Delhi-110085

SHASHIKANT JADHAV. Naib Tahsildar

CENTRAL INFORMATION COMMISSION

File No. CIC/AT/A/2006/00045

Dated: 21st April, 2006

Appellant: Dr. D.V. Rao, Superintendent (Legal), Deptt. of Legal Affairs, Ministry of Law & Justice, Govt. of India, 4th Floor, Shastri Bhawan, New Delhi-110001.

Respondents:

Shri Yashwant Singh, APIO & Deputy Secretary (A), Deptt of Legal Affairs, Shastri Bhawan, New Delhi-110001;

Shri K.D. Singh, Appellate Authority (RTI Act 2005) & Additional Secretary (Admn.), Department of Legal Affairs, Shastri Bhawan, New Delhi-110001.

Dr. D.V. Rao, Superintendent (Legal), Department of Legal Affairs, Ministry of Law & Justice, Govt. of India has preferred this appeal against the order of the first Appellate Authority, Shri K.D. Singh, Additional Secretary, Department of Legal Affairs rejecting, through his order dated 19.12.2005, the appellant's plea for certain information. The first Appellate Authority had upheld the orders dated 18.12.2005 of PIO, Shri R. Raghupathy dated 18.12.2005 which the appellant had challenged as inadequate and incomplete.

SHASHIKANT JADHAV, Naib Tahsildar

2. The appellant was called and was present in person while the public authority was represented by Shri R. Raghupathy, JS & CPIO and Shri A.K. Srivastava, SO (RTI) during the hearing on 7th April, 06.

3. The appellant had requested for following information from PIO:-

- (i) Why the Department of Legal Affairs did not amend/review the ILS Rules so far;
- (ii) What is the reason(s) for non-amendments of the ILS Rules even after more than 7 years of the issuance of the DOPT O.M. dated 25.5.1998;
- (iii) Why the delay was happened, where it is happened, under whom the delay was happened and what is the vested interest of the officers in delaying the amendment of the ILS Recruitment Rules and the day-to-day reasons for delaying the amendment of the ILS Recruitment Rules since the issuance of the DOPT O.M. dated 25.5.1998;
- (iv) If the ILS Recruitment Rules are amended, whether it would have the retrospective effect or not;
- (v) When the Department is going to amend the ILS Recruitment Rules;
- (vi) Whether the Department is going to take any action against the erring officers for not amending the ILS Recruitment Rules for a long time in view of the said O.M.”

....2

: 2 :

4. The Appellate Authority, Shri K.D. Singh had taken the view that the PIO had supplied to the appellant the latest information available. Since there was no change in the position regarding the amendment to the relevant Recruitment Rules only the latest information could be supplied to the appellant.

5. We have carefully gone through the records in this case and heard the arguments of the appellant. A perusal of the type of information requested by the appellant revealed that his was not so much a request for information, but was a set of questions regarding why the public authority had not taken certain actions and when, if at all, would it take those actions. We attempted to elicit from the appellant as to how, in his view, his request for information could be brought within the scope of Section 2(f) of the RTI Act. The definition of information, as it occurs in Section 2(f), lays down the scope of the type of information a petitioner can seek. The underlying idea is clearly that the petitioner's entitlement for information is only in respect of the categories of information mentioned in Section 2(f). It is not open to an appellant to ask, in the guise of seeking information, questions to the public authorities about the nature and quality of their actions. The RTI Act does not cast on the public authority any obligation to answer queries, as in this case, in which a petitioner attempts to elicit answers to his questions with prefixes, such as, why, what, when and whether. The petitioner's right extends only to seeking information as defined in Section 2 (f) either by pinpointing the file, document, paper or record, etc., or by mentioning the type of information as may be available with the specified public authority. He can, for example, ask for all records pertaining to decision regarding amendments to and review of ILS rules, but not "why the Department of Legal Affairs did not amend/ review the ILS rules so far?"

6. In view of the fact that the request of the petitioner is not clearly defined in terms of Section 2 (f) of the RTI Act, we have no option but to reject his appeal. He may, if he so chooses, file his application once again before the appropriate PIO spelling out clearly the information (as per Section 2(f)) he might be needed.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Sd/-
(DR. M.M. ANSARI)
INFORMATION COMMISSIONER

Authenticated true copy:

Sd/-
(P.K. GERA)
REGISTRAR

.....3

SHASHIKANT JADHAV. Naib Tahsildar

: 3 :

Address of parties:

1. Dr. D.V. Rao, Superintendent (Legal), D/o Legal Affairs, M/o Law & Justice, 4th Floor, Shastri Bhawan, New Delhi-110001.
2. Shri Yashwant Singh, APIO & Deputy Secretary(A), D/o Legal Affairs, Shastri Bhawan, New Delhi-110001.
3. Shri K.D. Singh, AA(RTI Act) & Addl. Secy(Admn.), D/o Legal Affairs, Shastri Bhawan, New Delhi-110001.

SHASHIKANT JADHAV. Naib Tahsildar

Central Information Commission

Mrh K Bansal vs Ministry Of Communications & ... on 18 March, 2016

CENTRAL INFORMATION COMMISSION

(Room No.315, B Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)
Information Commissioner

CIC/BS/A/2014/002319SA

(Video Conference - Rohtak)

H.K.Bansal v. DoT, New Delhi

RTI Application: 20122012 1st Appeal: 2972014 2nd Appeal: 2592014

Observation: Harassing RTIs

Hearing: 07012016

Decision date 18.3.2016

Parties present:

1. The appellant is not present for video conference at NIC Studio, Rohtak. The Public Authority represented by several officers of the DoT, from different wings of the public authority.

Background:

2. Mr. H. K. Bansal, a retired Engineer of the respondent authority, filed several RTI

applications (more than 100) seeking various kinds of information including review DPC

for the CE grade of P&T BW GradeA service, happened long back. Some of his

demands include copy of the notes on file on the basis of which the letter dated

13.12.2012 was issued, copy of the approval of telecom commission of June 1989

issued after which ACC approval is not being taken for the empanelment for the

CIC/BS/A/2014/002319SA

Page 1

appointment of officers to CE/CE/CAgrades of P and T BW Gr 'A' service, inspection

of all the concerned files where this issue has been dealt with etc and also sought for

information regarding D.O.T letter dated 13.12.12 regarding ACC approval aspect, etc.

3. The CPIO replied on 04.01.2013/14.01.2013/06.02.2013 and 29.07.2013. Claiming

unsatisfied he filed First Appeal. The First Appellate Authority (FAA) directed CPIO on

14.05.2013 to supply the certified copies of the information sought by the appellant.

4. In compliance of FAA Order, CPIO on 28.06.2013 gave copy of the note sheets.

Appellant complained that those were not properly attested copies because over the rubber stamp mark someone wrote 'certified copy', added below the undated signature, which was not admissible in evidence in a court of law. He also alleged that there were certain irregularities in the note sheet furnished to him. In every application he requests for early priority hearing because he is senior citizen.

5. To understand the nature of his RTI applications we need to refer to some of his

information demands: Appeal No. 1281 copies of file notings, instructions etc on the basis of which so and so numbered letter is written. Like this he wanted details of ten letters in one RTI request. (This was transferred by CPIC to five sections of the public authority). No. 586: Similar details about disposal of letters written by him for his gratuity etc. He wanted huge information on seven points each which require some more documents. No. 48. Rules and instructions about discharge of functions of an officer in a post. Like that he wanted information about ten posts in one RTI application. No. 41. He asks such a question: What consideration (legal or illegal) taken from Shri VK Jain to extend favors to him? And then he wants all sorts of documents about him. He will choose some more names like that and then a dump of questions are posed. No. 1293 is his huge demand about Shri UN Srivastava. Appeal nos. 934 and 315 are

about Shri PK Panigrahi, and No.321, 264, 1316, 1432 are about complaints against

him. No. 482 is about his grievances. He asks for prosecution of certain officers and

then files RTI applications seeking action. Apart from considering each case

separately, the Commission took an overall view on all the appeals filed by this

appellant and passing this order, which shall also be considered part of orders passed

in all second appeals heard today.

Contentions:

6. The appellant is not present for video conference at NIC studio, Rohtak. Several PIOs

made their submissions. From the files, PIOs showed that the appellant was asking for

information about the senior officers, repeatedly.

7. Officers explained background that Mr. H K Bansal has been filing multiple RTI

application since his representation for promotion was not favored. In a written

submission to the Commission, Mr. S. P. Mohapatra, Director (Civil) & CPIO, stated:

Shri Bansal, a Retired S.E. (C) wanted promotion to the grade of Chief Engineer (Civil)

on 20.5.2005 but his name was not considered in the DPC held on 18.05.2005 for

selecting a panel for promotion to the grade of Chief Engineer (C) under the provisions

of FR 35 due to non availability of ACRs. After his permanent absorption in Bharat

Sanchar Nigam Limited (BSNL) Sri Bansal retired on 31.5.2007 as Superintending

Engineer (Civil), on attaining the age of superannuation. Sri Bansal had submitted many representations on the same subject matter since 20.5.05. Those representations were considered and followed up in DPCs (30.9.2005 & 6.12.2005).

The DPC concluded on 6.12.2005 ".....The DPC considered that the officer has deliberately not submitted selfappraisal wherever he felt that he may not get Very Good or outstanding as is clear from record. It amounts to indiscipline and willfully not submitted his self appraisal.DPC finds the officer not fit".

The representations of Shri H.K. Bansal were also examined in detail and rejected at

SHASHIKANT JADHAV, Naib Tahsildar

CIC/BS/A/2014/002319SA

Page 3

various levels i.e, Member (T), Special Secretary (T) and Secretary (T). He was being regularly informed accordingly on decisions taken by the competent authorities. The fresh representation dt.9.3.15 of Shri H.K. Bansal has once again been considered and it has been decided to advise him to desist from making frequent representations on the same issue in light of DoP&T OM No. 11013/4/2010Estt.A dated 19.4.2010. It was also informed to him by letter dt. 16.12.15. Nonconsideration of promotion to the grade of Chief Engineer (civil) under provisions of FR 35 with respect to his juniors from the year 2005 resulted in a number of RTI applications on the same issue and they were responded from time to time till now. The latest information under RTI supplied to him

was on again on the same subject on 04.01.2016.

8. The officers from different departments have contended that; they are frustrated and agonized at the number of representations are being repeatedly made followed by multiple and repeated RTI applications from appellant. Such applications are causing harassment to them individually and compelling the public authority to divert its resources to be engaged with the useless work created by the appellant, diverting office from deserving attention and seriously affecting the essential functioning of the public authority, they felt harassed because of this strange behavior of this applicant.

Issues before Commission:

9. These are some questions culled out of facts, material and the contentions before the Commission.

a) Whether multiple RTI applications like these amount to misuse?

b) Are there any restrictions on indiscriminate demand of huge information by present/former employee about other employees?

c) Can an employee use RTI to target colleagues, who complained or deposed against him in disciplinary proceedings or superior or took action

CIC/BS/A/2014/002319SA

Page 4

against him or did not select him for promotion? How to prevent harassment of public authority through misuse of RTI by its present or retired employees?

Analysis & Directions :

10. From the submissions of officers from public authority, it appears that they

faced following problems:

a) Appellant repeats the representations and RTI applications on the same subject, i.e.,

he was denied 'due' promotion.

b) He used to raise several objections and issues from the reply given and uses them as

basis for further RTI applications or appeals, using unreasonable language. Some of

such letters are filed against the CIC office also. Most of RTI applications reveal that he

picks up some letter numbers from earlier reply of public authority and then asks file

notings and other related documents around that letter without any rhyme or reason

and purpose or logic. The officers have to spend a lot of time to understand the RTI

application points which contains several names, reference numbers and files about at

least four of five sections. His second appeals are also similarly drafted. He wants a

portion of second appeal should be treated as complaint, but does not specify.

c) He demanded details of information about the seniors in DoT, who he thinks involved in denial of promotion or for some other reason or without any reason. For instance there are requests for information about service or orders or seniority of persons for instance, Mr. P. K. Panigrahi, Mr U.N. Srivastava, and others. Interestingly some of the information about these persons, which was exempted from disclosure, was given by the public authority. He generates some more RTI questions from out of responses.

d) To answer his questions several officers have to disproportionately divert their resources.

SHASHIKANT JADHAV. Naib Tahsildar

CIC/BS/A/2014/002319SA

Page 5

11. A mentally sound person or sane senior citizen will not generally engage in sadistic filing of frivolous RTI applications. It is not known why this senior citizen has targeted this public authority which he served, found livelihood in and enjoying pension benefits from. Suffering from torture was visible in officer's faces as they prayed the Commission to relieve them from the chakravayuh of RTI applications designed by appellant.

12. The Commission, having heard 16 (sixteen) appeals today, ([H. K. Bansal v. Department of Telecommunications](#)), observes that these repeated RTI applications

were unreasonable and became a big problem for several sections of DoT and BSNL.

His repeated representations and RTI applications about them on issue of rejection of his promotion by DPC long ago were already answered, were selfcentric and devoid of any public interest, or not even a genuine grievance.

13. A reading of his RTI applications and appeals leads to an inference that his sole aim is to harass and torture but nothing else. Generally people use RTI for redressal of grievance, i.e., they state grievance or complaint and ask for action taken report. This is not that, because his grievance of denial of promotion was addressed several times. If he is aggrieved by rejection of promotion request, he is free to approach appropriate tribunal. Some highly educated citizens are using RTI to avenge against spouses, brothers or parents or colleagues or seniors etc. The appellant is a highly educated engineer with long experience, who became an advocate, but fully engaged in writing letters or RTI applications left, right and centre against his own department. The CPIOs of public authority responded with great patience, split his RTI questions, transferred, forwarded, struggled to file note, issue notices, letters to get information and built huge number of files, some of which they have presented before the Commission. Lot of money and energy might have been spent on his applications so far, which if calculated would be more than Rs. 5 lakh, of public money. Neither appellant nor any other

person has any right to cause such wastage of public money and RTI is not meant to lead to such a loss.

14. Appellants like this appellant should know that the RTI Act is a means to advance public interest; not to be used as a tool to harass the public authority by a workless or disgruntled employee serving/retired. His multiple RTI applications have a serious impact on the functioning of public authority BSNL/DOT, its RTI authorities and the Central Information Commission in Second Appeal. Officers also presented a bundle of files of the appellant. It reflects criminal wastage of time and, if unchecked, will check the functioning of the public authority. If this is allowed, the public authority cannot focus on their regular duties and their whole time will be devoted to such frivolous/vexatious/useless/repeated/multiple/obnoxious RTI questions. This is misuse and it has to be prevented.

15.

In relation to the multiple/indiscriminate filing of RTI application, Hon'ble Delhi High Court in Shail Saini Vs. Sanjeev Kumar [W.P (c) No. 845/2014] had observed as follows:

5. In the opinion of this Court, the primary duty of the officials of Ministry of Defence is to protect the sovereignty and integrity of India. If the limited manpower and resources of the Directorate General, Defence Estates as well as the Cantonment Board are devoted to address such meaningless queries, this Court is of the opinion that the entire office of the Directorate General, Defence Estates Cantonment Board would come to stand still. The Supreme Court in [CBSE vs. Aditya Bandopadhyay](#), (2011) 8 SCC 497, has held as under:

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

CIC/BS/A/2014/002319SA

Page 7

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

harmonizes the two objects of the Act, while interpreting Section 8 and the

other provisions of the Act.

....

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, 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 prioritizing "information furnishing", at the cost of their normal and regular duties.

6. After all disproportionate diversion of limited resources to Directorate General, Defence Estates' office would also take its toll on the Ministry of Defence. The Supreme Court in ICAI vs. Shaunak H. Satya, (2011) 8 SCC 781 has held as under:-
CIC/BS/A/2014/002319SA Page 8

39. 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 Sections 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 the Government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources.

Consequently, this Court deems it appropriate to refuse to exercise its writ jurisdiction. Accordingly, present petition is dismissed. This Court is also of the view that misuse of the RTI Act has to be appropriately dealt with otherwise the public would lose faith and confidence in this "sunshine Act". A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law. A copy of this order is directed to be sent by the Registry to Defence and Law Ministry, so that they may examine the aspect of misuse of this Act, which confers very important and valuable rights upon a citizen.

16. Filing of multiple RTI on the same subject creates fear among the public authority. The feel tormented by such disgruntled/ retired employees consuming through RTI their precious resource apart from causing mental agony. As observed by the Hon'ble High Court, "a beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law."

17. This Commission has earlier ordered that once an RTI application was finally decided it cannot be filed again (CIC/IS/C/2012/000860SA. <http://indiankanoon.org/doc/140925637/>). Responding to such repeated applications and continuing the same in first and second appeals will block the activity of public CIC/BS/A/2014/002319SA Page 9 authority, FAA and Information Commission and deprive the other genuine first applicants waiting for information or adjudication. Reckless repetition of this kind without any feel about responsibility is nothing but abusing of RTI. From the reading of his multiple applications the Commission comes to an inevitable inference that this retired appellant is misusing the freetime available for him to harass his colleagues through the RTI, abusing the information and knowledge which he gained during his service in the Department in a most unreasonable manner. His own colleagues and subordinates are the victims of this harassment. From DoT, 24 officers including the senior officers like Chief Engineer, etc have attended the hearing. They are expected to devote their valuable time for office work and grievances of the consumers, but they are busy with answering the appellant's RTI applications which are without any aim or purpose, repeating the same answers. It is obvious that the appellant has no public interest. In fact, the appellant has caused huge loss. Second Issue:

18. Whether serving/retired employees are having any right to behave in such a manner to torture his colleagues and employer? The Commission opines that such a conduct deserves to be considered as misconduct. There should be a system within the Public Authority to

tackle such misconduct of any serving employee/retired employee or by any other staff member/outsourced or similar nature, because they are becoming potential hazards of RTI misuse. Public authority should have evolved a mechanism and service rules or include in conduct rules, to initiate departmental action against existing/retired employees for such misbehavior or misconduct and impose penalty in the nature of cutting increments or pension emoluments for serving or retiring employees accordingly. If the RTI application from its own employee reflects a grievance or complaint, the public authority should address grievance immediately and inform him within one month. If the RTI application is
CIC/BS/A/2014/002319SA Page 10

repeated, frivolous or useless one and only meant for harassing other employees or public authority as a whole, then the disciplinary action should be initiated for such alleged misconduct, leading to appropriate action. If they do not act at all against such characters (retired or not retired employees) in indulging in such misconduct of filing frivolous and entertain these repeated RTI applications it will cause huge wasting of public money. The public authority is answerable to public why they are facilitating the misconduct causing damage to public exchequer. Each department has to address the issue of misusing RTI by employee, after thoroughly examining each individual case separately.

Third Issue

19. Targeting the witnesses, complainants, superior officers who were members of inquiry committee or DPC who did not favour them and seeking whole lot of information about them under RTI Act is irresponsible misuse of the right. It will not only interfere with the independent interdepartmental decision making process, but also instill fear in inquiry officers and dissuade others from lodging complaints against wrongdoers. This increases the already existing space for wrongdoing ultimately affecting the governance. The RTI is not meant for granting such immunity or impunity to wrongdoing employees to misuse RTI to demoralize the complainants and inquiry officers. Some of the Mr Bansal's RTI applications are aimed at the officers who might have not favoured him in DPC. This is a dangerous trend. The repeated RTI applications and appeals by H K Bansal present bad example of misuse by retired employees targeting their past colleagues. In larger public interest of protecting the morale of officers, to facilitate independent decision making, to regulate and act against wrongdoers or nonperformers or cantankerous litigants or those who bide away time in public office doing nothing or corrupting the processes, this kind of misuse of RTI against the public authority shall be curbed. Denial of information to the
CIC/BS/A/2014/002319SA Page 11 applicants like this appellant is justified broadly under the exceptions prescribed in Section 8 (1) (g), (h), (j) and Section 8(2): See text of these sections: Section 8. Exemption from disclosure of information: (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,

(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;

20. Appellant is demanding the information about some employees/officers who gave assistance in confidence for law enforcement, which can be denied under this provision.

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

21. Appellant's targeted demand for details of officers who decided or opined or complained or deposed against him will impede the process of collecting evidence of misconduct of accused public servant, impede process of inquiry for taking disciplinary action, hence need not be given under this clause.

(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,

22. Appellant's approach for the information pertaining to individual service of the colleagues, seniors and subordinates is motivated by his selfish personal interest of avenging based on his prejudice, and nowhere it reflects any public interest, thus it has to be denied.

CIC/BS/A/2014/002319SA

Page

12

Section 8(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with subsection (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

23. Even if the information sought appears to be in public domain because the colleagues are also employees, yet the consequences of disclosure need to be compared and only if there is public interest in disclosure it can be given. In these second appeals, the appellants' demand does not reflect any public interest. More over there is public interest in nondisclosure as explained above. The information sought cannot be given.

24. Exercising its powers under section 19(8)(v) of the RTI Act, the Commission requires that the higher authorities of DOT, BSNL/MTNL shall consider this serious issue and develop a mechanism to curb this kind of misconduct/misuse, as suggested above and save the RTI for the use of the people in general public interest.

25. The Commission further directs all the CPIOs of the respondent authority to prepare a comprehensive note on the number of RTI applications filed by the appellant, with his background, the responses given by them in the first appeal and second appeals, etc, and put it on the official website under the heading "Do not misuse RTI". The official website also should publish this order. If applicant files another repeated RTI application, public authority can give a single line reply to refer to these two files on the website and reject the application. This answers the first issue.

26. Second issue is also a significant one. The respondent officers made fervent appeal to the Commission that they were compelled to spend most of the time in CIC/BS/A/2014/002319SA Page 13 answering harassingly repeated questions about the same subject matter repeatedly asked from different angles; and about individual officers, whom, the applicant assumed to be responsible for the grievance.

27. The Commission noticed that some former employees in every public authority, who were either suspended or removed or facing charges, convicted in a crime or facing disciplinary action, or trying to run a counter inquiry with several harassing questions. The Commission also noted an atmosphere of fear and worry was spread in the offices and among the officers who are hesitating to take action against erring staff members for fear of facing flood of questions under RTI. Sometimes, the RTI applications are running into hundreds similar to those posed by lawyers during cross examination. The respondents submitted that they were ready to comply with the RTI Act but answering 'enquiry' type questions and repeated RTI applications would involve diversion of resources, energy besides having demoralizing effect. The Commission appreciates the genuineness of the problem and sincere feelings of the respondent officers and finds a need to address this serious issue. It is the responsibility of Government of India and Information Commissions to see that the RTI Act will not become rendezvous for disgruntled elements.

28. The Commission in the case of [Mukesh Sharma v. Delhi Transport Corporation \[CIC/SA/A/2014/000615\]](#), had observed as follows :

"Every employee has rights to secure his employment but also has duties to perform the job without resorting to misconduct or any other irregularity. The employee also has right to get the copy of complaint, notice, charge sheet and every piece of paper which is relied on against him. He should get the opportunity also to defend himself.

At the end he should also get the copy of enquiry report/order/judgment or sentence pronounced along with right of appeal. He has all rights as per principles of natural justice and if there is any lapse, or suppression of information or document or non-supply of papers relied on by the disciplinary authority, he can seek them from the inquiry officer or authority, if not, he can get them under RTI Act, Though an

CIC/BS/A/2014/002319SA

Page

14

employee facing disciplinary charges as explained above the accused employee does not have any moral or legal right to file plethora of RTI applications seeking information not related to allegation against him, but to harass the officers who he suspect to have complained or gave evidence or provided information or taken action against him, if done so it becomes misuse and that cannot be encouraged. The public interest is an overriding factor in these cases also as per the provisions of Right to Information Act, 2005. If such multiple RTI actions are allowed the officers at higher level will lose moral authority to initiate action against erring employees and whole system system of disciplined administration would crumble. In contra, there is a huge public interest in taking action against the wrongdoing employees. Here in this case, the appellant is not even trying to protect his personal right, or right to employment or right to fair trial. But he is unleashing his private vengeance against colleagues or seniors who are either inquiring or informing or complaining or giving evidence against him. Such information would squarely fall under exempted category as per Section 8(h) ('information which would impede process of investigation or prosecution of offenders') of RTI Act, 2005 as this would not only impede the investigation or inquiry against him, but also impede the inquiries against all such erring employees who will be immorally encouraged or tempted to use RTI for this private, illegal and vengeful purpose. The RTI is not a rendezvous for suspended employees or those erring personnel facing inquiries to serve their personal interests in protecting their misconduct or preventing the authorities from proceeding with penal proceedings enquiring into misconduct. The RTI is not for these disgruntled employees facing disciplinary proceedings or selfish persons but for the people in general, only in public interest, and never for the private vengeance at all.

If this kind of misuse is not checked, and officers will be threatened, demoralized and prevented from proceeding against employees facing charges misconduct. None would complain/inform/give evidence or no authority would gather courage to initiate enquiry against erring employees even if law authorizes them, prescribes it as a duty and situation demands. Such a situation will lead to chaos in administration. In order

CIC/BS/A/2014/002319SA

Page

15

to check the misuse of RTI for running a parallel or counter enquiry against inquiring officers, this application deserves to be rejected and the appellant, admonished. "

29. Hon'ble Punjab and Haryana High Court in the case of K K Sharma Vs. State of Haryana [W.P (C) No. 4930 of 2011]in relation to disgruntled employees had observed as follows :

"Clearly, the provisions of the RTI Act would not be available to a disgruntled employee seeking information as regards public officials which is otherwise personal in nature on account of furtherance of a personal vendetta."

30. Thus any information sought about colleagues, inquiry officers, witnesses or complainant, DPC members, selection committee members or any other officer, by present/retired employee with private motive like vengeance against complainant or inquiry officer etc who are connected with disciplinary inquiry or action taken by virtue of their seniority or authority, should be thoroughly examined, giving him opportunity to present his case, and if proved, shall be denied under relevant exceptions of section 8(1) d, e, g, h, and j. The second appeals/complaints are found as frivolous, vexatious, lack in even the character of grievance and also devoid of any public interest. The CPIOs have sufficiently and substantially furnished the information to their best of their ability from the available records. There is nothing left to be given to this appellant. He does not deserve any more information, sympathy or consideration. Though he was abuser of RTI, the officers gave all possible information. All his second appeals are hereby rejected as entire information was given and also because of being abusive.

31. The Commission directs CPIO need not answer any RTI question or request, if filed by this appellant again in coming days, for information pertaining to officers mentioned in his various applications and appeals, or if part of new RTI request was already covered by his earlier RTI request for the reasons discussed above and also on the principle of res judicata, in order to prevent such appellants from hijacking time of public authorities that is to be used in service of public in general.

CIC/BS/A/2014/002319SA Page 16

32. The Commission records its admonition against appellant for his frivolous and vexatious applications and hopes that he will not resort to misuse of RTI any more, to protect the dignity of the positions he has held in the Public Authority while in service, and to show some element of gratitude to the organization that gave him livelihood.

33. With the above observations/directions the Commission disposes of all the appeals.

(M. Sridhar Acharyulu) Information Commissioner Authenticated true copy (Babu Lal)
Deputy Registrar Address of the parties:

1. The CPIO under the RTI Act, Govt of India, Ministry of Telecommunications, Sanchar Bhavan, Ashoka Road, New Delhi 110001 (RTI Cell)
2. Shri H.K.Bansal Kanta Niwas 1011/24, Jagdish Colony Rohtak 124001, Haryana
CIC/BS/A/2014/002319SA Page 17

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 nowhere 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 years 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;
September 2, 2011.

.....J.
(A K Patnaik)

CENTRAL INFORMATION COMMISSION

....

CIC/AT/A/2008/00097	CIC/AT/A/2008/000116	CIC/AT/A/2008/00125
---------------------	----------------------	---------------------

Dated, the 12th June, 2008.

Appellant : Shri Gopal Soni

Respondents : The New India Assurance Company Limited

This matter was heard on 05.06.2008, when the appellant was called and was absent. Respondents were represented by Dr.Sriram Munda, Manager and Shri Inderjeet Singh, Manager.

2. At the outset, the respondents pointed out that the appellant had filed over 26 applications of which, the appeals in File No.CIC/AT/A/2008/00095, CIC/AT/A/2008/00116 and CIC/AT/A/2008/000125 now being considered by the Commission are parts. Appellant is an employee of The New India Assurance Company Limited (respondents) at Jaipur and was placed under suspension for insubordination and misconduct. Ever since, he has directed a spate of RTI-applications containing queries for detailed, voluminous but inane information --- all directed at harassing and discomfiting the public authority. No public interest attaches to disclosure of this information and all the applications filed by the appellant were vexatious and frivolous. Yet, respondents consented to provide him with information wherever it was possible to disclose these without incurring avoidable expenditure and where the information was centrally available.

3. Commission has noted these submissions of the public authority.

4. The appellant's RTI-requests dated 07.07.2007, 04.05.2007 and 05.11.2007 had raised an array of queries, majority of which were related to creation of the post of Hindi Translator in the New India Assurance Company Limited and other service related matters, for various periods of time. A part of the information has already been disclosed to the appellant. The respondents urged that the balance information will need to be collected and collated from over 30 Branches of the public authority in Jaipur, which comprised over 600 employees. This cannot be done without diversion of both time and resources. As such, this should attract Section 7(9) of the RTI Act.

5. The respondents further urged during the hearing that theirs was a commercial organization who were engaged in the activity of service providing and were in competition with other similarly placed entities in the Insurance

market. The types of vexatious and frivolous queries which this appellant is making through repeated applications are imposing on the public authority heavy cost, which is compromising their competitive position vis-à-vis their competitors. They, therefore, urged that this appellant should be firmly discouraged from using such tactics to settle personal scores with the public authority, whose employee he is.

6. The Commission agrees that given the nature and tenor of the queries of the appellant these are clearly vexatious and frivolous, all aimed at making the respondents work overtime to furnish information to the appellant within the time-limit prescribed under the Act. Commission also agrees that answering this type of elaborate and detailed queries, which have to be both accurate and authentic and therefore needed repeated scrutiny, imposes heavy cost on the public authority and tends to divert its resources. This brings it within the scope of Section 7(9) of the RTI Act.

7. Commission also noted that the appellant's second-appeal does not clarify as to how the information so far provided to him was inaccurate or misleading nor does it show why it should be provided to him regardless of the cost.

8. In view of the above, it is directed that there shall be no further disclosure obligation regarding these three second-appeals.

9. Appeal Rejected.

10. Copy of this decision be sent to the parties.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Authenticated by –

Sd/-
(D.C. SINGH)
Under Secretary & Asst. Registrar

CENTRAL INFORMATION COMMISSION

.....

F.No.CIC/AT/A/2007/00112

Dated, the 12th April, 2007.

Appellant : Shri K. Lall, 90/88 Ground Floor, Malviya Nagar, New Delhi-17.

Respondents : Shri M.K. Bagri, Assistant Registrar of Companies & CPIO, NCT of Delhi & Haryana, Office of the Registrar of Companies, 4th Floor, IFCI Tower, Nehru Place, New Delhi-110 019.

Shri T.P. Shami, Appellate Authority, Office of the Registrar of Companies, 4th Floor, IFCI Tower, Nehru Place, New Delhi-110 019.

This appeal by Shri K. Lall is against the order dated 8.11.2006 of the Appellate Authority (AA). Through his RTI-request dated 28.8.2006, the appellant had asked for the following information:

“M.J.M. PHARMA LTD.,R.O. AT UG F-10, INDIRA PRAKASH, BARA KHAMBA ROAD, NEW DELHI-110 001 IS COMPANY REGISTERED IN 1991. KINDLY GIVE ME THE STATUS OF THE COMPANY, NAME OF THE DIRECTORS AND IF ANY DEFAULT OR CASE PENDING IN COURT SINCE IT IS NOT AVAILABLE ON YOUR WEB SITE I.E. MCA-21. No Notice and Annual Accounts has been seen since 1992.”

2. The AA rejected the first appeal of the appellant on the ground that the information requested by him was already in the public domain having been put on the website as a priced item. Besides that, rules also provide for access to any applicant to the same information held in the form of files by the Department on payment of certain predetermined charges. In the public authority's view,

“The information already available in the public domain would not be treated as ‘information held by or under the control of public authority’ pursuant to Section 2(j) of the Right to Information Act, 2005. Therefore, the provisions of RTI Act, 2005 would not be applicable for providing copies of such documents / information to the public.”

3. The present request of the appellant is for inspection of the records regarding which the CPIO had given him some information through his communication dated 4.9.2006.

4. The respondents have pointed out that they shall be only too happy to allow the inspection of the records and the documents corresponding to the information requested by the appellant in his RTI-request. The respondents have cited a Ministry of Company Affairs' circular dated 24.1.2006 which prescribed the “procedure to be followed by a person to get the relevant information, after paying the prescribed fee”. The respondents have further pointed out that the CPIO through his letter dated 4.9.2006, had already informed the appellant that there was no case pending against the company- M/s. M.J.M. Pharma Limited.

5. The appellant's contention is that he had "not asked for any document, but only information such as documents that have been filed, name of the Directors, default if any. Instead of giving this information, he (the AA) has tried to teach me Companies Act in which I am not interested"

6. The appellant has urged that Section 22 of the RTI Act invests the Act with "overriding effect". Therefore, according to the appellant, "denial of information" is fully illegal and against the provisions of the RTI Act. He has further stated that the Companies Act, to which the respondents have made reference, had nothing to do with the Right to Information Act, 2005 as the former is only "for companies and its officials and not for the general public to access information"

7. The respondents have brought up the point that the information as requested by the appellant falls in two categories. There is a part which is about default by the firm, M/s. M.J.M. Limited. The other part is about the status of the company, name of the directors, filing of the accounts by the company since 1992 and other such details. According to the respondents, the CPIO and the AA have furnished the information in respect of the first part to the appellant. In their submission before the Commission, the respondents have stated "In this regard, it is further submitted that the office of the respondents have launched prosecution against M/s.M.J.M. Pharma Ltd. and its directors by filing 16 complaints with the Hon'ble Court of ACMM on 06.11.2006 and the same are pending." In regard to the second part, the respondents have submitted that they acted in terms of letter no.F.No.11/4/2005 CL.V dated 24.1.2006 issued by the Ministry of Company Affairs, which according to the respondents, they were "legally bound to follow"

SHASHIKANT JADHAV, Naib Tahsildar

8. The sum-total of the respondents' argument is that once they have put some information in the public domain and put a price on accessing that information, they cannot be said to hold control of that information in terms of Section 2(j) of the RTI Act. If any application is made under RTI Act to access such already disclosed information, it would suffice if the public authority informed the applicant where and how to access that information and also the fact that it was already in the public domain. They have pointed out that the pricing of access to such documents is equivalent to putting a price on a publication brought out by a public authority. Once an information is either placed in the public domain through a website or through a public announcement about the availability of that information in public domain on payment of a predetermined price, or by bringing out a priced publication, the information is automatically excluded from the purview of the RTI Act, at least in regard to the methodology and the fee for accessing that information.

9. It shall be interesting to examine this proposition. Section 2(j) of the RTI Act speaks of "the right to information accessible under this Act which is held by or under the control of any public authority.....". The use of the words "accessible under this Act"; "held by" and "under the control of" are crucial in this regard. The inference from the text of this sub-section and, especially the three expressions quoted above, is that an information to which a citizen will have a right should be shown to be **a)** an information which is accessible under the RTI Act and **b)** that it is held or is under the control of a certain public authority. This should mean that unless an information is exclusively held and controlled by a public authority, that information cannot be said to be an information accessible under the RTI Act. Inferentially it would mean that once a certain information

is placed in the public domain accessible to the citizens either freely, or on payment of a pre-determined price, that information cannot be said to be 'held' or 'under the control of' the public authority and, thus would cease to be an information accessible under the RTI Act. This interpretation is further strengthened by the provisions of the RTI Act in Sections 4(2), 4(3) and 4(4), which oblige the public authority to constantly endeavour "to take steps in accordance with the requirement of clause b of subsection 1 of the Section 4 to provide as much information suo-motu to the public at regular intervals through various means of communication including internet, so that the public have minimum resort to the use of this Act to obtain information." (Section 4 sub-section 2). This Section further elaborates the position. It states that "All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or *at such cost of the medium or the print cost price as may be prescribed.*" The explanation to the subsection 4 section 4 goes on to further clarify that the word "disseminated" used in this Section would mean the medium of communicating the information to the public which include, among others, *the internet or any other means including inspection of office of any public authority.*

10. It is significant that the direction regarding dissemination of information through free or priced documents, or free or priced access to information stored on internet, electronic means, or held manually; free or on payment of predetermined cost for inspection of such documents or records held by public authorities, appear in a chapter on 'obligations of public authorities'. The inference from these sections is **a)** it is the obligation of the public authorities to voluntarily disseminate information so that "the public have minimum resort to the use of this Act to obtain information", **b)** once an information is voluntarily disseminated it is excluded from the purview of the RTI Act and, to that extent, contributes to minimizing the resort to the use of this Act, **c)** there is no obligation cast on the public authority to disseminate all such information free of cost. The Act authorizes the public authorities to disclose such information suo-motu "at such cost of a medium or the print cost price as may be prescribed", **d)** the RTI Act authorizes the public authority to price access to the information which it places in the public domain suo-motu.

11. These provisions are in consonance with the wording of the Section 2(j) which clearly demarcates the boundary between an information held or under the control of the public authority and, an information not so held, or under the control of that public authority who suo-motu places that information in public domain. It is only the former which shall be "accessible under this Act" — viz. the RTI Act and, not the latter. This latter category of information forms the burden of sub-section 2, 3 and 4 of Section 4 of this Act.

12. The RTI Act very clearly sets the course for the evolution of the RTI regime, which is that less and less information should be progressively held by public authorities, which would be accessed under the RTI Act and more and more of such held information should be brought into the public domain suo-motu by such public authority. Once the information is brought into the public domain it is excluded from the purview of the RTI Act and, the right to access this category of information shall be on the basis of whether the public authority discloses it free, or at such cost of the medium or the print cost price

“as may be prescribed”. The Act therefore vests in the public authority the power and the right to prescribe the mode of access to voluntarily disclosed information, i.e. either free or at a prescribed cost / price.

13. The respondents are right therefore in arguing that since they had placed in the public domain a large part of the information requested by the appellant and prescribed the price of accessing that information either on the internet or through inspection of documents, the ground rules of accessing this information shall be determined by the decision of the public authority and not the RTI Act and the Rules. That is to say, such information shall not be covered by the provisions about fee and cost of supply of information as laid down in Section 7 of the RTI Act and the Rules thereof.

14. It is, therefore, my view that it should not only be the endeavour of every public authority, but its sacred duty, to suo-motu bring into public domain information held in its control. The public authority will have the power and the right to decide the price at which all such voluntarily disclosed information shall be allowed to be accessed.

15. There is one additional point which also needs to be considered in this matter. The appellant had brought up the issue of the overarching power of the RTI Act under Section 22. This Section of the Act states that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. In his view, the pricing of the access to the records and information by the public authority at a scale different from the rates / fees for accessing the information prescribed under the Act amounts to inconsistency. A closer look at the provision shows that this is not so. As has been explained in the preceding paragraphs, the fees prescribed for access to information under the RTI Act applies only to information ‘held’ or ‘under the control of’ the public authority. It does not apply inferentially to the information not held or not under the control of the public authority having been brought into the public domain suo-motu in terms of sub-section 3 of Section 4. The price and the cost of access of information determined by the public authority applies to the latter category. As such, there is no inconsistency between the two provisions which are actually parallel and independent of each other. I therefore hold that no ground to annul the provision of pricing the information which the public authority in this case has done, exists.

16. In my considered view, therefore, the CPIO and the AA were acting in consonance with the provision of this Act when they called upon the appellant to access the information requested and not otherwise supplied to him by the CPIO, by paying the price / cost as determined by the public authority.

17. The appeal is consequently rejected.

Sd/-
(A.N. TIWARI)
INFORMATION COMMISSIONER

Authenticated by –

Sd/-
(D.C. SINGH)
Under Secretary & Asst. Registrar

Address of parties:

1. Shri K. Lall, 90/88 Ground Floor, Malviya Nagar, New Delhi-17.
2. Shri M.K. Bagri, Assistant Registrar of Companies & CPIO, NCT of Delhi & Haryana, Office of the Registrar of Companies, 4th Floor, IFCI Tower, Nehru Place, New Delhi-110 019.
3. Shri T.P. Shami, Appellate Authority, Office of the Registrar of Companies, 4th Floor, IFCI Tower, Nehru Place, New Delhi-110 019.

SHASHIKANT JADHAV. Naib Tahsildar

Central Information Commission**Mrnitesh Kumar Tripathi vs Ministry Of Health & Family ... on 4 July, 2014**

CENTRAL INFORMATION COMMISSION

(Room No.315, B Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

(1) File No.CIC/LS/C/2012/000858SA

(2) File No.CIC/LS/C/2012/000859SA

(3) File No.CIC/LS/C/2012/000860SA

(4) File No.CIC/LS/C/2012/000861SA

(5) File No.CIC/LS/C/2012/000862SA

(6) File No.CIC/LS/C/2012/000863SA

(7) File No.CIC/LS/C/2012/000865SA

(8) File No.CIC/LS/C/2012/000866SA

(9) File No.CIC/LS/C/2012/000867SA

(10) File No.CIC/LS/C/2012/000868SA

(11) File No.CIC/LS/C/2012/000869SA

(12) File No.CIC/LS/C/2012/000870SA

(13) File No.CIC/LS/C/2012/000872SA

Appellant : Shri Nitesh Kumar Tripathi

Respondents/GNCTD, Delhi : (1) Dte of Health Services
(2) Health & Family Welfare

(3) Hed Arogya Sansthan

(4) GTB Hospital

(5) DDU Hospital

(6) Baba Sah. Ambedkar Hosp

(7) GB Pant Hospital

(8) DDMAS Chikitsalaya

(9) CN Bala Chikitsalaya

(10)

1

Acharya Bhikshu Hosp. (11)

Aruna

Asaf Ali Hospital (12) Guru

Govind

Singh Hos. (13) Babu Jagjivan Ram
Memorial Hospital

Date of hearing : 03072014

Date of decision : 04072014

Information Commissioner : Prof. M. Sridhar Acharyulu
(Madabhushi Sridhar)

Referred Sections : Sections 3, 19(3) of the
RTI Act

Result : Appeal allowed / disposed of

Observation : A case of misuse of RTI

The appellant is not present. The Public Authority is represented by

- (1) Dr. Lily Gangmei, PIO, Directorate of Health Services, GNCTD, Delhi
- (2) Mr. H.R.Sharma, Jt. Secretary/PIO, Dept of Health & Family Welfare, GNCTD, Delhi.
- (3) Dr.S.P.Kalra, PIO/Mr.Jaswinder Singh, APIO, Dr.Hedgyan Arogya Sansthan, Delhi
- (4) Dr.Rajendra Kumar Chopra, Medical Officer/PIO, Guru Teg Bahadur Hospital, Delhi
- (5) Not represented, Deen Dayal Upadhyay Hospital, Delhi.
- (6) Dr. J.S.Martolia, DMS(A)/PIO, Mr. Dalbir Singh, Supdt/APIO, Mr. R.R.Banswal, Sr. AO,
Baba Saheb Ambedkar Hospital, Delhi
- (7) Not represented, G.B.Pant Hospital, Delhi
- (8) Ms. Pratima Bhatia, PIO, Mr. Sandeep Kumar, Office Supdt., Dada Dev Matri Avum Shishu
Chikitsalaya, Delhi
- (9) Dr. Dheeraj Gupta, PIO, Dr. Manoj Kumar Gupta, Link Officer & PIO, Chcha Nehru Bal
Chikitsalaya, Delhi
- (10) Dr. Bhaskar Varma, Sr. Specialist(Artho), DMS(A)/PIO, Mr. S.K.Ghai, Office
Supdt/APIO, Acharya Bhikshu Hospital, Delhi
- (11) Mr. Pravesh Aggrawal, UDC, Mr. Naveen Kumar, LDC, Aruna Asaf Ali Government
Hospital, Delhi
- (12) Dr. Sangeeta Raji, CMD(NFSG)/PIO, Guru Govind Singh Government Hospital,

Delhi

(13) Dr. Anirudha Pande, Consultant(ENT), Mr. Virender Kalona, Babu Jagjivan Ram

Memorial Hospital, Delhi

2. The appellant Mr. Nitesh Kumar Tripathi has filed the above 13 RTI applications against different Hospitals controlled by the same Public Authority, i.e. Department of Health & Family Welfare, Govt. of NCT of Delhi, on almost similar issues and hence they are heard together today.

FACTS

3. Through the following RTI applications/First appeals, addressed to the respective PIOs/First Appellate Authorities, the appellant/complainant was seeking almost similar information and has not enclosed the replies given by the respective PIOs/orders passed by the respective First Appellate Authority: S.No. RTI Appln PIO reply Dt. FAA order Dt Remarks dated & addressed to

1. 1232012 to Not enclosed Not enclosed Complaint,converted Dte of Health 2nd appeal, as the Services appellant is seeking information.

2. Same date to Not enclosed Not enclosed As above

Dept of Health

3. Same date to Not enclosed Not enclosed As above

Hedgyan Hos

pital

4. Same date to Not enclosed Not enclosed As above

GTB Hospital

5. Same date to Not enclosed Not enclosed As above

DDU Hospital

6. Same date to Not enclosed Not enclosed As above

BSA Hospital

7. Same date to Not enclosed Not enclosed As above

Pant Hospital

8. Same date to Not enclosed Not enclosed As above

DDMAS Hosp

9. Same date to Not enclosed Not enclosed As above

CNB Hospital

10. Same date to Not enclosed Not enclosed As above

Bhikshu Hosp.

11. Same date to Not enclosed Not enclosed As above

Asaf Ali Hosp

12. Same date to Not enclosed Not enclosed As above

Guru GS Hosp

13. Same date to Not enclosed Not enclosed As above

Jagajivan Ram

Hospital

In all the above applications, the appellant is seeking information about the number of patients in different hospitals, reservation roster for each and every reserved category, number of advertisements published for JS/SR in the respective hospitals along with number of seats and the number of candidates applied/selected, money spent on electricity, patient food, salary of staff, etc. Alleging that the Public Authority has not furnished any information, the appellant/complainant has filed the 2nd appeal/complaint in all the above 13 cases on the same date, i.e. 2452012 before the Commission.

Decision:

4. Heard the submissions made by all the respondent authorities/Hospitals, except the respondent authorities of two Hospitals, namely, Deen Dayal Upadhyay Hospital and G.B. Pant Hospital, who have not been represented in the hearing. The appellant/complainant is not present before the Commission for hearing him in these appeals. He was also never present before the First Appellate Authorities during the hearing of the first appeal in all these cases, as reported by all the respondent authorities. As per the respondent authorities, the appellant Mr. Nitesh Kumar Tripathi, is interested only in filing the RTI applications, but not in getting the information, as he never receives the information dispatched by the PIOs because he changes his addresses deliberately, and the said replies/information, are received back by the PIOs, with the remarks of the Postal Department stating as 'Not residing/absconding', etc. They have also submitted that they have sent the desired information to the appellant, in good faith, but he is not receiving them and they have also offered him inspection of the record, for which he never turns up. The PIOs of all the Hospitals, also submitted that they are compelled to divert the services of the professional doctors and specialists to answer the RTI questions on priority, which is causing a serious disruption of the medical services to the public. All the doctors and officers are fearing the onslaught of the RTI Act, especially from this appellant Mr. Nitesh Kumar Tripathi. In this connection, the Commission advised the Public Authority to give a comprehensive report of the RTI applications filed by this appellant and how it paralyzed their medical services. The PIO of Acharya Bhikshu Hospital, presented a brief of the information given to the appellant, in which there are 16 cases decided by this Commission on the same subject. The PIO of the Dada Dev Matri Avum Shishu Chikitsalaya submitted that they did not receive the RTI application of the appellant at all. In this connection, they have also presented the relevant extracts of their diary register to the Commission. They have only received the hearing notice of the Commission. The PIO of the Aruna Asaf Ali Govt. Hospital presented a bundle of sheets of information furnished to the appellant in response to this RTI application. All the PIOs of the Public Authority have submitted that the following number of RTI applications are repeatedly received by them: Name of the PIO No. of RTI applications being received Directorate of Health Services 12 (Dozen) every year Dept of Health & Family Welfare 17 in less than a year Dr. Hedgvan Arogya Sansthan 62 in less than 2 years Baba Saheb Ambedkar Hospital 200 [@ 30/31 per day] Dada Dev Matri Avum Shishu Chikitsalaya 50 Acharya Bhikshu Hospital 100 [16 cases CIC decided on the same matter]

5. From the submissions made by the Public Authority, the Commission observes that the RTI questions asked by the appellant are wide-ranging; require lot of effort on the part of the Public Authority to collect documents for the years from 2000 to 2012. The appellant went on asking for informations which are highly voluminous and difficult to be answered in one go. The range of questions asked by the appellant start from reservation categories, roster for 12 years, number of advertisements given, money spent on electricity bills, maintenance of vehicles, money spent on purchases, patients' food, number of inpatients/outpatients, salary paid to the doctors/staff and diagnostic facilities available in the hospitals for the past 12 years. His appeals do not contain what he exactly wanted, what information is given to him and what is not given, etc.

He does not even file the FAA orders. Almost all of his RTI applications are the Photostat copies containing the same questions. It is a reckless way of seeking information which nobody knows whether the same is supported by any public interest. The appellant has cultivated a habit of sending Photostat copies in a format which were given as RTI Applications, sometimes, even without filling the blanks. He does not attend, appear for inspection, appear before the First Appellate Authority or the Commission. In response to this second appeal, 13 doctors attended the hearing. They represented that their precious time needed to be used for patients, an emergency medical case is being spent on such needless, nonserious questions, without any purpose. They appealed to the Commission to prevent such misuse of RTI Act by people like the appellant in this case. The information furnished by the respondent authorities is relevant, since his appeals do not disclose why he was not satisfied. Hence all the above 13 appeals/complaints are dismissed.

6. The Commission considers this case as the case of repetitive use of RTI assuming the proportion of harassment to the Public Authority and reckless abuse of RTI. UK, South Africa, Mexico refuses vexatious requests

7. Various access law enactments have provisions to prevent abuse of right to information. a. The United Kingdom's Freedom of Information Act, 2000 which became fully effective in January 2005 provided an exception to Right to Information on the grounds of vexatious or repeated requests under Section 14. Requests for information intended to be published are also excluded. Information which is already reasonably accessible to the applicant even though this involves payment operates as absolute exception under Section 21 of Freedom of Information Act, 2000 of UK.

b. In Mexico, the access to information law provides grounds of offensive requests or requests which have already been dealt with for refusing the information. c. South Africa also provided for refusing information requests which are frivolous or vexatious.

Renowned Author Sudhir Naib, in his book "The Right to Information in India, published by Oxford University Press 2013 supported these restrictions saying: "This appears to be in order as vexatious, offensive or repeated requests can impose a costly burden on public authorities and yet not advance the right to information" (at page 28). Res judicata = already decided

8. The Commission noticed that some of the applicants are filing photocopies of RTI requests with the same or other public authorities time and again seeking information, irrespective of the fact that previous application reached second appeal level or information was furnished or refused as decided by the concerned authorities. When not taken to High Court for judicial review in stipulated period, the matter decide finality and cannot be sought for again from the public authority.

9. Though Right to Information Act, 2005 did not have any specific provision to bar the repetition for information like Section 11 of Code of Civil Procedure, the universal principle of civil justice 'res judicata' will certainly apply and the repeated request can be denied. Two Latin maxims form the basis of this rule, they are:

a. 'interest republicae ut sit finis litium' (= it is in the interest of the State that there should be an end to litigation) and b. 'nemo devet vis vexari pro una et eadem cause' (=no man should be taxed twice over for the same cause).

If presumed that the PIOs, First Appellate Authorities and the Commissions are statutorily compelled to entertain the repeated RTI applications, information litigation and woos of public authorities would never end. An Appeal, as provided by law is legal, because it is a legal opportunity to challenge the order on reasonable and legal grounds. Engaging with the application which is same or slightly modified request for information which was responded earlier will be certainly against the principles of natural justice both procedural and substantive, as far as right to information is concerned.

10. The universal principles of civil justice also recognized 'constructive res judicata', which in the RTI context means when an applicant uses an opportunity of obtaining information on a particular subject as per law, he is expected to seek all the related information in that first ever opportunity itself. He cannot file another application for a bit or piece which he forgot to ask, or not advised by his lawyer, or for any other reason. He should ask all possible aspects of information about that subject matter, in the first ever available opportunity. Even if he does not, it is presumed by law that he asked for that and was refused after due trial. This is incorporated in principles of civil procedural justice and practiced universally. It is in the public interest and also to further the objectives of Right to Information Act, that such repeated or unending stream of questions being sought from same or different public authorities to be stopped.

11. The Commission noticed that several applicants seek some information from one wing of the public authority, and based on the responses file a bunch of RTI questions from the same or other wings of same public authority, or from other authority. This will have a continuous harassing effect on the public authority. As the PIOs go on answering, more and more questions are generated out of the same and in the same proportion the number of repeated first appeals and second appeals also will be growing.

Earlier Observations of CIC: Sri MM Ansari

12. In several occasions earlier the Central Information Commission referred to the issue of repeated RTI requests and harassing tendency. In Prem Prakash Kumar v NFL, Panipat, (Decision no. 246/IC/(A)/2006, F.No. CIC/MA/A/2006/00374 & 375 dated 28 August 2006) the appellant sought documents and specific comments of CPIO on 89 queries. The Learned Commissioner Shri M M Ansari observed that in fact, the nature of queries and the information sought are such that the information seeker would never be satisfied because the promotion of self interest, rather than public interest, was dominant, as the appellant had sought redressal of grievances.

Sri A N Tiwari's observations

13. In Shri Gopal Soni v The New India Assurance Company Ltd (F No CIC/AT/A2008/00097, 000116, 000124, dated 12.6.2008) Learned Commissioner Shri A. N. Tiwari dealt with similar problem. The respondents in this case submitted that the appellant, their employee, was suspended for insubordination and misconduct, and ever since he directed a spate of applications containing queries for detailed, voluminous but inane information which would have to be collected and collated from over 30 branches. The Commission held in this case: "answering the elaborate and detailed queries, which have to be both accurate and authentic, imposes heavy cost on the public authority and tends to divert its resources, which brings it within the scope of section 7(9) of RTI Act."

14. In Shri K. Lall v Sh M K Bagri, Assistant Registrar of Companies & CPIO, (F No. CIC/AT/A/2007/00112) the Learned Central Information Commissioner Sri A N Tiwari observed: "...it would mean that once certain information is placed in public domain accessible to the citizens either freely or on payment of a predetermined price, that information cannot be said to be 'held' or 'under the control' of the public authority and thus would cease to be an 'information' accessible under the RTI Act."

15. From the above observations, one could infer that once the information is accessible or available, no requests for the same need to be entertained. It can also be stated, agreeing with the observation of Sri A N Tiwari referred above, that once applicant procured the information sought, that information will not be considered as 'held' by public authority or 'under its control' as far as that applicant is concerned, and thus the public authority need not answer.

Sri Shailesh Gandhi's observations

16. It is relevant here to quote a paragraph from the order of Learned Information Commissioner Sri Shailesh Gandhi in case numbers No. CIC/SG/C/2011/000760, CIC/SM/A/2011/000926/SG, CIC/SM/A/2011/001111/SG, CIC/SG/A/2011/002909 Dated 17th January, 2012 in a second appeal: "The Commission at several appellate hearings, has explained to the complainant that under RTI Act, only the information as per records can be made available; multiple RTI applications and appeals would not provide him any information beyond the records that exists. The Commission recognizes the fact that valuable time of the complainant, respondent public authority as well as the Commission is being spent in merely going through the motions prescribed under the RTI Act again and again to obtain similar information. ... At this juncture the Commission would like to mention that though the right to information is a fundamental right of the citizens, it cannot be used indiscriminately to fulfill the demands of one individual. In the present matter, it must be noted that the Complainant is pursuing multiple litigation and various public authorities are being asked to divert an extraordinarily disproportionate amount of resources just to respond to hundreds of RTI applications filed by him. ...The Commission is also conscious of the fact that it is financed by the poorest man in this country who may be starving to death. The complainant by repeatedly filing similar RTI applications and appeals with the respondent public authority and the Commission, is wasting public resources."

17. In the above case Sri Shailesh Gandhi observed that appellant was using RTI Act as a litigation tool, his use of RTI was vexatious in nature, and held that entertaining such appeal could no longer serve the objectives of the RTI Act and at one go the Commissioner had disposed off all the pending appeals.

Principles of Freedom of Information Legislation

18. International standard series have developed the Principles of Freedom of Information Legislation under the title 'Public's Right to Know', by the 'Article 19 Organization'. These Principles were endorsed by Mr. Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, in his report to the 2000 session of the United Nations Commission on Human Rights, and referred to by the Commission in its 2000 resolution on freedom of expression. They were also endorsed by Mr. Santiago Canton, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression in his 1999 Report, Volume III of the Report of the Inter-American Commission on Human Rights to the OAS. Under Principle 4 "Limited scope for exceptions" this document explained that exceptions should be clearly and narrowly drawn and subject to strict "harm" and "public interest" tests. Explaining the 'harm' test, it stated that the public body must also show that the disclosure of the information would cause substantial harm to that legitimate aim.

19. Cases of disclosure of information to the repetitive applicants for their private purpose which promotes their private interest but not the public interest would cause substantial harm to the legitimate aim of the Right to Information Act.

20. Thus, once information is given, applicant shall not seek the same once again in the guise of different form or language. If the applicant seeks information again and again, the PIO, the First Appellate Authority and the Commission would be forced to spend their time on this repeated application, and in the process the authorities would lose that much time to address the other RTI applications or performing their general duties in their public office. Repeated RTI applications will amount to clogging the office of public authority and CPIO would be justified in refusing the same with intimation of reason. Application has an effect of clogging the public offices, it would amount to obstructing the free flow of information to deserving and genuine RTI applicants, besides preventing the officers from performing their general duties attached to their office. Conclusions

21. All the above discussion can be consolidated into:

(i) Even a single repetition of RTI application would demand the valuable time of the public authority, first appellate authority and if it also reaches second appeal, that of the Commission, which time could have been spent to hear another appeal or answer another application or perform other public duty.

(ii) Every repetition of RTI application which was earlier responded will be an obstruction to flow of information and defeats the purpose of the RTI Act. No scope for repeating under RTI Act

22. The Commission infers from the above that though RTI Act, did not specifically provide as a ground of refusing the information, it is implied from the objective and various provisions of RTI Act, that right of citizen to information is limited to one time and does not extend to repetition of request for that directly or indirectly.

Citizen has no Right to Repeat

23. For the above reasons and based on objective of the RTI Act, its provisions, their interpretation by the Information Commissioners referred above, reading them together, this Commission observes:

a) The citizen has no right to repeat the same or similar or slightly altered information request under RTI Act, 2005, for which he already got a response.

b) Once an RTI application is answered, the appellants shall refrain themselves from filing another RTI application against the public authority as once information is received and held by them or posted in public domain, because such information is deemed to have ceased to be 'held' by the public authority.

Repetition shall be ground of refusal

c) Such repetition of information request may be considered as reasonable ground for refusal under the RTI Act.

d) An applicant or appellant repeating the RTI application or appeal either once or multiple times, suppressing the fact of earlier application and receipt of the answer, the CPIO of public authority may reject it forthwith after intimating it along with reasons. Appeals can be rejected

e) The First Appellate Authority and Commission may be right and reasonable to consider this as a ground for rejecting the first or second appeal, respectively among other reasons if any.

Recommendations

24. To address the problem of 'harassing & repeated questions', the Commission recommends the respondent authority to analyze all the RTI applications filed by such appellants, compile all the questions contained therein and indicate the information provided against them. That consolidated information along with a background note based on facts, avoiding unfounded allegations may also be placed on website besides sending a copy to the applicant and the concerned Information Commission. The Commission also recommends exhibiting such information in their notice board at the entrance or at any conspicuous place in their office besides posting a photograph of such a notification on the website.

25. The entire information about the repeated RTI questions by appellants, and the documents given by the Public authority, the private interest of the appellants, if any, lack of public interest in the said RTI applications, etc. also shall be kept in the public domain. The information in website may also serve as response to repeated RTI question. The same may be referred in the responses to first and second appeals.

26. In view of the above, the Commission also directs the Public Authority to post the

Annual Reports of their Department/Hospitals in their official website as part of the voluntary disclosure of information, as mandated u/s 4(1) (b) of the RTI Act including the past Annual Reports from whichever date they are available. These annual reports would answer the general questions about the voluminous records like this present RTI application and the Public Authority will be relieved of answering such repeated voluminous RTI questions.

27. The respondent authority is further directed to seek a probe by an appropriate authority into the motive behind the appellants' repeated RTI questions in such a reckless manner, so that the Public Authority can know whether these questions are in a private interest and act accordingly.

(M. Sridhar Acharyulu) Information Commissioner Authenticated true copy (Ashwani K. Sharma) Designated Officer Address of the parties:

1. Shri Nitesh Kumar Tripathi, C-184, Begum Pur Extension, Begum Pur, DELHI-110086
2. The CPIO/PIO under RTI Act, Government of NCT of Delhi Directorate of Health Services , F-17 Karkardooma, DELHI
3. The CPIO/Public Information Officer under RTI Department of Health & Family Welfare, GNCTD Metcalf House, Vikas Bhavan-II, DELHI
4. The CPIO/Public Information officer under RTI, GNCTD Dr.Hedgyan Arogya Sansthan, East Arjun Nagar DELHI
5. The CPIO/Public Information Officer under RTI, GNCTD Guru Teg Bahadur Hospital, Dilshad Garden DELHI-110095
6. The Public Information Officer under RTI, GNCTD Deen Dayal Upadhyay Hospital, Hari Nagar NEW DELHI-110064
7. The CPIO/PIO under RTI, Govt. of NCT of Delhi Baba Saheb Ambedkar Hospital, Sector-06, Rohini, DELHI
8. The CPIO/PIO under RTI, Govt. of NCT of Delhi G.B. Pant Hospital, Jawahar Lal Nehru Marg, NEW DELHI
9. The CPIO/PIO under RTI, Govt. of NCT of Delhi Dada Dev Matri Avum Shishu Chikitsalaya Shaheed Balwan Singh Solanki Marg, Dabri, NEW DELHI
10. The CPIO/PIO under RTI, Govt. of NCT of Delhi Chacha Nehru Bal Chikitsalaya, Geeta Colony, DELHI
11. The CPIO/PIO under RTI, Govt. of NCT of Delhi Acharya Bhikshu Hospital, Moti Nagar, NEW DELHI
12. The CPIO/PIO under RTI, Govt. of NCT of Delhi Aruna Asaf Ali Government Hospital, 5-Rajpura Road, DELHI-110054
13. The CPIO/PIO under RTI, Govt. of NCT of Delhi Guru Govind Singh Government Hospital, IRaghuvir Nagar, NEW DELHI
14. The CPIO/PIO under RTI, Govt. of NCT of Delhi Babu Jagjivan Ram Memorial Hospital Jahangir Puri, DELHI Copy also forwarded with reference to Para 27 of the order to:-
15. The Principal Secretary to Government of NCT of Delhi, DEPARTMENT OF HEALTH AND FAMILY WELFARE 9th Level, A-Wing, I.P. Extension De

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 12TH DAY OF JULY 2010

BEFORE

THE HON'BLE MR.JUSTICE MOHAN SHANTANAGOUDAR

WRIT PETITION NO. 10974/2010(EM-kes)

BETWEEN :

Smt. Reshima Tahaseen
W/o. Syed Maqsood Hussain.
Aged 36 years, Tahsildar.
Shidlaghatta Taluk,
Chikkaballeur District.

...PETITIONER

(By Sri. Kashinath, Adv., for
Sri C. Jagadish, Adv.)

SHASHIKANT JADHAV, His Tahsildar
AND

1. The Karnataka Information
Commission.
Represented by Under Secretary,
2nd Floor, M.S. Building,
Dr. Ambedker Street,
Bangalore - 560 001.
2. The Commissioner,
Karnataka Information
Commission,
M. S. Building,
Bangalore - 560 001.
3. Sri. S. N. Narayanarao,
Sonaganahalli village,
Saadali Post,

Shidlaghatta Taluk,
Chickballapur District.

...RESPONDENTS

(By Sri.M.Nagesh &
Sri.K.Subramanyam, Advs. for R3,
Sri.Narendra Prasad, HCGP for R1 & R2)

This writ petition is filed under Articles 226 and 227 of the Constitution of India with a prayer to quash the order dated 16.02.2010 passed by the R2 vide Annexure 'L'.

This writ petition coming on for *preliminary hearing*, this day, the Court made the following:

ORDER

The order Annexure 'L' dated 16.02.2010 passed by the State Information Commissioner, by which the petitioner is imposed a cost of Rs.25,000/- is called in question in this writ petition. By the very order, the State Information Commissioner has directed to hold Departmental Enquiry and initiate Disciplinary action against the petitioner under Section 20(2) of the Act for not providing information under CCA Rules applicable to her.

2. The impugned order is self-explanatory inasmuch as it assigns the detailed and valid reasons as

13

to why the punishment is imposed and disciplinary enquiry is sought to be conducted.

The records reveal that the 3rd respondent filed an application on 04.02.2009 before the petitioner, who was then working as Tahsildar in Shidlaghatta Taluk, seeking certain information under Right to Information Act. However, the said information was not furnished by the petitioner, who was the then Public Information Officer and Tahsildar. Consequently, proceedings were initiated before the State Information Commissioner against the petitioner. Though it is the case of the petitioner that she had furnished the information as required to respondent No.3 on 19.05.2009, in fact full information was not supplied by her to respondent No.3. Thus, the proceedings were initiated against the petitioner before the State Information Commissioner by issuing notice to her. The complaint was heard on 01.12.2009 and the Commissioner directed the petitioner to provide information within 15 days, free of cost by Registered Post with Acknowledgement Due.

fs

The Commissioner also issued show cause notice to her under Section 20(1) of the Right to Information Act for not providing information. The Commissioner further issued a show cause notice to the petitioner seeking explanation as to why compensation of Rs.1,000/- should not be awarded under Section 19(8) (b) of the Act to the complainant for the loss and other hardships suffered by him. In spite of serving notice, the petitioner did not choose to be present before the Commissioner on the date of hearing nor had she provided the information. However, during the course of hearing, respondent No.3 appeared before the Commissioner and submitted that he has not received any information as sought for by him.

Thus, the records make it amply clear that the request for information was received by the petitioner on 04.02.2009. However, no information was provided by her till 16.02.2010 i.e., for nearly 11 months. During the course of these eleven months, the Commissioner had directed the petitioner to provide information by its



orders dated 08.07.2009 and 01.12.2009. She was also issued with a show cause notice seeking explanation as to why penalty should not be levied upon her under Section 20(1) of the Act. In spite of giving an opportunity by the Commissioner to the petitioner on 08.07.2009 and 07.12.2009, the petitioner did not choose to offer her explanation. Consequently, the Commissioner has rightly treated that the petitioner has no explanation to offer. Since there is delay of more than 11 months, in furnishing the information, the State Information Commissioner chose to impose maximum penalty and consequently, Commissioner imposed penalty of Rs.25,000/- to the petitioner under Section 20(1) of Right to Information Act. By the very order, the Commissioner directed the Deputy Commissioner to initiate Disciplinary action against the petitioner under Section 20(2) of the Act for not providing the information.

3. During the course of arguments, learned Advocate for the petitioner pleaded for lenience.

M

According to him, the petitioner could not furnish the requisite information and could not appear before the Commissioner as she was busy in her other official work and was held up in election duty etc. It is further submitted on behalf of the petitioner that the negligence on the part of the petitioner is not deliberate or intentional.

The learned counsel appearing for the petitioner has filed an affidavit of the petitioner before the Court today. In the said affidavit, the petitioner has tried to explain the lapses on the part of the petitioner. However, she pleads lenience. She has also tendered unconditional apology for the lapses committed by her and also undertakes that she will not commit any mistake in future. She has further sworn to the fact that she will diligently act and co operate with the 2nd respondent, in case if she receives notice from the 2nd respondent in future.

4. The affidavit filed by the petitioner dated 12.07.2010 is recorded. Having regard to the totality of

ms

the facts and circumstances and in view of the unconditional apology tendered by the petitioner, interest of justice will be met if the portion of the impugned order relating to directing the Deputy Commissioner to initiate disciplinary action against the petitioner is set-aside. Accordingly, following order is passed:

The impugned order relating to imposition of penalty of Rs.25,000/- on the petitioner is confirmed. However, the direction issued by the 2nd respondent - Commissioner to the Deputy Commissioner, Chickballapur District to initiate disciplinary action against the petitioner under Section 20(2) of the Act for not providing information, is quashed.

Writ petition is **disposed of** accordingly.

Sd/-
JUDGE

SPS

महाराष्ट्र राज्य माहिती आयोग, कोंकण खंडपीठ

कोंकण भवन, नवी मुंबई - ४०० ६१४.

दूरध्वनी/फॅक्स क्रमांक : ०२२ २७५७९४६३. Email ID : ic.konkan@maharashtra.gov.in

माहितीचा अधिकार अधिनियम २००५ चे कलम १९(३) अन्वये द्वितीय अपिल.

अपिल क्रमांक : केआर- ३७११/२०१४

श्री.सुर्यकांत परशुराम नाईक,
रा.सावंतवाडी, सालईवाडा,
ता.सावंतवाडी, जि.सिंधुदुर्ग.

... अपिलार्थी

विरुध्द

जन माहिती अधिकारी,
निवासी नायब तहसिलदार,
तहसिल कार्यालय सावंतवाडी,
ता.सावंतवाडी, जि.सिंधुदुर्ग ४१६ ५१०.

... प्रतिवादी

प्रथम अपिलीय प्राधिकारी,
निवासी नायब तहसिलदार,
तहसिल कार्यालय सावंतवाडी,
ता.सावंतवाडी, जि.सिंधुदुर्ग ४१६ ५१०.

विवेचन

माहितीचा अर्ज दाखल केल्याचा दिनांक -	: १०/०८/२०१४
जन माहिती अधिकारी यांनी दिलेल्या उत्तराचा दिनांक -	: ---
प्रथम अपिल दाखल केल्याचा दिनांक -	: २९/०९/२०१४
प्रथम अपिलीय अधिकारी यांनी दिलेल्या निर्णयाचा दिनांक -	: ७/११/२०१४
द्वितीय अपिल प्राप्त झाल्याचा दिनांक -	: २०/११/२०१४
द्वितीय अपिलाच्या सुनावणीची सूचना दिल्याचा दिनांक -	: २९/०६/२०१५
द्वितीय अपिलाच्या सुनावणीचा दिनांक -	: १७/०७/२०१५

सुनावणीस अपिलार्थी अनुपस्थित आहेत. जन माहिती अधिकारी श्री. एन. डी. वेगुलेंकर, निवासी नायब तहसिलदार, सावंतवाडी उपस्थित आहेत. प्रथम अपिलीय प्राधिकारी अनुपस्थित आहेत.

अपिलकर्ता यांनी मागितलेल्या माहितीचा तपशिल :

वारस रजिस्टरचा उतारा, कागदपत्र, सहहिस्सेदारांची नोंद घेणे या संदर्भात दि.२०.११.२०१३, २३.०५.२०१४, २७.६.२०१४ रोजीच्या अर्जावर केलेल्या कारवाईसंदर्भात एकुण ६ मुद्यांची माहिती मागितली आहे.

जन माहिती अधिकारी यांचे उत्तर :

निरंक

प्रथम अपिल दाखल करण्याबाबतची कारणे :

माहिती मिळाली नाही.

प्रथम अपिलीय प्राधिकारी यांनी दिलेला निर्णय :

जन माहिती अधिकारी यांनी अपिलार्थी यांना दि.२०.११.२०१३ व दि.२३.५.२०१४ रोजी दिलेल्या अर्जातील मागणी केलेली कागदपत्रे १० दिवसात अपिलार्थी यांना मोफत देण्याबाबत आदेश दिले आहेत.

द्वितीय अपिल दाखल करण्याबाबतची कारणे :

समाधानकारक माहिती दिली नाही. अपुरी माहिती देण्यात आली आहे. सहहिस्सेदार म्हणून नोंद घेण्याबाबतची नियमावली देण्यात आलेली नाही.

सुनावणीचा तपशील :

अपिलकर्ता सुनावणीची सुचना देवूनही गैरहजर आहेत.

जन माहिती अधिकारी यांनी सुनावणी दरम्यान खालील प्रमाणे युक्तीवाद केला.

दिनांक १३.११.२०१४ रोजी माहिती व्यक्तीस: देण्यात आली. सारख्याच विषयाच्या माहिती अर्जासंदर्भात आयोगासमोर दाखल करण्यात आलेल्या अपिल क्र. ३१९१/२०१३ आणि २३३२/२०१४ मध्ये सुनावणी घेऊन, आयोगाने अनुक्रमे दि.४.१२.२०१४ आणि दि.१६.४.२०१५ रोजी आदेश पारित करून, अपिल फेटाळण्यात आलेले आहे. अन्य अपिल क्र.३४११/२०१४ मध्ये आयोगाने दि.५.७.२०१५ रोजी आदेश पारित केले असून, सारख्याच विषयावर वारंवार माहितीचा अर्ज दाखल करणे माहितीचा अधिकार अधिनियमांतर्गत अभिप्रेत नसून, अशा पार्श्वभूमीवर माहिती नाकारली जाऊ शकते, असे आदेशामध्ये उधृत करण्यात आले आहे.

दरील वस्तुस्थिती विचारात घेवून खालीलप्रमाणे निर्णय देण्यात येत आहे.

निर्णय

१. अपिलार्थींनी सारख्याच माहितीकरीता यापूर्वीही वारंवार अर्ज केले आहेत. सारख्याच स्वरूपाच्या विरता किंवा सुधारणा करून मागीललेल्या माहितीच्या अर्जातील अपिलाच्या अनुषंगाने केंद्रीय माहिती आयोगाने क्रमांक सीआयसी/एडी/ए/२०१३/ ००१०४६ एसए (प्रदिप एस.अहलुवालीया विरुद्ध दिल्ली टुरीझम आणि ट्रान्सपोर्टेशनल डेव्हलपमेंट कार्पोरेशन) मध्ये दिनांक ०५/०६/२०१४ रोजीच्या सुनावणीत पुढीलप्रमाणे नमूद केले आहे:-

UK, South Africa, Mexico refuse vexatious requests

The United Kingdom's Freedom of Information Act, 2000 which became fully effective in January 2005 provided an exception to Right to Information on the grounds of vexatious or repeated requests as a general exception under Section 14. Requests for information intended to be published are also excluded. Information which is already reasonably accessible to the applicant even though this involves payment operates as absolute exception under Section 21 of Freedom of Information Act, 2000 of UK. In Mexico the access to information law provides grounds of offensive requests or requests which have already been dealt with for refusing the information. South Africa also provided for refusing information requests which are frivolous or vexatious. Renowned Author Sudhir Naib, in his book "The Right to Information in India, published by Oxford University Press 2013 supported these restrictions saying: "This appears to be in order as vexatious, offensive or repeated requests can impose a costly burden on public authorities and yet not advance the right to information"

Res judicata = already decided

The Commission noticed that some of the applicants are filing photocopies of RTI requests with the same public authorities time and again seeking information, irrespective of the fact that previous application reached second appeal level and information was furnished or refused as decided by the wisdom of authorities. When not taken to High Court for judicial review, the matter assumes finality and cannot be sought for again from the PIO. Though Right to Information Act, 2005 did not have any specific provision to bar the repetition for information like Section 11 of Code of Civil Procedure, the universal principle of civil justice 'res judicata' will certainly apply and the repeated request has to be rejected with an

emphasis. Two Latin maxims form the basis of this rule, they are: 'interest republicae ut sit finis litium' (= it is in the interest of the State that there should be an end to litigation) and 'nemo devet vis vexari pro una et eadem cause' (=no man should be taxed twice over for the same cause). If the PIOs, First Appellate Authorities and the Commissions allow repeated RTI applications, there will be no end to the information litigation and the public authorities would be continuously taxed for no fault of them. Appeal as provided by law is allowed, though it appears like relitigating, because it is review and an opportunity to challenge the order on reasonable and legal grounds. Filing same or slightly modified application for information which was decided, is against the principles of natural justice pertaining to procedure.

Citizen has no Right to Repeat

For the above reasons and based on objective of the RTI Act, its provisions, which should be read together, and above orders by the learned Commissioners, this Commission observes:

a) The citizen do not have a right to repeat the same or similar or slightly altered information which he already got, (the combined reading of various provisions of RTI Act, along with the statement of objectives of the Act) b) Once an RTI application is answered, the appellants shall refrain themselves from filing another RTI application against the public authority as once information is received and held by them or posted in public domain, the applicants are not supposed to seek it again under RTI applications.

Repetition shall be ground of refusal c) Such repetition shall be considered as ground of refusal under the RTI Act. d) An applicant or appellant repeating the RTI application or appeal either once or files multiple applications, in certain cases hundreds of queries, suppressing the fact of earlier application and receipt of the answer, the CPIO of public authority shall explain such facts and intimate the applicant, and reject it forthwith, giving such reason.

Appeals can be rejected e) The First Appellate Authority shall be right if they reject first appeal on this ground and the Commission also would only be justified in rejecting such appeal. वेदीय माहिती आयोगाच्या उपरोक्त निर्णयाशी आम्ही सहमत आहोत.

२. अपील अमान्य करण्यात येत आहे.

कोंकण भवन,

बेलापूर, नवी मुंबई : ४०० ६१४.

दिनांक : १४ जुलै, २०१५.



टी प्रभा वेंकटराव

(थॅक्सी फ्रान्सिस थेकेकरा)

राज्य माहिती आयुक्त,

कोंकण खंडपीठ

Gujarat High Court

Vishnubhai

vs

Principal on 20 December, 2010

ORDER IN

THE HIGH COURT OF GUJARAT

AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15887 of 2010

===== SHASHIKANT MADHAV N. Parekh =====

===

VISHNUBHAI

N PAREKH - Petitioner(s)

Versus

PRINCIPAL

SECRETARY TO GOVERNOR & 2 - Respondent(s)

=====

===

Appearance :

**MR DEVESH A BHATT for Petitioner(s) : 1, None for
Respondent(s) : 1, 3,**

**MS MAITHILI MEHTA, ASST.GOVERNMENT PLEADER for
Respondent(s) : 2,**

=====
===

CORAM:

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/12/2010

ORAL ORDER

1. The petitioner has challenged an order dated 30.11.2009 passed by His Excellency the Governor of Gujarat as also subsequent order dated 15.6.2010 by which the petitioner's review against the order dated 30.11.2009 came to be dismissed.

2. Facts are as follows:-

2.1 The petitioner had moved application for disclosure of certain information under the Right to Information Act before the Public Information Officer, Kalol Police Station. The case of the petitioner was that certain factory premises contained hazardous chemicals and there was every possibility of an accident resulting into considerable loss of life and property. Since, the Public Information Officer did not supply the information within time permitted under the Act though according to the petitioner it was an urgent issue, the petitioner approached Chief Information Commissioner under Section 18 of the Right to Information Act.

3. It is the case of the petitioner that the said authority, respondent No.3 herein, which passed order in favour of the petitioner, did not ensure that such order be complied. The petitioner, therefore, requested to initiate the contempt proceedings against Public Information Officer and refer the matter to the High Court to proceed under the Contempt of Courts Act. Respondent No.3 did not accede to the request of the petitioner. According to the petitioner, the stand of the respondent No.3 amounts to contempt of his own Court. The petitioner, therefore, approached His Excellency the Governor of Gujarat seeking permission for prosecution of respondent No.3 under Section 197 of the Criminal Procedure Code. The said application came to be dismissed by impugned order dated 30.11.2009. Not satisfied, the petitioner preferred review application, which also came to be turned down by subsequent order dated 15.6.2010. He has, therefore, approached this Court assailing the above mentioned orders.

4. First and foremost, I am of the opinion that the Chief Information Officer is not a Court for the purpose of Contempt of Courts Act. Section 18 of the Right to Information Act cloths the said authorities with certain powers of a Court. In Sub-Section (3) of Section 18, it is provided as under:-

"18(3)

The Central Information Commission or State Information Commission, as the case may be shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any Court or office;"

Section 20 of the Right to Information Act pertains to penalties, which can be imposed when it is found that the Public Information Officer or the Public Information Officer 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 malafide denied request for information or knowingly given incorrect, incomplete or misleading information or destroyed information, which was the subject matter of the request or obstructed in any manner in furnishing information.

5. It can thus be seen that all acts or omissions connected with information which is mala fide withheld or information supplied is incorrect or incomplete or misleading, are dealt with under Section 20 by making such action penal. In this context, if one peruses Section 18, it clearly emerges that Information Commission is entrusted with the powers of Civil Court under the Code of Civil Procedure, 1908 for specified purposes such as summoning and enforcing attendance of persons and to compel them to give evidence, requiring the discovery and inspection of documents, receiving evidence on affidavit, requisitioning any public record or copies for issuing summons for examination of witnesses or documents. Such powers cannot be construed as converting the said authority into a Court for all purposes much less for the purpose of Contempt of Courts Act.

6. There was, therefore, no question of respondent No.3 committing contempt of his own Court. Even otherwise, by refusing to initiate Contempt

of Court and referring the same to the High Court, he could not be said to have committed any contempt. The application of the petitioner under Section 197 of the Criminal Procedure Code, therefore, was without any substance and was rightly dismissed by His Excellency the Governor. The reasons or non-reasons for rejecting the review, therefore, are not relevant for the present petition. The petition is, therefore, dismissed.

(Akil Kureshi, J.)

SHASHIKANT JADHAV. Naib Tahsildar

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 3469 of 2013****In LETTERS PATENT APPEAL NO. 799 of 2013****In SPECIAL CIVIL APPLICATION NO. 4150 of 2012****With****LETTERS PATENT APPEAL NO. 799 of 2013****In SPECIAL CIVIL APPLICATION NO. 4150 of 2012**=====

KETAN PRADYUMNA BHATT....Applicant(s)

Versus

BOARD OF GOVERNORS IIM-A & 4....Respondent(s)
=====

Appearance:

PARTY-IN-PERSON, ADVOCATE for the Applicant(s) No. 1

DS AFF.NOT FILED (R) for the Respondent(s) No. 1 - 5

MR NANDI CHUDGAR with MR KUNAL J VYAS for NANAVATI ASSOCIATES,
ADVOCATE for the Respondent(s) No. 2 , 4

NOTICE SERVED BY DS for the Respondent(s) No. 1 , 3 , 5

RULE SERVED for the Respondent(s) No. 3

RULE SERVED BY DS for the Respondent(s) No. 1 - 5
=====

CORAM: **HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

and

HONOURABLE MR.JUSTICE MOHINDER PAL

Date : 17/06/2013

ORAL ORDER**(PER : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI)**

1. One Ketan P.Bhatt, appearing as party-in-person, invited attention of the Court to the fact that the present civil application is filed seeking condonation of delay of 125 days caused in preferring the LPA. Notice was issued on this civil application on 02.4.2013 returnable on 15.4.2013 and

M/s.Nanavati Associates appeared for respondent Nos.2 & 4 in this civil application. Respondent No.1 is the Board of Governors IIM-Ahmedabad. Respondent No.3 is the Chief Information Commissioner (CIC) and Respondent No.5 is Public Information Officer (PIO) IIM-Ahmedabad. The reasons set out for delay is in paragraph 2 of the application, which reads as under:

"The Applicant submits that he is a first time litigant. And that he took some time to understand ramifications of the learned single Judge order which partly granted his prayers. He also took some time to decide whether and how he will challenge the order of the learned single Judge. The Applicant consulted the learned advocate of his petition and expressed his willingness to challenge the learned single Judge order. The learned advocate who conducted the Applicant's original petition refused to appear in the Letters Patent Appeal as she was very busy at that point of time due to some reason. Thereafter Applicant also approached few other advocates but for some reasons he could not find out and engage a lawyer to appear on his behalf in the Letters Patent Appeal."

1.1 In view of the aforesaid submissions, the matter requires consideration. **RULE.** Learned advocates M/s.Nanavati Associates waived service for respondent Nos.2 and 4. So far as condonation of delay is concerned, the other respondents are not the contesting parties. Hence, this civil application is allowed and Rule is made absolute.

2. Letters Patent Appeal (St.) No.504 of 2013 is taken up for consideration. Registry to give regular number.

3. We heard party-in-person Ketan P.Bhatt. The party-in-person gave history of the controversy involved in the matter. The party-in-person submitted that he is a computer centre staff in IIM and his designation is computer professional. He joined IIM in the year 1987 and the dispute arose in the year 1991 when qualifications were arbitrarily changed by IIM. The party-in-person submitted that, in the year 1993 there came an advertisement for recruitment of head of computer centre and friction between the party-in-person and the IIM increased thereafter. It is the case of the party-in-person that wife of one faculty member was recruited to the post of head of computer centre, though she was having the same qualifications as that of the party-in-person. Be that as it may, the same thing becomes insignificant for the fact that, till 2008 the party-in-person did not take recourse to any remedy to ventilate his grievance.

4. It so happened that, in 2008 the appellant was project leader of enterprise resources planning. According to the party-in-person, it was a project of about Rs.5 crore and in that project, it was alleged against the party-in-person that he is favouring a particular vendor and on that ground he was relieved from the responsibilities of project leader. That increased the rift between the party-in-person and the employer-IIM. It is thereafter that the party-in-person asked for some information – information sought for was the Minutes of the Committee to whom the appellant used to report.

4.1 What is important is the appellant asked for Minutes of the Committee (Computer Committee) right from 1991 in

the year 2010. It is the case of the party-in-person that the IIM replied to the party-in-person that the information consists of 25000 pages and if it is to be charged @ Rs.2/- per page, an amount of Rs.50,000/- is required to be deposited by him. It is the case of the party-in-person that he challenged this order before CIC and the CIC, on considering the submissions made by the party-in-person, directed IIM to supply the aforesaid information free of cost. It is the case of the party-in-person that, on 19.5.2010 some persons in sumo vehicle came to his place and delivered him 23000 pages. It was just before the date of the impugned resolution which was passed in a meeting convened on 20.5.2010 whereby the Board of Governors resolved as under:

"Item 7 Any other matter:

Board expressed concern on the increasing request received by the Institute under the RTI Act 2005. Many of the requests appeared to be from vested interests. Some of the information collected was being quoted out of context in the media. This could cause avoidable harm to the Institute. It was decided that Director should use his own discretion in providing information on RTI queries and the Board would support the his decision."

4.2 The party-in-person vehemently submitted that this resolution is violative of his fundamental rights and the party-in-person has the fundamental right to have the information which are provided under the RTI Act and, therefore, this resolution should be declared to be *ultra vires* and he should be granted necessary relief. It is thereafter that the party-in-person approached this Court by filing SCA No.4150 of 2012. The petition was affirmed on 27.3.2012. The matter was considered by learned single Judge and learned single Judge

was pleased to dismiss the same by judgment and order dated 15.10.2012. It is against this order that the present LPA is preferred.

5. There was delay in filing the appeal, for which a civil application seeking condonation of delay was filed which is considered by this Court and delay is condoned. On merits, we perused the order of learned single Judge and we find that learned single Judge has not committed any error in passing the order impugned in the appeal. We find no merits in the appeal and, therefore, the appeal is dismissed.

6. At this juncture, the Court would like to add that the present case is one of the cases wherein the benevolent legislation of RTI is misused and information in the nature of Minutes of Computer Committee right from 1991 are sought in the year 2010. We restrain ourselves from commenting anything further in this matter, but it is really surprising that the person remains in job right from 1991 till 2010 and then on one fine morning in 2010 he demands information starting from 1991 from his employer under the RTI Act .

Sd/-

(RAVI R. TRIPATHI, J.)

Sd/-

(MOHINDER PAL, J.)

(KMGThilake)

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 449 OF 2007

1. Shekhar Prabhudessai
Public Information Officer,
The Superintendent of Police,
South Goa, Margao.
2. Tony M. Fernandes,
Assistant PIO,
Margao, Goa. Petitioners

V e r s u s

1. Shri Samiro Pereira,
R/o. H. No. 50,
Orlim Gontonaik Vaddo,
Salcete, Goa.
2. Goa State Information Commission,
At Panaji constituted with two members
Having its office at ground floor,
Shramashakti Bhavan, patto
Panaji-Goa. Respondents

Mr. E. Afonso, Government Advocate for the Petitioners.

Coram :- F. M. REIS, J

Date : 11th February, 2013.

ORAL JUDGMENT

Heard Shri Afonso, learned Counsel appearing for the Petitioners.
None for the Respondents, though served.

2. The above Petition challenges an Order passed by the State Information Commission dated 14.06.2007, whereby both the Petitioners have

been directed to pay penalty/fine of Rs.5,000/- each in terms of the provisions of Section 20 of The Right to Information Act, 2005, (for short 'said Act')

3. Briefly, the facts of the case are that the Respondents sought information from the Petitioners in connection with some complaints lodged at different Police Station. The subject matter of dispute in the present Writ Petition is the information sought from the Petitioner no. 1, who was a Public Information Officer and the Petitioner no.2 was an Assistant Public Information Officer. On receipt of the said application, the matter was made over to the Petitioner no.2 by the Petitioner no.1 on 21.08.2006. The application filed by the Respondent no.1 was dated 17.08.2006. Immediately, thereafter, on 22.08.2006, the Petitioner no.2 sought information from the concerned Colva Police Station with regard to the information sought by the Respondent. Thereafter, reminders were sent to the said Police Station to remit such information and ultimately, it appears that somewhere in January, 2007, the information was supplied to the Respondent no.1. In the meanwhile, the Respondent no.1 preferred an Appeal before the First Appellate Authority alleging that the information sought by the Respondent no.1 has not been supplied by the Petitioners. The Appeal came to be allowed and the Petitioners were directed to furnish such information. Despite of such direction, the Respondent no.1 preferred a Second Appeal before the State Information Commission alleging that despite of the Orders passed by the First Appellate Authority, some of the information was not supplied. Nevertheless, it appears that in the meanwhile the information was duly supplied and the Respondent no.1 being satisfied with such information, sought to withdraw the Appeal before the State

Information Commission. The Commission did not find any deficiency in the supply of the information but, however, as Respondent no.2 found that there was delay in supplying such information, a show cause notice was issued to the Petitioners as to why penalty should not be imposed in terms of Section 20 of the said Act. A reply to the said show cause notice was filed by the Petitioners, but, however, the Respondent no.2 by the impugned Order dated 14.06.2007, imposed a penalty/fine of a sum of Rs.5,000/- on each of the Petitions. Being aggrieved by the said Order, the Petitioners have preferred the present Petition.

4. Shri E. Afonso, learned Government Advocate appearing for the Petitioners, has pointed out that in terms of Section 5 of the said Act, the persons from whom the information was sought by the Assistant Public Information Officer are deemed to be Information Officers and, as such, considering that the information was sought from the Colva Police Station, the officials therein were deemed to be Public Information Officers. Learned Counsel as such pointed out that any default in supplying such information is on account of the breach committed by such Officers at the Colva Police Station. Learned Counsel has taken me through the definition of the Right to Information and pointed out that even the Assistant Public Officer is a Public Information Officer as such, the Respondent no.2 was not justified to impose fine on the Petitioners. Learned Counsel further pointed out that in any event, such penalty/fine is to be imposed only in cases in which there was no reasonable cause shown by the Petitioners for such delay in furnishing such information. Learned Counsel has taken me through the affidavit and pointed out that the averments therein reveal that in fact the

Respondent no.2 immediately upon receipt of the complaint lodged by the Respondent no.1, took necessary steps to call for the information from the concerned Colva Police Station. Learned Government Advocate further pointed out that even reminders were sent to the concerned Police Station to furnish such information. Learned Counsel as such submits that there was reasonable cause for the delay and, as such, the question of imposing any penalty/fine on the Petitioners is totally misplaced. Learned Counsel as such submits that the impugned Order to the extent of imposing of penalty/fine to the Petitioners, be quashed and set aside.

5. I have carefully considered the submissions of the learned Counsel. No doubt, in terms of Section 5 of the said Act, the Officials who have been asked to submit the information to the Public Information Officer are deemed to be Public Information Officers. But, however, in the present case, on perusal of the affidavit filed by the Petitioner no.2, I find that the Petitioners immediately upon receipt of the application dated 17.08.2006 seeking information by the Respondent no.1 called upon the Colva Police Station on 22.08.2006 to supply such information. Para 4 of the said affidavit further discloses that reminders on that count were sent to the concerned Police Station. Para 5 of the said affidavit also states the steps taken by the Petitioner no.2 to obtain such information from the concerned Police Station. In such circumstances, I find that the Tribunal was not justified to impose a penalty/fine of Rs.5,000/- each to the Petitioners. On perusal of the affidavit, the facts narrated therein have not been disputed and, as such, the Petitioners appear to have had a reasonable cause for the delay in supplying the information. The

information admittedly was not with the Petitioner no.2 and they had to rely upon the supply of such information from the concerned Police Station. In overall facts and circumstances of the case, I find that the said Order dated 14.06.2007, passed by the Respondent no.2, to the extent of imposing penalty/fine of Rs.5,000/- on the Petitioners, cannot be sustained and deserves to be quashed and set aside. Section 20 of the said Act clearly provides that in case reasonable cause is shown, the delay can be condoned. In the peculiar facts and circumstances of the case and taking note of the fact that the information had to be obtained from the Colva Police Station, I find that the Petitioners have shown reasonable cause in the delay in supplying such information.

6. Shri E. Afonso, learned Government Advocate appearing for the Petitioners, pointed out that action has also been initiated against the concerned officials on account of such lapse and it is expected that such action be taken to its logical condition.

7. In view of the above, the penalty/fine of Rs.5,000/- imposed on the Petitioners by Order dated 14.06.2007, is quashed and set aside.

8. Rule is made absolute in the above terms.

F .M. REIS, J.

arp/*

CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
Tel: +91-11-26101592

File No. CIC/RM/A/2014/000210/BS/8301
10 August 2015

Relevant Facts emerging from the Appeal:

Appellant : Mr. Chandratan B Somani
A-73, Eeshita Towers,
Navrangpura,
Ahmedabad - 380009

Respondent : CPIO & Income-Tax Officer, ward-2(4)
Income Tax Department
O/o the Income Tax officer ward -2(4)
Room No – 119, Aayakar Bhavan,
Majura Gate, Surat – 395001

CPIO & Joint Commissioner of Income-tax, Range-2
Income Tax Department
O/o Joint Commissioner of Income-tax, Range -2
Room No – 102, Aayakar Bhavan,
Majura Gate, Surat- 395001

SHASHIKANT JADHAV, Naib Tahsildar
CPIO & Commissioner of Income-tax-I
Income Tax Department
O/o Commissioner of Income-tax-I
1st Floor, Room No – 123, Aayakar Bhavan,
Majura Gate, Surat- 395001

RTI application filed on : 12/08/2013
PIO replied on : 21/08/2013 & 20/08/2013 & 27/08/2013
First appeal filed on : 25/09/2013
First Appellate Authority order : 28/10/2013
Second Appeal dated : 05/11/2013

Information sought:-

The appellant has sought the following information related to Status of tax returns, arrears & cases against Radheyshyam Somani (PAN: ADOPS 3006P) and Purushottam Somani (PAN: ADOPS 3003J) addressed at 303, Empire State Building, Ring Road, Surat – 395 002.

- a. Whether Radheyshyam Somani (PAN: ADOPS 3006P) and Purushottam Somani (PAN: ADOPS 3003J) have regularly filed their tax returns from A.Y. 2000-01 onwards? If no, for which years, they have filed tax returns & how much tax they have paid?
- b. All facts/documents related to Radheyshyam Somani (PAN: ADOPS 3006P) and Purushottam Somani (PAN: ADOPS 3003J) for their annual year 2003-04 with copies of their A/o. passed u/s 143(3) with copies of orders of CIT (A)-II along with copies of tribunal orders for ITA Nos. 2168, 2220 & 2222/Ahd/2009.

- c. Considering their large scale violation of laws & gross irregularities detected in A.Y. 2003-04 tax returns, whether their tax returns of earlier years & later years were scrutinized for detection & recovery of total amount unduly hidden & grabbed by them during these years?
- d. Whether the department is aware about their all benami & fictitious export firms addressed at 303, Empire State Building, Ring Road, Surat – 395002 & elsewhere as mentioned in enclosed sheet? If yes, provide information on these firms & their tax status. If no, whether department will consider for doing the needful to identify it all for finding their total hidden income to ascertain real amount of due tax & arrears in their name as well as in their firms?
- e. What actions the department has taken against them for recovery of tax arrears/dues as well as to facilitate their prosecution for their economic & criminal offences?
- f. Whether department is having track on their present operations, whereabouts, properties etc.?

Grounds for the Second Appeal:

The CPIO has not provided the desired information.

Relevant Facts emerging during Hearing:

The following were present

Appellant: Mr. C. Somani through VC;

Respondent: Mr. Varghese K. Philip, CPIO through VC; Mr. H. K. Lal, FAA through VC;

The appellant stated that he has not received the information sought in his RTI application dated 12/08/2013. The FAA stated that the information relates to two assesses viz. Shri Radheshyam Somani and Shri Purushottam Somani and is exempted from disclosure under Section 8(1)(j) of the RTI Act. In support of his contention he cited Hon'ble Supreme Court's decision dated 03/10/2012 in the matter of Girish Ramchandra Deshpande and Hon'ble Delhi High Court's decision dated 24/11/2014 in the matter of CIT Vs Rakesh Kumar Gupta. The appellant contested quoting CIC decision dated 24/03/2011 in the matter of Manoj Kumar Saini Vs CIT (File no. CIC/LS/A/2010/001044/DS) wherein the Commission had allowed disclosure of net taxable income of Munna Lal Saini.

The FAA strongly argued that the Hon'ble Supreme Court's decision in the matter of Girish Ramchandra Deshpande is clear wherein the Court has held that "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."

The appellant alleged that the assesses are fraudsters and are involved in a scam of over Rs.100/-Cr. and Mr. Radheshyam Somani is still at large and two criminal cases are pending against them including one in CBI Court. He vehemently argued that there is larger public interest in the matter as the Commission has held that disclosure of information will lead to greater transparency and accountability. He pointed out that the Hon'ble Supreme Court in the matter of S.P. Gupta Vs President of India AIR 1982 SC 149 has held that public interest means "redressing public injury, enforcing public duty, protecting social, collective, "defused" rights and interest." The FAA argued that the Hon'ble Supreme Court's decision cited by the appellant was given in response to a PIL whereas the decisions cited by him are under the RTI Act and consequently binding on the Commission under article 143 of the Constitution.

The appellant asserted that as per the proviso to Section 8(1)(j) information which cannot be denied to Parliament cannot be denied to him.

Decision notice:

The appellant in his submissions has alleged that Somani brothers are fraudsters involved in a scam, have criminal cases against them and are absconding; hence, there is public interest in the disclosure of the information.

The appellant's assertion that public interest is involved in the disclosure of personal information relating to Somani brothers is flawed. The right to privacy has been recognized as a fundamental right to which a citizen is entitled to, therefore, unless the condition mentioned in Section 8(1)(j) is satisfied, the information cannot be provided. In a case where personal information relating to third party is sought the burden on the applicant to show larger public interest is much more onerous than may be a routine case.

The assessment proceedings are not public proceedings where all and sundry are allowed to participate and add their opinion to the proceedings. Merely because a spirited citizen wishes to expose alleged fraudsters the same cannot be stated to be in larger public interest. On the contrary, larger public interest would require that assessment proceedings are completed expeditiously and by the authorities who are statutorily empowered to do so.

The Hon'ble Supreme Court in the matter of Girish Ramchandra Deshpande has held that information relating to income tax return of an assessee is "personal information" which stands exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless the CPIO is satisfied that larger public interest justifies the disclosure of such information.

The appellant has contended that information which cannot be denied to Parliament cannot be denied to him. This issue has also been elaborately clarified by the Hon'ble Delhi High Court in its decision dated 30/11/2009 in the matter of *Union Of India Thr. Director vs Central Information Commission & ors.* WRIT PETITION (CIVIL) NO. 8396 OF 2009 holding as under:

*"43. A proviso can be enacted by the legislature to serve several purposes. In **Sundaram Pillai versus Patte Birman** (1985) 1 SCC 591 the scope and purpose of a proviso and an explanation has been examined in detail. Normally, a proviso is meant to be an exception to something in the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. A proviso cannot be torn apart from the main enactment nor can it be used to qualify and set at naught, the object of the main enactment Sarthi on "Interpretation of Statutes", referred to in the said judgment, states that a proviso is subordinate to the main section and one of the principles which can be applied in a given case is that a proviso would not enlarge an enactment except for compelling reasons. It is unusual to import legislation from a proviso into the body of the statute. But in exceptional cases a proviso in itself may amount to a substantive provision. **The proviso in the present cases is a guiding factor and not a substantive provision which overrides Section 8(1)(j) of the RTI Act. It does not undo or rewrite Section 8(1)(j) of the RTI Act and does not itself create any new right. The purpose is only to clarify that while deciding the question of larger public interest i.e., the question of balance between 'public interest in form of right to privacy' and 'public interest in access to information' is to be balanced.**"*

In terms of Section 8(1)(j) of the RTI Act 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.

In the matter at hand the appellant has not succeeded in establishing that the information sought is for larger public purpose. It being so, there is no need to interfere with the respondent's decision.

The matter is closed.

BASANT SETH
Information Commissioner

Authenticated true copy:

(R. L. Gupta)
Dy. Registrar/Designated Officer

SHASHIKANT JADHAV. Naib Tahsildar

North Block, New Delhi
Dated September 24, 2010

OFFICE MEMORANDUM

Subject:- RTI applications received by a public authority regarding information concerning other public authority/authorities.

The undersigned is directed to refer to this Department's OM of even number dated 12th June, 2008 on the above noted subject, clause (iii) of para 3 of which provides that if a person makes an application to the public authority for information, a part of which is available with that public authority and the rest of the information is scattered with more than one other public authorities, the Public Information Officer (PIO) of the public authority receiving the application should give information relating to it and advise the applicant to make separate applications to the concerned public authorities for obtaining information from them. **It further provides that if no part of the information is available with the public authority receiving the application but scattered with more than one other public authorities, the PIO should inform the applicant that information is not available with the public authority and that the applicant should make separate application to the concerned public authorities for obtaining information from them.**

2. The matter has been examined in consultation with the Chief Information Commissioner, Central Information Commission and it has been decided to advise the PIOs that if the details of public authorities who may have this information sought by the applicant are available with the PIO, such details may also be provided to the applicant.
3. Contents of this OM may be brought to the notice of all concerned.



[K.G. Verma]
Director
Tel. 2309 2158

1. All the Ministries/Departments of the Government of India
2. Union Public Service Commission/Lok Sabha Secretariat./Rajya Sabha Secretariat/Cabinet Secretariat/Central Vigilance Commission/President's

CENTRAL INFORMATION COMMISSION
Club Building (Near Post Office)
Old JNU Campus, New Delhi - 110067
Tel: +91-11-26161796

Decision No. CIC/SM/A/2011/001207/SG/15488
Appeal No. CIC/SM/A/2011/001207/SG

Relevant Facts emerging from the Application:

Appellant : Mr. Rahul Aggarwal
Res: BG-70 (Poorvi),
Shalimar Bagh,
Delhi- 110 088.

Respondent : Mr. M. K. Sripathi
PIO & AGM
Syndicate Bank
Head Office
Manipal- 576 104, Karnataka

RTI application filed on : 14/01/2011
PIO replied : 15/02/2011
First appeal filed on : 25/02/2011
First Appellate Authority order : 21/03/2011
Second Appeal received on : 13/04/2011

Information Sought:

- Details of office note which was put before the competent authority after receiving my resignation letter dated 22.06.98.
- Copy of Office Note/Order or any written direction of the competent authority or other instruction of accepting my resignation letter.
- Copy of the said resignation letter which was accepted and I was relieved from the services.
- Copy of letter no. 3307/0089/PD:RD(01/OR -4951 dated 29-11-2010 sent to Ministry of Finance and to Banking division /President Secretariat in reply to my representation made to Govt. Authorities.

Reply of the Public Information Officer (PIO):

It is observed that the issue of your relief from service of the Bank accepting your resignation was agitated by you before the Hon'ble High Court of Delhi in WP No. 4851/2000 and that the Court had dismissed the said Petition, upholding the Bank's action, on 02.05.2002. Your Appeal against the above Order was dismissed by the Appellate Court on 30.07.2002, observing that regard to the conduct of the Appellant, we are of the opinion that it is not a fit case where this Court should exercise the discretionary jurisdiction under clause No.10 of the Letters Patent Appeal. You had challenged this order before the Hon'ble Supreme Court of India in SLP No. 22460/2002, which was also dismissed with the observation that we do not find any merit in this Petition. The Special Leave Petition is accordingly dismissed". In the circumstances, it is observed that all the issues relating to your relief from the Bank cm resignation have been finally and irrevocably settled legally. In spite of this, you had once again approached the Hon'ble Appellate. Court for reviewing its 'Judgment for which the Court expressed its reservation on your misusing the process of law and directed you to pay a sum of 50001- towards cost.

In this back drop, we find that your request for the first three information I documents is to reopen an issue 'which has been finally settled and set at rest by the Hon'ble Apex Court of the Country and also for which the Hon'ble High Court of Delhi had found you as misusing the process of law by repeated Petitions. The intention of the RTI Act is not to enable such an exercise, which results in precipitation of issues endlessly.

Further, your Application indicates that you have already had access to a copy of the document requested for by you under item No.4. In any case, this document being a correspondence between the Bank and the Government of India is a privileged document and is held by the Bank in fiduciary capacity.

The above apart, we do not find any public interest in disclosing these information to you. in view of the foregoing, we are unable to furnish the information sought by you by virtue of Section 8(1) (e) of the RTI Act.

Grounds for the First Appeal:

Information provided is unsatisfactory

Order of the First Appellate Authority (FAA):

I have gone through all the papers placed before me and I observe that you are misusing the precious Act of RTI Act and causing inconvenience to the Bank and diversion of its resources and manpower to furnish reply to your applications. The legal point involved in your case was finally heard and disposed of by the Competent Court of Law.

As such, you cannot re-open the closed issue by resorting to filing applications under RTI Act. The SLP filed by you was dismissed by the Hon'ble Supreme Court and confirmed the order of the I-Hon'ble Delhi I-Ugh Court After that you preferred Review petition and in the said petition court expressed its reservation on your misusing the process of law and directed you to pay a sum of Rs 5000/- as costs. The same was not challenged by you again. Thus, the decision on the matter has attained finality. The legal position being so now contravening the repeated orders of Hon'ble court you are preferring applications under RTI Act. This act amounts to contempt of Court. The Bank reserves its right to prefer contempt petition against you.

Moreover, the documents sought by you are privileged documents and cannot be parted with. The main motto of RTI Act is to curb the corruption and to maintain transparency of the information but not to trouble the public authority by resorting to file applications after application on same/similar issues. Moreover no public interest is seen in your request. Accordingly, ***I do not find any merit in your appeal hence, rejected.***

Grounds for the Second Appeal:

The FAA rejected the Appeal. The Appellant argued that "The bank had rejected the appeal with malafides which, can be established by the Fact that the information sought for is related to me only which bank has refused to provide just with. the intention of harassing me and they have given a threat of filing contempt proceeding & against me on the grounds that by asking this information I am abusing the process of law as well as RTI Act . This it self proves the malafides on the part of bank since .merely asking for the information related to decided issue does not and can not amount to misuse of process of law. I would, like to add that Commission has allowed my earlier appeals .in my favor in spite of stiff opposition by the bank during personal/ hearing before the commission so bank authorities are trying to harass me without, not providing the information sought for although-this is pertains to me on1y.

Relevant Facts emerging during Hearing:

The following were present

Appellant: Mr. Rahul Aggarwal;

Respondent: Mr. M. K. Sripathi, PIO & AGM on video conference from NIC-Udupi Studio;

The respondent states that the matter in which the Appellatn is seeking information have been disposed in a court and hence the appellant should not seek informatno regarding this. The PIO also claims exemption under Section 8(1)(e) on the ground that there is no public interest inveolved in giging

the information to the Appellant. From the submissions to the PIO it is apparent that there is no justification under RTI Act that he is able to offer for denying the information. The PIO has refused to give the information without any basis in the law. The Right to Information is a fundamental right to citizens and denial of information is only permitted under the exemptions given under Section 8(1) of the RTI Act. The onus to prove that the denial of information is justified is on the PIO as per Section 19(5) of the RTI Act. The PIO has not justified the denial of information by the Appellant in his initial order under the provisions of the RTI Act and has again not given any reasons during the hearing as per the Act for denial of information. It thus appears to be the denial of information without any reasonable cause. The PIO has made no attempt to show how section 8(1)(e) of the RTI Act would be applied in the instant case.

The respondent states that the person responsible for denying the information was the then PIO Mr. M. P. Nagpal, DGM(P).

Decision:

The Appeal is allowed.

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

The issue before the Commission is of not supplying the complete, required information by the then PIO Mr. M. P. Nagpal, DGM(P) within 30 days as required by the law.

From the facts before the Commission it appears that the then PIO is guilty of not furnishing complete information within the time specified under sub-section (1) of Section 7 as per the requirement of the RTI Act. It appears that the PIO's actions attract the penal provisions of Section 20 (1). A showcause notice is being issued to him, and he is directed to give his reasons to the Commission to show cause why penalty should not be levied on him.

The then PIO Mr. M. P. Nagpal will present himself before the Commission at the above address on **02 December 2011 at 4.30pm**, along with his written submissions showing cause why penalty should not be imposed on him as mandated under Section 20 (1). He will also submit proof of having given the information to the appellant.

If there are other persons responsible for the delay in providing the information to the Appellant the PIO is directed to inform such persons of the show cause hearing and direct them to appear before the Commission with him. If no other responsible persons are brought by the persons asked to show cause hearing, it will be presumed that they are the responsible persons.

This decision is announced in open chamber.

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

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

Shailesh Gandhi
Information Commissioner
04 November 2011

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

Copy through Mr. M. K. Sripathi, PIO & AGM to:

1- The then PIO Mr. M. P. Nagpal;

कारागृहातील न्यायाधीन (Under Trial) वा शिक्षाधीन (Convicted) बंदयांना, माहिती अधिकार अधिनियम २००५ अन्वये त्यांनी माहिती मागविताना, दारिद्र्यरेषेखालील अर्जदार न समजण्याबाबत.

महाराष्ट्र शासन
सामान्य प्रशासन विभाग
शासन परिपत्रक क्र.संकिर्ण २०१४ /प्र.क्र.(२६५/१५) सहा.
मंत्रालय, मुंबई - ४०० ०३२.
दिनांक- ०१.१२.२०१५.

परिपत्रक:-

माहितीचा अधिकार अधिनियम २००५ मधील कलम ३ अन्वये सर्व नागरीकांना माहितीचा अधिकार प्रदान करण्यात आलेला आहे. तर अधिनियमाच्या कलम ७ (५) मध्ये, समुचित शासनाकडून निर्धारित करण्यात आलेल्या दारिद्र्यरेषेखालील अर्जदारांना, विनाशुल्क माहिती देण्याची तरतूद करण्यात आली आहे. तथापि, कारागृहातील न्यायाधीन बंदी (Under Trial) वा शिक्षाधीन (Convicted) बंदयास दारिद्र्य रेषेखालील अर्जदार समजावे किंवा कसे याबाबत अधिनियमामध्ये स्पष्टता नाही. तत्संदर्भाने विधी व न्याय विभाग तसेच गृह विभागाचे अभिप्राय घेतले असता, न्यायाधीन बंदी (Under Trial) वा शिक्षाधीन (Convicted) बंदयास दारिद्र्य रेषेखालील अर्जदार समजावे किंवा कसे याबाबत मार्गदर्शक सूचना निर्धारित करण्यात याव्यात आणि कारागृहातील बंदीवान अर्जदारांची प्रकरणे स्वतंत्रपणे तपासून न्यायाधीन बंदी (Under Trial) वा शिक्षाधीन (Convicted) बंदयास दारिद्र्य रेषेखालील अर्जदार केव्हा समजावे, याबाबत प्रकरणपरत्वे निर्णय घेण्याचे अभिप्राय विधी व न्याय विभागाने दिले आहेत.

शासनाच्या पत्र क्रमांक केमाअ-२००६/प्र.क्र.७/०६/पाच दि. २०/६/२००६ अन्वये माहितीचा अधिकार अधिनियम २००५ मधील तरतूदीनुसार कोणाला दारिद्र्य रेषेखालील व्यक्ती समजावे याबाबत निकष विहित केलेले आहेत. त्यानुसार नागरी क्षेत्रामध्ये वास्तव्य करणाऱ्या ज्या व्यक्तीचे दरमहा दरडोई उत्पन्न रू. ५९१.७५ पेक्षा कमी आहे, तर ग्रामीण भागात ग्रामपंचायतीकडून करण्यात आलेल्या कुटूंबांच्या सर्वेक्षणानुसारच्या, दारिद्र्यरेषेखालील यादीतील व्यक्ती आणि ज्या कुटूंबाकडे पिवळ्या रंगाची शिधापत्रीका आहे, असे कुटूंब या सर्वांना दारिद्र्यरेषेखालील व्यक्ती समजण्यात येते.

कारागृहात दाखल होण्यापूर्वी बंदयाचे उत्पन्नाचे विविध स्रोत असू शकतात, त्याव्यतिरिक्त कारागृहात दाखल झाल्यानंतर, कारागृहातील नियमानुसार त्यास मिळणारे आर्थिक उत्पन्नही असू

शकते, यास्तव कारागृह बंदयांना सरसकट दारिद्र रेषेखालील व्यक्ती समजून त्यांना विनाशुल्क माहिती देणे उचित होणार नसल्याचे गृह विभागाने अभिप्राय दिले आहेत.

आता विधि व न्याय विभाग तसेच गृह विभागाचे अभिप्राय लक्षात घेता, माहिती अधिकार अधिनियम २००५ च्या अंमलबजावणीसाठी कारागृहातील न्यायाधीन बंदी (Under Trial) वा शिक्षाधीन (Convicted) बंदयास माहिती अधिकारात माहिती मिळविण्यासाठी दारिद्र रेषेखालील अर्जदार समजावे किंवा कसे याबाबत मार्गदर्शक सूचना निर्गमित करण्याची बाब शासनाच्या विचाराधीन होती. तदनुसार शासन पुढीलप्रमाणे निर्णय घेत आहे-

कारागृहातील न्यायाधीन बंदी (Under Trial) वा शिक्षाधीन (Convicted) बंदयास सरसकट दारिद्ररेषेखालील अर्जदार समजण्यात येऊ नये. कारागृहात दाखल होण्यापूर्वी जे बंदी दारिद्ररेषेखालील कुटुंबात मोडत होते त्यांचा यासाठी अपवाद असेल. मात्र, दारिद्ररेषेखालील कुटुंबात मोडणाऱ्या बंदयांना (Convicted) शिक्षा झाली असल्यास व ती व्यक्ती १ वर्षाहून अधिक कालावधीसाठी शिक्षाधीन बंदी असल्यास, त्यांना कारागृहातून विहित मर्यादेपेक्षा जास्त उत्पन्न मिळू शकते, त्यांना दारिद्ररेषेखालील अर्जदार समजण्यात येऊ नये. प्रकरणांमध्ये बंद्याचे उत्पन्न व दारिद्र्यरेषेसंदर्भातील विहित पुरावा लक्षात घेऊन त्यास दारिद्र्यरेषेखालील व्यक्ती समजावे किंवा कसे, याबाबत संबंधीत जन माहिती अधिकारी यांनी स्वविवेके निर्णय घ्यावा.

सदर शासन परिपत्रक महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून, त्याचा सांकेतांक २०१५१२०११२०४२९५८०७ असा आहे. हे परिपत्रक डीजीटल स्वाक्षरीने साक्षांकित करून काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने

**Rajendra M
Jadhav**

(राजेंद्र मा. जाधव)
शासनाचे उपसचिव

Digitally signed by Rajendra M Jadhav
DN: c=IN, o=Government Of Maharashtra, ou=GENERAL
ADMINISTRATION DEPT., postalCode=400032,
st=Maharashtra,
2.5.4.20=656ebca17998fd5c29178a5abcf1aa60d72bd5515
ddc791d9ad9786418f07e4f, cn=Rajendra M Jadhav
Date: 2015.12.01 12:05:22 +05'30'

प्रति,

- १) मा.राज्यपाल यांचे सचिव,
- २) मा.मुख्यमंत्री / मा.उपमुख्यमंत्री यांचे प्रधान सचिव/सचिव.
- ३) सचिव, मुख्य सचिवांचे कार्यालय, महाराष्ट्र राज्य, मुंबई.

- ४) राज्य मुख्य माहिती आयुक्त, राज्य माहिती आयोग, महाराष्ट्र राज्य मुंबई.
- ५) सर्व राज्य माहिती आयुक्त, राज्य माहिती आयोग, महाराष्ट्र राज्य मुंबई.
- ६) *प्रबंधक, मूळ न्याय शाखा, उच्च न्यायालय, मुंबई
- ७) *प्रबंधक, उच्च न्यायालय, अपील शाखा, मुंबई
- ८) *सचिव, महाराष्ट्र लोकसेवा आयोग, मुंबई
- ९) *सचिव, महाराष्ट्र विधानमंडळ सचिवालय, मुंबई
- १०) प्रबंधक, लोकआयुक्त व उपलोकआयुक्त यांचे कार्यालय, मुंबई
- ११) मंत्रालयीन विभागाचे सर्व अपर मुख्य सचिव/प्रधान सचिव/सचिव
- १२) महासंचालक, माहिती व जनसंपर्क संचालनालय, मुंबई
- १३) सर्व मंत्रालयीन विभाग (प्रशासकीय अधिपत्याखालील सर्व विभाग प्रमुख/ कार्यालय प्रमुख यांच्या निदर्शनास आणण्याच्या विनंतीसह)
- १४) सर्व विभागीय आयुक्त
- १५) महासंचालक, यशदा, पुणे
- १६) सर्व जिल्हाधिकारी
- १७) निवडनस्ती, सा.प्र.वि. कार्यासन सहा.

***पत्राने**

SHASHIKANT JADHAV. Naib Tahsildar

RNI No. MAHBIL/2009/31733

Reg. No. MH/MR/SOUTH-322/2010-12



महाराष्ट्र शासन राजपत्र असाधारण भाग चार-अ

वर्ष ३, अंक ६९]

शुक्रवार, जानेवारी २०, २०१२/पौष ३०, शके १९३३

[पृष्ठे ३

किंमत : रुपये १४.००

SHASHIKANT JADHAV, Naib Tahsildar

असाधारण क्र.मा.क्र. ७

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाने केंद्रीय अधिनियमान्वये तयार केलेले (भाग एक, एक-अ आणि एक-ल यांमध्ये प्रसिद्ध केलेले नियम व आदेश यांब्यतिरिक्त) नियम व आदेश.

सामान्य प्रशासन विभाग

मंत्रालय, मुंबई ४०० ०३२, दिनांक १६ जानेवारी २०१२

अधिसूचना

माहितीचा अधिकार अधिनियम, २००५.

क्रमांक केमाअ. २००९/प्र.क्र. ३९८/०९/सहा.—माहितीचा अधिकार अधिनियम, २००५ (२००५ चा २२) याच्या २७ कलम, पोट-कलमे (१) आणि (२) द्वारे प्रदान करण्यात आलेल्या अधिकारांचा वापर करून महाराष्ट्र शासन, याद्वारे, महाराष्ट्र माहितीचा अधिकार नियम, २००५ यात आणखी सुधारणा करण्यासाठी पुढील नियम करित आहे :—

१. या नियमांना, महाराष्ट्र माहितीचा अधिकार (सुधारणा) नियम, २०१२ असे म्हणावे.

भाग चार-अ-७-१

(१)

महाराष्ट्र शासन राजपत्र असाधारण भाग चार-अ, जानेवारी २०, २०१२/पौष ३०, शके १९३३

२. महाराष्ट्र माहितीचा अधिकार नियम, २००५ याच्या नियम ३ नंतर पुढील नियम समाविष्ट करण्यात येईल :—

“ ३क. एक विनंती अर्ज केवळ एका विषयाशी संबंधित असणे.—अधिनियमाच्या कलम ६ अन्वये माहिती मिळण्यासाठीचा लेखी विनंती अर्ज एकाच विषयाशी संबंधित असावा आणि त्यात सर्वसाधारणपणे दीडशेपेक्षा अधिक शब्द नसावेत. अर्जदाराला एकापेक्षा अधिक विषयांची माहिती हवी असेल तर तो त्याकरिता स्वतंत्र अर्ज करील :

परंतु, एकापेक्षा अधिक विषयांशी संबंधित विनंती अर्ज केला असेल अशा प्रकरणी, जन माहिती अधिकारी, केवळ पहिल्या विषयाशी संबंधित विनंतीबद्दलच माहिती देईल आणि इतर प्रत्येक विषयाकरिता स्वतंत्र विनंती अर्ज करण्याचा सल्ला, अर्जदाराला देईल.”

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

SHASHIKANT JADHAV, नंदुराज मंत्रे,
शासनाचे सचिव.